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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 39

[Docket No. 91-CE-94-AD; Amendment 39-8270; AD 92-13-01]

Airworthiness Directives; Aerostar Aircraft Corporation PA-60-600 and PA-60-700 Series (formerly Piper) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Aerostar Aircraft Corporation PA-60-600 and PA-60-700 series airplanes. This action requires an inspection of the nose landing gear drag brace for corrosion, replacement of any corroded components, and replacement of the spring and piston in the lower drag link of the nose landing gear drag brace assembly. The Federal Aviation Administration (FAA) has received several reports of corrosion in the spring and piston in the lower drag link of the nose landing gear drag brace assembly. The actions specified by this AD are intended to prevent failure of the nose landing gear caused by corroded parts, which could lead to nose gear collapse and damage to the airplane.

DATES: Effective July 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204; Telephone (509) 455-8872. 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.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Swope, Aerospace Engineer, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055-4056; Telephone (206) 227-2589.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Aerostar Aircraft Corporation PA-60-600 and PA-60-700 series airplanes was published in the **Federal Register** on January 21, 1992 (57 FR 2233). The action proposed an inspection of the nose landing gear drag brace assembly for cracks, replacement of any corroded components, and replacement of the existing spring and piston with new corrosion resistant parts. The actions would be done in accordance with Aerostar Service Bulletin No. 600-121, dated September 12, 1991.

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

The commenter is an operator of 16 of the affected airplanes and expresses that the problem goes beyond what is addressed in this AD action. The commenter states that (1) the moisture in the hydraulic cylinder of the nose landing gear drag brace assembly is subject to freezing as well as corrosion; (2) this freezing moisture is the reason for the collapse of the nose gear of the two airplanes that prompted this AD; and (3) the problem should be corrected by drilling a drain hole into the bottom of the cylinder.

The FAA concurs that the subject of freezing moisture within the hydraulic cylinder of the nose landing gear drag brace assembly is a potential problem. Even though the FAA has not received any other reports of moisture freezing in the hydraulic cylinder of these assemblies, the FAA is currently investigating this situation. However, the FAA has determined that the inspection for corrosion of the nose landing gear drag brace assembly and replacement of any corroded parts should not wait for the results of this investigation in order to prevent failure of the nose landing gear caused by corroded parts. In addition, the FAA has determined that the solution proposed by the commenter is not practical because there is no location for the drain hole where it will provide adequate drainage without causing a hydraulic leak when the cylinder is actuated. Additional AD action may be taken in the future concerning the subject of freezing moisture within the hydraulic cylinder of the nose landing gear brace assembly.

After careful review of all information relating to the proposed AD including the comment discussed above, 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 375 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $96 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $118,500.

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 adding the following new AD:

92–13–01 Aerostar Aircraft Corporation: Amendment 39–8270; Docket No. 91–CE–94–AD.

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

Model	Serial Nos.
*PA–60–600	60–0001–003 through 60–0608–7961195.
PA–60–600	60–0614–7961196 through 60–0933–8164262.
*PA–60–601	61–0001–004 through 60–0605–7962136.
PA–60–601	61–0611–7962137 through 61–0880–8162157.
*PA–60–601P	61P–0157–001 through 61P–0610–7963274.
PA–60–601P	61P–0612–7963275 through 61P–0659–8163455.
PA–60–602P	62P–0750–8165001 through 60–8365021.
PA–60–700P	60–8423001 through 60–8423025.

* = that have been converted to Wiebel nose gear system (Option No. 199)

Note 1: The manufacturing and ownership rights of the affected model airplanes were previously owned by the Piper Aircraft Corporation, but these rights were recently transferred to the Aerostar Aircraft Corporation.

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

To prevent failure of the nose landing gear caused by corroded parts, which could lead to nose gear collapse and damage to the airplane, accomplish the following:

(a) Inspect the nose landing gear drag brace assembly for corrosion in accordance with the INSTRUCTIONS section of Aerostar Service Bulletin No. 600–121, dated September 12, 1991. Replace any corroded component in accordance with the Aerostar Maintenance Manual, and replace the existing spring and piston with a new corrosion resistant spring and piston in accordance with the INSTRUCTIONS section of Aerostar Service Bulletin No. 600–121, dated September 12, 1991.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office.

(d) The inspection and replacements required by this AD shall be done in accordance with Aerostar Service Bulletin No. 600–121, dated September 12, 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 the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204. 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.

(e) This amendment (39–8270) becomes effective on July 24, 1992. Issued in Kansas City, Missouri, on May 27, 1992.

Larry D. Malir,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–12800 Filed 6–1–92; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 3

Adverse Registration Actions and Other Registration Matters

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: On August 2, 1991, the Commodity Futures Trading Commission (Commission) published proposed amendments to its rules concerning adverse registration actions and other registration matters and allowed sixty days for comments thereon.[1] The Commission has carefully considered the comments received and, based upon its review of the comments and its own reconsideration of the issues, has determined to adopt the rules essentially as proposed, with the following principal changes: (1) Elimination of the proposed requirement that contract markets notify the Commission where they "should have known" of events constituting a statutory disqualification for floor brokers; (2) substitution of biennial, for annual, floor broker registration updates; (3) clarification that the Commission's burden to show that a respondent is subject to a statutory disqualification must be met by a "preponderance of the evidence"; (4) clarification of the special registration process; (5) expansion of the availability of the exclusion from the fingerprint requirement for certain natural persons who are ten percent or more owners of a non-natural person principal of an applicant; and (6) rendering the exemption from the fingerprint requirement for certain outside directors perfected upon filing of certain information with the National Futures Association (NFA), rather than requiring a petition for exemption.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Scott L. Diamond, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's decision in In re Kangles and Chamberlain called for equal treatment of applicants and registrants who are subject to statutory disqualification.[2] In that case, the Commission stated that "our registration process should use uniform substantive standards to assess the fitness of disqualified applicants seeking entry into the futures industry and disqualified registrants seeking retention in the industry." [3] As a result, the Commission is amending its rules relating to statutory disqualifications from registration of industry professionals to accomplish this result.

In addition to amending its rules governing statutory disqualification procedures, the Commission has amended its rules relating to several other provisions of the rules governing

[1] 56 FR 37026.

[2] In re Kangles and Chamberlain, [Current Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,855 (June 6, 1990).

[3] *Id.*, at 37,028 (footnote omitted).

the registration process. Based upon its administration and oversight of the registration process, the Commission has determined that these areas of the rules should be clarified and simplified. Some of these amendments will serve to codify or expand the availability of relief made available on a case-by-case basis by the Commission's Division of Trading and Markets (Division) pursuant to delegated authority. The amendments include, among others: codification of exemptions from the restrictions on dual and multiple associations of associated persons (APs); codification of positions exempting: (1) Corporate officers with no direct supervisory responsibilities from AP registration under certain circumstances, (2) APs from being required to re-register when they gain a new sponsor due to events such as a merger or acquisition of the sponsoring firm, and (3) firms from being required to re-register because of a corporate reorganization where there is no change in the natural person principals; requiring a Form 8–R and fingerprint card from certain natural person principals of an entity that is a non-natural person principal of a firm applying for registration, unless the non-natural person is a publicly-held company or an otherwise regulated entity; simplified registration procedures for persons who will confine their activities under the Commodity Exchange Act (Act) to specified products; and clarifying that a futures commission merchant that has entered into a guarantee agreement with an IB must carry all of the customer accounts introduced by the IB.

The Commission received eight written comments in response to the proposed rulemaking. The commenters included five contract markets (Chicago Board of Trade, Commodity Exchange, Inc., Coffee, Sugar & Cocoa Exchange, Inc., New York Cotton Exchange and New York Mercantile Exchange), the Committee on Futures Regulation of the American Bar Association, an industry trade association (Futures Industry Association), and the NFA. All commenters expressed general support for this rulemaking proceeding. The comments received on particular aspects of the proposals are discussed below in the context of the specific rule to which they relate. The Commission has carefully reviewed each of these comments and, based upon that review and its careful reconsideration of the proposals, is now adopting rules which it believes are responsive to the concerns of the commenters and the regulatory objectives of this rulemaking process.

The following discussion focuses on the changes or clarifications to the proposals in the final rules as adopted. Those provisions not discussed specifically were not commented upon and are being adopted as proposed. Additional background on these final rules may be found in the **Federal Register** release setting forth the proposals.[4]

II. Statutory Disqualifications

A. Rule 3.60—Procedure To Deny, Condition, Suspend, Revoke or Place Restrictions Upon Registration Pursuant to Sections 8a(2), 8a(3) and 8a(4) of the Act—General

In general, the amended Rule 3.60 sets forth procedures applicable to statutory disqualification proceedings pursuant to section 8a(2), 8a(3) and 8a(4) of the Act, and is intended to create procedural equality between applicants and registrants subject to statutory disqualification under those sections of the Act. Rule 3.60 will now permit an applicant who is subject to a section 8a(2) statutory disqualification to introduce evidence of mitigation and rehabilitation in order to rebut the presumption of unfitness created by the underlying offense, rights currently afforded to all registrants subject to statutory disqualification and to those applicants subject to statutory disqualification under section 8a(3) of the Act.

The two commenters who addressed this section generally supported the Commission's effort to amend Rule 3.60 to provide greater procedural equality between applicants and registrants and to streamline the disqualification process. One commenter lauded the Commission's efforts in this area (and also with respect to the other part 3 amendments) and urged the adoption of the proposed amendments to Rule 3.60, subject to the comment letters. The other commenter specifically supported the Commission's statement in the preamble to the proposed rules,[5] which the Commission hereby reiterates, that an applicant's or registrant's willful, material false or misleading statements or omissions of material facts about a statutory disqualification in his registration application can constitute separate grounds for disqualification under sections 8a(2)(G) and 8a(3)(G) of the Act and impact the applicant's or registrant's showing of mitigation or rehabilitation.

The first commenter referred to above who addressed Rule 3.60 generally "urge[d] the CFTC, in the event this rulemaking results in the promulgation of amendments to its registration rules, to express strongly its desire that the NFA adopt rules similar to those of the CFTC, without undue delay." The Division has been in contact with NFA staff to assure that conforming changes in registration forms and NFA registration processing procedures will be in place by the July 1, 1992 effective date of these rule amendments. The Commission is also aware that NFA is proceeding expeditiously to adopt conforming amendments to its registration rules to take account of these amendments to the Commission's rules.

B. Rule 3.60—Filing Deadlines

Rule 3.60 as proposed established a 30-day deadline for filing by the applicant or registrant of a response to the Commission's notice that the applicant or registrant is subject to statutory disqualification, and a 30-day deadline for reply by the DOE to the applicant's or registrant's response to the notice of adverse registration action.

Two commenters specifically addressed the proposed filing periods. One commenter questioned whether thirty days is sufficient time for DOE to reply to the applicant's or registrant's response to the notice of adverse registration action. After due consideration, the Commission has determined that thirty days generally is sufficient time for DOE to reply to the applicant's or registrant's response, and is adopting Rule 3.60 with filing deadlines as proposed. However, in light of another commenter's objection to the inclusion of filing deadlines in the proposed rules without a statement indicating the Commission's willingness to consider reasonable requests for extensions of time, the Commission has determined to amend Rule 3.61 to allow for extension of filing deadlines in statutory disqualification proceedings for good cause shown.[6]

C. Rule 3.60(e)—Determination by the Administrative Law Judge—Standards of Proof

As proposed, Rule 3.60(e) would provide for different burdens of proof, depending upon whether the underlying offense constitutes a statutory

[4] 56 FR 37026.

[5] 56 FR 37026, at 37028.

[6] The Commission has also determined to amend Rule 3.50(a) to conform to the provisions of Rule 10.12(a)(2) by providing that where a party effects service by mail, the time within which the person served may respond thereto shall be increased by three days.

disqualification under sections 8a(2) or 8a(3) and 8a(4) of the Act. Pursuant to proposed Rule 3.60(e)(1), an applicant or registrant subject to an 8a(2) statutory disqualification must make a clear and convincing showing that full, conditioned or restricted registration would not pose a substantial risk to the public, whereas, under proposed Rule 3.60(e)(2), an applicant or registrant subject to statutory disqualification under 8(a)(3) or 8(a)(4) of the Act must make his case by a preponderance of the evidence. This distinction in the burden of proof reflects existing Commission regulations and relevant case-law.[7]

One commenter raised several questions regarding the different burdens of proof. The commenter requested clarification as to whether the clear and convincing standard is applicable to a challenge to the factual basis for the presumption of unfitness, e.g., the fact of conviction. The commenter recommended that the determination as to whether a statutory disqualification exists be based on a preponderance of the evidence standard in all cases. In response to this comment and its own reevaluation of the issue, the Commission has added language to the introductory paragraph of Rule 3.60(e) to provide in the final rule that in both 8a(2) and 8a(3) statutory disqualification cases, the Administrative Law Judge (ALJ) shall specifically consider whether DOE has shown by a preponderance of the evidence the existence of a statutory disqualification with respect to the applicant or registrant as set forth in the notice issued by the Commission. This showing applies only to the fact of a conviction, judgment or other disqualification specified in the Act and does not require nor is it to be used as an opportunity for the re-litigation of the underlying facts that led to the conviction or judgment.

The commenter also stated that specifying the burden of proof standard would hinder the decision-making flexibility of the Commission, the NFA and ALJs in deciding statutory disqualification cases. The commenter requested that no specific burden of proof standard be codified. The Commission, after careful analysis of the comments, and existing precedent, has determined that Rule 3.60(e) should maintain differing burdens of proof in this area for 8a(2) and 8a(3) statutory disqualification cases, as proposed. Such differentiation reflects the structure of the statute and existing case precedents. Decision-makers will retain flexibility to apply the relevant law to the facts of each case.

D. Rule 3.60(k)—Incorporation by Reference of Certain Part 10 Procedures

The proposed amendments to part 3 would have deleted existing Rules 3.56 and 3.61(a). In general, those rules provide that part 10 (17 CFR part 10 (1991)) shall not apply in proceedings under 8a(2) but shall apply in proceedings under 8a(3). The amended part 3 rules establish unified procedures for all statutory disqualification proceedings and specifically incorporate particular part 10 rules. For example, new Rule 3.60(d)(2) governing hearings refers to Rules 10.61 through 10.81 and 10.83, and the appeal rule (3.60(j)) refers to provisions from sections 10.102 *et seq.*

The rule amendments as originally proposed were premised on the belief that such specific references would eliminate the need for a general rule on the applicability of part 10 procedures to statutory disqualification proceedings. However, upon assessment of the comments, the Commission has determined that certain part 10 procedures which address matters such as formalities of filing, time calculation, and depositions should be made specifically applicable to statutory disqualification proceedings. Accordingly, the Commission has added a new paragraph (k) to Rule 3.60 in order to apply certain basic provisions of part 10 that were not otherwise listed in the part 3 amendments as proposed. This provision will formalize (with some limitations) present practice in 8a(3) proceedings under current Rule 3.61(a).

The Commission also notes that in establishing unified procedures for all statutory disqualification proceedings and identifying those sections of the Part 10 Rules of Practice that will apply, the rule amendments eliminate, as proposed, the present applicability (under current Rule 3.61(a)) of Rule 10.42(b) discovery in proceedings involving disqualifications under Section 8a(3) or 8a(4) of the Act. The obligation of the Division of Enforcement under Rule 10.42(b) to produce certain material will be replaced by the mutual exchange of information concerning witnesses and documents provided for in new Rule 3.60 (b) and (c). This procedure is similar to the exchange of "core information" encouraged by Executive Order 12778 on Civil Justice Reform (October 23, 1991). The Commission believes that this procedure will provide respondents in all statutory disqualification proceedings, whether brought under section 8a(2), section 8a(3) or section 8a(4), with adequate information to prepare their defense and is consistent with the expedited nature and limited scope of issues in such proceedings.

E. Rule 3.63(b)—Timing and Procedure for Filing Petition for Review

Currently, Rule 3.63(b) provides that within fifteen days of the service of a final order, a party may file a petition for review with the Commission. The rule further addresses finality of the Commission's refusal to entertain such a petition.

Newly adopted Rules 3.60 (i) and (j) also govern the finality of, and appeal procedures with respect to, Commission orders. Specifically, these rules cross-reference the Commission's part 10 appellate procedures—to provide further consistency and clarity with respect to statutory disqualification appellate procedures and the procedures applicable to other administrative actions.

In order to avoid ambiguity, the Commission in adopting new Rules 3.60(i) and (j), has determined to delete Rule 3.63(b) and any reference thereto. Additionally, Rule 3.63(a) will be redesignated Rule 3.63, with no subparagraphs.

F. Rule 3.64—Procedures to Lift or Modify Conditions or Restrictions

Proposed Rule 3.64 would establish a procedure whereby a registrant whose registration is subject to conditions or restrictions may petition the Commission to lift or modify such conditions or restrictions. The rule would limit the registrant's showing to an affidavit that the conditions or restrictions have been satisfied in accordance with the order imposing such conditions or restrictions.

The commenter who addressed this rule specifically supported the Commission's objective of providing a registrant whose registration is subject to conditions or restrictions with procedures to petition to lift or modify such conditions or restrictions at a date no earlier than the date set by the ALJ in the initial decision. However, the commenter questioned the sufficiency of a thirty-day reply period for DOE and the factors on which the ALJ could make his determination. The commenter also stated that the rule places "undue emphasis" on whether the registrant has adhered to the conditions or restrictions rather than the question of "whether the conditions or restrictions remain necessary to protect the public." The commenter further suggested that the registrant should have the burden of

[7] *See generally*, 56 FR 37026, at 37028 n.8, and accompanying text.

showing that his modified or full registration is in the public interest and, as part of this burden, be required to address any customer complaints against him which relate to the period of conditioned or restricted registration.

The Commission has determined to adopt Rule 3.64 as proposed. As stated in the preamble to the proposed rules, "[t]he registrant's showing in a petition to lift or modify conditions or restrictions shall be strictly limited to affidavits indicating that the conditions or restrictions have been fulfilled in accordance with the standards established in the ALJ's initial decision." [8] The Commission will continue this limitation in order to avoid a re-litigation of the statutory disqualification and focus the trier of fact upon issues appropriate to a post-adjudicative hearing. Where reporting of customer complaints is relevant to the conditions or restrictions imposed, the decisionmaker may, of course, consider such complaints. The burden of proof, as in most matters, is upon the moving party.

III. Other Registration Matters

A. Rule 1.62—Contract Market Requirement for Floor Broker Registration

Contract markets are required by Rule 1.62 to adopt and enforce rules assuring that only registered floor brokers (FBs) act as FBs on the floor of the contract market. The proposed amendments to Rule 1.62 would have required, among other things, a contract market to notify the Commission of any facts which could constitute a statutory disqualification with respect to an FB or applicant for registration as an FB within ten business days of when the contract market knew or should have known such facts.

Six of the eight commenters objected to the "should have known" language contained in the proposed amendments as creating an undue burden and asked that this standard be eliminated. Five of these commenters did not object to the requirement that an exchange notify the Commission based upon facts within the exchange's actual knowledge. In light of the concern expressed by the commenters, and in light of the Commission's belief that a duty to report facts constituting statutory disqualification based upon actual knowledge thereof is sufficient to achieve the regulatory goal of ensuring that disqualified registrants are brought to the Commission's attention, the Commission has determined not to adopt the "should have known" standard in Rule 1.62.

B. Rule 3.1—Definition of the Term "Principal"

Current Rule 3.1(a)(3) defines the term "principal" to include, among other persons, "any person who has contributed ten percent or more of the [registrant's or applicant's] capital." The Commission's final rule clarifies that the latter provision applies generally to a person who has contributed capital by means of subordinated debt, with exclusions from the definition of the term "principal" for those contributors of subordinated debt that are FDIC-insured banks, U.S. branches of unaffiliated foreign banks subject to U.S. regulation, and insurance companies regulated under federal or state law, except where such institutions "control" the registrant or applicant in a manner that would otherwise bring them within the definition of the term "principal" under Rule 3.1(a)(1) or (a)(2).

One commenter recommended that the exclusion from the definition of principal for lenders of subordinated debt regulated under U.S. or state law be expanded "to include loans from all commercial lenders in the ordinary course of their business." The Commission has carefully considered this comment and believes that the proposal provides sufficient relief with respect to lenders of subordinated debt whose routine business encompasses such loans and who are subject to other regulatory frameworks. Accordingly, the Commission has determined to adopt the amendment to Rule 3.1(a)(3) as proposed.

C. Rule 3.10(a)—Application for Registration of Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants

Under current Rules 3.13, 3.14, 3.15 and 3.17, natural persons who are principals of an applicant generally must file a Form 8–R and fingerprint card. However, where the principal of an applicant or registrant is not a natural person (*e.g.*, a corporate holding company or a general partnership), the firm is required to provide the names of officers and directors or general partners of that entity. This leaves open the possibility that persons who could not meet the statutory fitness standards as individual principals of an applicant firm might be able to exercise control of the firm through a corporate holding company or other entity. To address this concern, the Commission is adopting Rule 3.10(a)(2)(ii), which generally requires the filing of a Form 8–R and fingerprint card for each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of an entity that is a nonnatural person listed on the Form 7–R of a firm applying for registration. Exemptions from this requirement are provided if the non-natural person principal files reports under the Securities Exchange Act of 1934, has filed a registration statement under the Securities Act of 1933, is subject to regulation by the Securities and Exchange Commission (SEC), is an insurance company subject to regulation by any State, or is a bank or any other financial depository institution subject to regulation by any State or the United States. The proposed rule also would permit NFA to waive the requirement to file a Form 8–R and fingerprint card if such natural person is a foreign national regulated by a foreign futures authority that agrees to provide information to the NFA concerning facts which would constitute a potential statutory disqualification and if such person is in good standing with the foreign futures authority.

Two commenters addressed proposed Rule 3.10. One commenter requested that the proposed rule be modified to provide that the Form 7–R include a list of all persons who ultimately control an applicant for registration, in order to harmonize Commission rules with those of the SEC.[9] Under the SEC standard, where a beneficial owner is other than a natural person, disclosure of successive parents is required, unless and until there are no natural persons who beneficially own five percent or more of the equity. The Commission believes that the proposal was more consistent with its regulatory framework, and has determined to adopt Rule 3.10(a)(2)(ii) as proposed in this regard.

Additionally, both commenters addressed the procedure for exempting foreign nationals from the fingerprint requirement. One commenter requested a broader fingerprint exemption for persons residing outside of the United States. The commenter recommended expansion of the proposed exemption from the filing of a Form 8–R and

[8] 56 FR 37026, at 37029. Examples of conditions imposed on registrants include, among others, prohibitions on acting as a principal of a registered entity, exercising supervisory authority over any registered person and exercising discretionary authority over any customer account.

[9] See SEC Form BD, which requires the listing on a schedule of the identities of all persons who ultimately control an applicant for registration, including all directors, executive officers, general partners and persons who beneficially own five percent or more of the equity of an applicant.

fingerprinting requirements contained in the proposed rule to include those subject to any foreign jurisdiction or agency which has been granted relief under Commission Rule 30.10.[10] The Commission has determined to modify proposed Rule 3.10(a)(2)(ii) such that a natural person who is a foreign national who has been granted relief under Commission Rule 30.10, or who is an employee or a principal of a firm which has been granted such relief, would be eligible for an NFA waiver of the Form 8–R and fingerprint requirements.

The other commenter requested clarification as to certain aspects of this rule. Those aspects of the rule include: (1) The impact of the fitness of a natural person who owns ten percent or more of a non-natural person principal of the applicant on the applicant's fitness; (2) the requirement to update a Form 8–R by means of a Form 3–R; and (3) NFA's authority to waive the Form 8–R and fingerprint requirements where a foreign national or "other appropriate circumstances" are involved. In response to this comment, the Commission specifies that a non-natural person principal having a natural person who owns ten percent or more of the firm and is deemed unfit will itself be deemed unfit for listing as a principal.[11] As to the update issue on which the commenter requested clarification, the Commission believes that Rule 3.31(b) requires natural persons who own ten percent or more of a non-natural person principal to report changes to the information reported on Form 8–R by means of a Form 3–R, just as all persons who file a Form 8–R are required to update the information contained therein by means of a Form 3–R. The last item of the instructions to Form 8–R makes this duty clear.

This commenter requested clarification on two other points relevant to this rule. The commenter requested clarification of the treatment of foreign nationals under Rule 3.10(a)(2)(ii) in light of screening procedures previously arranged for principals of applicants who are natural persons residing abroad whereby requests are sent to foreign regulators for information concerning such persons using the Form 8–R filing. The Commission finds no inconsistency here. The existing screening procedures apply to persons who are themselves principals of an applicant for registration and a Form 8–R is always required for such persons. New Rule 3.10(a)(2)(ii) applies only to natural person owners of an entity that is a non-natural person principal of an applicant, *i.e.*, persons at a level once removed from the applicant firm. The commenter also requested guidance as to the "other appropriate circumstances" under which NFA would waive the requirement for a Form 8–R and fingerprint card. The Commission believes that the specific provisions of this rule (and the parallel provisions of new Rule 3.32(a)(2)(ii)) contain appropriate relief in this area and, in light of the comment received, the Commission has determined to delete the clause referring to "other appropriate circumstances" as generally unnecessary. The Commission notes, however, that a person can apply to the Commission for relief if he believes his particular situation requires special consideration.

The Commission also wishes to note, although the point was not raised in any written comment, that Rule 3.10(a)(2)(ii) will apply only prospectively. Accordingly, current registrants need not amend their Forms 7–R by means of a Form 3–R, or include in any annual update, information required of new applicants under Rule 3.10(a)(2)(ii).

D. Rule 3.10(b)—Duration of Registration of Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants

The proposed amendment to Rule 3.10(b) would clarify the effect of a registration suspension upon firms (*i.e.*, futures commission merchants (FCMs), introducing brokers (IBs), commodity trading advisors (CTAs), commodity pool operators (CPOs) and leverage transaction merchants (LTMs)) by providing that the registrant would not be deemed registered during the pendency of a registration suspension but that such a suspension would not have the effect of a revocation or withdrawal of registration. Proposed Rules 3.11(b) and 3.12(b) would apply the same treatment to suspended FBs and APs.

One commenter recommended clarification of proposed Rules 3.10(b), 3.11(b) and 3.12(b) insofar as they would suggest that the suspended person is not registered during the pendency of the suspension. The commenter contended that the proposed text could have the unintended effect of depriving the Commission of reparations jurisdiction under section 14 of the Act, which extends only to registrants. The commenter suggested that these proposals be redrafted "to prohibit a registrant from acting in a registered capacity or holding himself out as a registrant during the suspension period." The Commission has determined to accept the substance of this recommendation, and the final rules are amended accordingly to prohibit a suspended registrant from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration. This language is consistent with section 4h of the Act.

The Commission also wishes to note that given the clarification of the effect of a registration suspension, it has determined that the special registration or temporary licensing procedures for an AP under new Rule 3.12(i) should apply only when the AP's registration is terminated because its previous sponsor's registration was revoked or withdrawn. As proposed, Rule 3.12(i) could also have applied in cases where the sponsor's registration was suspended. However, since the suspension of the sponsor's registration will only have the effect by itself of suspending and not terminating the AP's registration, the Commission has determined that Rule 3.12(i) is not applicable to an AP in such circumstances. Such an AP can transfer to a new sponsor in accordance with existing procedures.

E. Rule 3.11(d)—Annual Affirmation of Registration Information by Floor Brokers

Rule 3.11(d) as proposed would have required floor brokers to file annual registration updates by reviewing NFA printouts of information contained in the registration files, as is currently required for FCMs, IBs, CTAs, CPOs and LTMs. Several commenters, including a majority of the contract markets who commented on the proposal, objected to an update requirement as unnecessary and burdensome. Some of these commenters suggested that if the Commission decides to adopt an update requirement, it should use a three-year cycle, rather than require an update on an annual basis. The Commission has reviewed these comments and, upon reconsideration of the matter and in light of the existing requirement under Rule 3.31(b) that a floor broker promptly

[10] Commission Rule 30.10 permits persons located outside the U.S., who are subject to a comparable regulatory framework in the jurisdiction in which they are situated, to seek an exemption from certain of the Commission's foreign futures and options rules (17 CFR Part 30 (1991)) based upon substituted compliance with comparable regulatory requirements of the foreign jurisdiction. The Commission has granted petitions under Rule 30.10 to nine foreign self-regulatory organizations and member firms they have designated.

[11] See Sections 8a(2)(H) and 8a(3)(N) of the Act.

correct any deficiency or inaccuracy in his registration application by filing a Form 3–R, has determined to require floor brokers to update registration by means of reviewing an NFA printout every two years. The final rules have been revised accordingly.

F. Rule 3.12(f)—Reporting of Dual and Multiple Associations

The Commission proposed to amend Rule 3.12(f) to codify the bases for permitting dual and multiple associations of APs. Such associations would require, among other things, that each sponsor of an AP with dual and multiple associations acknowledges to the NFA that it will be jointly and severally liable for the AP's activities with respect to any customers common to it and the other sponsor(s) of the AP. The Commission proposed to maintain a prohibition against dual registration where an associated person of an FCM or IB directs customers seeking a managed account to use the services of a CTA approved by the FCM or IB and where all such accounts are carried by the FCM or introduced by the IB, in which case the AP is deemed solely associated with the FCM or IB.

Four commenters addressed this issue. One commenter stated that it "applauds the Commission's efforts to eliminate the current prohibitions on multiple associations in Rule 3.12 and to require all sponsors to sign a certification accepting responsibility for the conduct of the AP with respect to all dual customers." Another commenter stated that it shared the goal of simplifying the registration process and approved of the Commission's proposal "to codify many of the exceptions to the existing regulatory structure that have become routine over the years." A third commenter "commends the Commission's efforts to streamline the process and supports the revisions regarding the multiple associations exemption."

The fourth commenter argued that the required acknowledgements could be interpreted as imposing liability upon each sponsoring firm for all acts of an AP in his capacity as an agent and even, potentially, for acts of other sponsoring firms. However, the proposed rules and the preamble thereto clearly stated that the sponsor would acknowledge joint and several liability for a dually registered AP only as to activities "with respect to any customers common to it and another sponsor of the AP."[12] There has been extensive experience with this type of acknowledgment of liability under existing Rule 3.16(e)(2) for APs of CTAs and CPOs with dual or multiple associations and the Commission has found that the representations clarify the scope of sponsorship responsibility for dually sponsored individuals and that those affected by this requirement have not found it unduly burdensome. Accordingly, upon consideration of the comments, the Commission has determined to adopt the acknowledgment of joint and several liability under Rule 3.12(f) as proposed.

The first commenter suggested, in light of the required acknowledgment of joint and several liability by dual or multiple sponsors, that the Commission allow an AP of an FCM or IB also to register as an AP of a CTA where the AP directs managed account customers to a CTA approved by the FCM or IB. The purpose of the provision that in such cases the AP is deemed solely associated with the FCM or IB was to eliminate administrative burdens on firms due to frequent changes in CTAs on an FCM's or IB's approved list. Neither the latter provision nor the final rule prohibits AP activity, but addresses only the status in which the AP is deemed to be registered and therefore should not prevent any person from engaging in sales activity.

Consequently, the final Rule 3.12(f) is adopted as proposed, except for two technical changes. The language in Rule 3.12(f)(1) concerning common customers of more than one sponsor of the same AP refers to "customers" generically rather than including the additional specific references in the proposal to "option customers" and "leverage customers." The Commission believes the use of the generic term "customer" encompasses customers with respect to all types of commodity interests, whether futures, options or leverage contracts, and thus that the additional language in the proposal was superfluous. The Commission also has not included in the final paragraph (4) of Rule 3.12(f) the language "nor be required to file a Form 3–R." Since this provision describes the one instance where dual registration is unnecessary and prohibited, the Commission believes that any reference to Form 3–R is likewise superfluous.

G. Rule 3.12(h)(1)(iii)—Exemption From AP Registration for Corporate Officers or General Partners With No Direct Supervisory Responsibilities

The Commission has determined to clarify that its codification in Rule 3.12(h)(1)(iii) of an exemption from AP registration for corporate officers or general partners with no direct supervisory responsibilities requires only that the firm involved engage in commodity interest related activity *for customers* as no more than ten percent of its total revenue on an annual basis. Accordingly, the amount of the firm's proprietary commodity interest business need not be included in this calculation. The phrase "for customers" was not included in the proposal, but the Commission believes it is appropriate to clarify this point since it is customer business that is the basis for any requirement to register as an AP.

H. Rule 3.12(j)—Special Temporary Licensing and Registration Procedures for Associated Persons of Futures Commission Merchants and Introducing Brokers Involved Only With Certain Commodity Interests

Rule 3.12(j) provides a procedure whereby persons limiting their AP activities to specified commodity interests would not be required to comply with the rules generally applicable to applicants for AP registration, including the proficiency testing requirements, but could instead comply with streamlined requirements adopted by NFA and approved by the Commission.

Although the commenters generally agreed with the goal of simplifying the registration process for those limiting their activities to specified commodity interests, certain commenters questioned whether the proposed rule would simplify registration or lead to unnecessarily cumbersome procedures. Certain commenters also suggested that NFA and the National Association of Securities Dealers (NASD) should cooperate in developing a uniform system for registration of all futures and securities salesmen, including a single examination for all such persons, in an effort to simplify registration, expand the available sales force in futures, and enhance the competitiveness of the futures markets.

The Commission has determined to adopt Rule 3.12(j) as proposed. The Commission, nonetheless, wishes to make clear that a contract market seeking special registration procedures with respect to persons limiting their activities to a particular new contract may consult with NFA and develop such procedures to be submitted in conjunction with the contract market designation application for simultaneous consideration by the Commission. The Commission also believes that the special registration procedures would be substantially identical for the various contracts qualifying for such procedures, despite the fact that NFA would have

[12] 56 FR 37026, at 37033.

discretion to vary these procedures on a contract-by-contract basis, subject to Commission approval. Accordingly, special registration procedures need not delay the consideration of a contract market designation application and such procedures could be in place when the new contract is available for trading. The Commission believes that the issue of a complete unification of NFA and NASD registration requirements, including those concerning proficiency testing, is beyond the scope of the present rulemaking.

I. Rule 3.21—Exemption From Fingerprinting Requirement for Outside Directors

The Commission's rules generally require all natural person principals of an applicant for registration to file fingerprint cards with NFA. Proposed Rule 3.21 would have authorized NFA to consider petitions for exemption from the fingerprint requirement filed by applicants or registrants on behalf of outside directors if such directors do not engage in commodity interest activities, do not have direct supervisory responsibility over persons so engaged, and do not have regular access to books and records relating to commodity interest activities.

One commenter suggested that in lieu of requiring a petition for exemption from the fingerprint requirement for outside directors, the Commission's regulations should mirror those of the SEC, whereby a securities broker-dealer is required to maintain and keep current a statement that provides information concerning specified restrictions upon the activities of the partner, director, officer or employee for whom exemption is claimed.[13] The Commission has decided to adopt a final Rule 3.21(c) which requires a firm, in lieu of filing a petition for exemption, to file with NFA a "Notice of Exemption Pursuant to Rule 3.21(c)" on behalf of any outside director who qualifies for the fingerprint exemption based upon the restrictions set forth in Rule 3.21(c). Rule 3.21(d) requires the firm to file with NFA a Form 8–R on behalf of such outside director. Under these rules, NFA will have information about those outside directors claiming the exemption from the fingerprint requirement and will be able to monitor the individuals and firms involved, but the exemption will be self-executing and a petition for exemption will not be required to be filed with or reviewed by NFA.[14] However, as is provided under Rule 3.10(a)(2)(ii), in appropriate cases the Commission and NFA may require further information from the firm with respect to any outside director referred to in a Notice Pursuant to Rule 3.21(c).

J. Rule 3.32—Changes Requiring Re-Registration; Addition of Principals

Under current Rule 3.32, subject to various exceptions, reregistration is required when a person not listed on the registrant's initial application becomes a principal. The Division has issued exemptive relief from the re-registration requirement in cases where no new natural persons are added as principals and where, *inter alia*, the addition of non-natural principals is not being undertaken for the purpose, and will not have the effect, of limiting the registrant's liability. The Commission proposed to amend Rule 3.32(a)(2) to codify such relief by requiring, in the event of a reorganization where no new natural person principals of a registrant are added, only the filing of a Form 3–R and written certifications to the effect that: (A) The ultimate day-to-day control of the registrant remains the same, (B) the addition of the new principal will not affect the conduct or the day-to-day operations of the registrant, and (C) the insertion of the new principal into the chain of ownership is not being done for the purpose, and will not have the effect, of limiting liability of the registrant. In addition, the Commission proposed an exemption from the requirement of re-registration where a new director is added but the majority of the board of directors remains the same and the registrant, among other things, files a corporate resolution with the NFA prohibiting the new director from exercising any control or voting privileges over the registrant's commodity interest activities until the NFA has had the opportunity to complete its fitness inquiry.

Although offering general support, one commenter requested clarification of several issues. This commenter expressed concern as to the application of the proposed rule to sole proprietorships or partnerships which have decided to incorporate since the effect of incorporation would be to limit the liability of the individual registrant. The Commission notes that a previous amendment to Rule 3.32 specifically deleted "changes in the form of organization of a registrant" as a grounds for reregistration.[15] As such, representations regarding limitation of liability would be unnecessary in a situation involving only a change in the form of organization.

With respect to the proposed amendment relating to the addition of new directors, the commenter questioned the utility of a corporate resolution prohibiting the new director from exercising control or voting privileges in light of the fact that the majority of the directors will remain the same. The commenter viewed this requirement as "one which will add a new hurdle to the re-registration process which will undoubtedly delay the process without providing any additional regulatory benefit." The Commission, in adopting the rule amendments as proposed, emphasizes the short term effect of the bar imposed by the corporate resolution (which will expire when the fitness check is completed) and the fact that the resolution is limited in scope to the registrant's commodity interest activities. The Commission believes that, given these limitations, the required corporate resolution does not constitute an unwarranted regulatory burden in these circumstances.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect IBs, FCMs, APs, FBs, CTAs, CPOs and LTMs. The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[16] FCMs, registered CPOs and LTMs have been determined not to be small entities under the RFA. With respect to these registrant categories as well as the other registrant categories that may be affected by these rules, the Commission does not believe that the rules would have any increased regulatory impact as

[13] The restrictions on activities parallel those in Rule 3.21(c) and provide that such person is not engaged in the sale of securities; does not regularly have access to the keeping, handling or processing of securities, monies, or the original books and records relating to the securities or the monies; and does not have direct supervisory responsibility over persons engaged in the activities referred to in this footnote. 17 CFR 240.17f–2(a)(1)(i) (1991).

[14] The commenter also suggested that Commission Rules 3.10 and 3.32 be amended to conform to the concept of filing a notice rather than a petition for exemption under Rule 3.21(c). As Rule 3.10(a)(2)(i) already refers to "a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part," no change is necessary. The language of Rule 3.32 (c) and (h) has been changed to conform to Rule 3.10(a)(2)(i) in light of the change discussed above regarding Rule 3.21(c).

[15] 53 FR 8428, 8429, 8433–34 (March 15, 1988).

[16] 47 FR 18618–18621 (April 30, 1982).

the overall effect of the rules is to reduce regulatory burdens on all entities, including small businesses.

One comment was received with respect to FBs. This commenter maintained that amended Rule 3.11(d) would create an increased regulatory burden on FBs, contravening the purposes of the RFA. The Commission finds that in light of the existing requirement for FBs to update and maintain their registration information,[17] Rule 3.11(d) supports such requirement by requiring review of NFA printouts of registration information. Therefore, FBs should not suffer a significant economic impact as a result of the required biennial review of registration information. As a consequence, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501–3512 (1988), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted these rules in proposed form and the associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with these rules on April 10, 1991 and assigned OMB control number 3038–0024 to the rules. While these rules impose no additional overall burden, the group of rules of which these are a part have the following burden:

Average Burden of Hours per Response	1.20
Number of Respondents	180
Frequency of Response	3

Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures.

[17] 17 CFR 3.31(b) (1991).

17 CFR Part 3

Brokers, Registration.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 2, 4d, 4e, 4f, 4k, 4m, 4n, 4p, 5a, 8a, 17 and 19 thereof (7 U.S.C. 2, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 7a, 12a, 21 and 23), hereby proposes to amend parts 1 and 3 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24, unless otherwise stated.

2. Section 1.10 is amended by revising paragraphs (j)(3) and (j)(4) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(j) * * *

(3) A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.10(a) of this chapter shall become effective upon the granting of registration or, if appropriate, a temporary license, to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

(4)(i) If the registration of the introducing broker is suspended, revoked, or withdrawn in accordance with the provisions of this chapter, the guarantee agreement shall expire as of the date of such suspension, revocation or withdrawal.

(ii) If the registration of the futures commission merchant is suspended or revoked, the guarantee agreement shall expire 30 days after such suspension or revocation, or at such earlier time as may be approved by the Commission, the introducing broker, and the introducing broker's designated self-regulatory organization.

* * * * *

3. Section 1.57 is amended by revising paragraph (a)(1) to read as follows:

§ 1.57 Operations and activities of introducing brokers.

(a) * * *

(1) Open and carry each customer's and option customer's account with a carrying futures commission merchant on a fully-disclosed basis: *Provided, however,* That an introducing broker which has entered into a guarantee agreement with a futures commission merchant in accordance with the provisions of § 1.10(j) of this part must open and carry such customer's and option customer's account with such guarantor futures commission merchant on a fully-disclosed basis; and

* * * * *

4. Section 1.62 is revised to read as follows:

§ 1.62 Contract market requirement for floor broker registration.

(a) Each contract market shall adopt, maintain in effect, and enforce rules which have become effective pursuant to Section 5a(12) of the Act and § 1.41 of this part and which provide that no person in or surrounding any pit, ring, post, or other place provided by such contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered under the Act as a floor broker in accordance with Section 4f of the Act and § 3.11 of this chapter, and such registration has not been suspended (and the period of such suspension shall not have expired), nor been withdrawn nor revoked. Each contract market shall also adopt, maintain in effect, and enforce rules which have become effective pursuant to Section 5a(12) of the Act and § 1.41 of this part which require biennial updates of registration filings by floor brokers in accordance with § 3.11(d) of this chapter and provide for requests for withdrawal of floor broker registration using Form 7–W in accordance with § 3.33 of this chapter.

(b) Each contract market must notify the Commission of any facts regarding a floor broker or an applicant for registration as a floor broker who has been granted trading privileges at the contract market which are set forth as statutory disqualifications in Section 8a(2) of the Act within ten business days of the date upon which the contract market first knows of such facts. Notice to the Commission shall be sufficient if the contract market gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, DC office (Attn: Chief

Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581).

PART 3—REGISTRATION

Subpart A—Registration

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

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a, 13c, 16a and 23 unless otherwise noted.

6. Section 3.1 is amended by revising paragraphs (a)(3), (b) and (c) and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 3.1 Definitions.

(a) * * *

(3) Any person who has contributed ten percent or more of the capital: *Provided, however,* That if such capital contribution consists of subordinated debt contributed by an unaffiliated bank insured by the Federal Deposit Insurance Corporation, United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions, or insurance company subject to regulation by any State, such bank, branch, agency or insurance company will not be deemed to be a principal for purposes of this section, provided such debt is not guaranteed by another party not listed as a principal.

(b) *Current.* As used in this subpart, a Form 8–R is current if, subsequent to the filing of that form and continuously thereafter, the registrant or principal has been either registered or affiliated with a registrant as a principal.

(c) *Sponsor.* Sponsor means the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant which makes the certification required by § 3.12 of this part for the registration of an associated person of such sponsor.

(d) *Beneficial owner.* Any person who, without limitation, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership, or of avoiding making a contribution of ten percent or more of the capital, as part of a plan or scheme to evade being deemed a principal of an applicant or registrant under paragraph (a) of this section shall be deemed for purposes of such paragraph to be the beneficial owner or the contributor of capital.

(e) *Foreign futures authority.* Foreign futures authority means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule or regulation as it relates to a futures or options matter.

(f) *Commodity interest.* Commodity interest means:

(1) Any contract for the purchase or sale of a commodity for future delivery regulated under the Act and rules promulgated thereunder; and

(2) Any contract, agreement or transaction subject to Commission regulation under sections 4c or 19 of the Act.

7. Section 3.10 is amended by revising the heading and paragraphs (a), (b) and (d) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Application for registration.* (1) (i) Application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(ii) Applicants for registration as a futures commission merchant or introducing broker must accompany their Form 7–R with a Form 1–FR–FCM or Form 1–FR–IB, respectively, in accordance with the provisions of § 1.10 of this chapter: *Provided, however,* That an applicant for registration as a futures commission merchant or introducing broker which is registered with the Securities and Exchange Commission as a securities broker or dealer may accompany its Form 7–R with a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part II A, in accordance with the provisions of § 1.10(h) of this chapter.

(iii) Applicants for registration as a commodity pool operator must accompany their Form 7–R with the financial statements described in § 4.13(c) of this chapter.

(iv) Applicants for registration as a leverage transaction merchant must accompany their Form 7–R with a Form 2–FR in accordance with the provisions of § 31.13 of this chapter.

(2)(i) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1)(i) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part. The provisions of paragraph (a)(2)(i) of this section do not apply to any principal who has a current Form 8–R on file with the Commission or the National Futures Association.

(ii) In the case of an applicant with a principal that is not a natural person, the applicant's Form 7–R must also be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of the entity that is a non-natural person principal listed on the Form 7–R of the applicant, and must be accompanied by the fingerprints of such natural person on a fingerprint card provided by the National Futures Association for that purpose: *Provided, however,* That the provisions of paragraph (a)(2)(ii) of this section shall not apply if the non-natural person principal files reports under the Securities Exchange Act of 1934, has filed a registration statement under the Securities Act of 1933, is subject to regulation by the Securities and Exchange Commission, is an insurance company subject to regulation by any State, or is a bank or any other financial depository institution subject to regulation by any State or the United States. If all of the principals of an applicant's non-natural person principal are also non-natural persons, the Form 7–R must be accompanied by a Form 8–R and fingerprints for each natural person described in the preceding sentence of such non-natural persons. The provisions of paragraph (a)(2)(ii) of this section do not apply to any natural person who has a current Form 8–R on file with the Commission or the National Futures Association or who has had filed on his behalf a Form 8–R and a

fingerprint card pursuant to paragraph (a)(2)(i) of this section. However, if such natural person is a foreign national who is regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification and whether such person is in good standing with the foreign futures authority to the National Futures Association, has been granted relief under § 30.10 of this chapter, or is employed by or a principal of a firm which has been granted relief under § 30.10 of this chapter, the National Futures Association may waive the requirement to file a Form 8–R and a fingerprint card. In appropriate cases, the Commission and the Natural Futures Association may require further information from the applicant with respect to any natural person or entities referred to in paragraph (a)(2)(ii) of this section.

(b) *Duration of registration.* (1) A person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section will continue to be so registered until the effective date of any revocation or withdrawal of such registration. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration.

(2) A person registered as an introducing broker who was a party to a guarantee agreement with a futures commission merchant in accordance with § 1.10(j) of this chapter will have its registration cease thirty days after the termination of such guarantee agreement unless the procedures set forth in § 1.10(j)(8) of this chapter are followed.

* * * * *

(d) *Annual filing.* Any person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

8. Section 3.11 is amended by revising paragraph (b) and by adding a new paragraph (d) to read as follows:

§ 3.11 Registration of floor brokers.

* * * * *

(b) *Duration of registration.* A person registered as a floor broker in accordance with paragraphs (a) or (c) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets have ceased. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration or of all such trading privileges. In accordance with § 3.31(d) of this part, each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker, must notify the National Futures Association within twenty days after such person's trading privileges on such contract market have ceased.

* * * * *

(d) *Biennial filing.* Any person registered as a floor broker in accordance with paragraphs (a) or (c) of this section must file with the National Futures Association a Form 8–R, completed in accordance with the instructions thereto, biennially on a date specified by the National Futures Association. The failure to file the Form 8–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

* * * * *

9. Section 3.12 is amended by revising the heading and paragraphs (a), (b), (c) introductory text, (d)(1) introductory text, (d)(1)(iv), (d)(1)(v) and (d)(2), by removing paragraphs (d)(4) and (d)(5), by revising paragraphs (f) and (h), and by adding new paragraphs (i) and (j) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Registration required.* It shall be unlawful for any person to be associated with a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant as an associated person unless that person shall have registered under the Act as an associated person of that sponsoring futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with the procedures in paragraphs (c), (d), (f), (i), or (j) of this section or is exempt from such registration pursuant to paragraph (h) of this section.

(b) *Duration of registration.* A person registered in accordance with paragraphs (c), (d), (f), (i), or (j) of this section and whose registration has not been revoked will continue to be so registered until the revocation or withdrawal of the registration of each of the registrant's sponsors, or until the cessation of the association of the registrant with each of his sponsors. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of his or his sponsor's registration. In accordance with § 3.31(c) of this part, each of the registrant's sponsors must file a notice with the National Futures Association on Form 8–T or on a Uniform Termination Notice for Securities Industry Registration reporting the termination of the association of the associated person within twenty days thereafter.

(c) *Application for registration.* Except as otherwise provided in paragraphs (d), (f), (i), and (j) of this section, application for registration as an associated person in any capacity must be on Form 8–R, completed and filed in accordance with the instructions thereto.

* * * * *

(d) *Special temporary licensing and registration procedures for certain persons—(1) Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (f) and (i) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes

associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto and accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose and, if applicable, a Supplemental Sponsor Certification Statement signed by the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (B) of this part) that contains conditions identical to those agreed to by the previous sponsor, which includes written certifications stating:

* * * * *

(iv) Whether there is a pending adjudicatory proceeding under Sections 6(b), 6(c), 6c, 6d, 8a, or 9 of the Act or §§ 3.55 or 3.60 of this part or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 of this part and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

(v) That the sponsor has received a copy of the notice of the institution of a proceeding if the applicant or registrant has certified, in accordance with paragraph (d)(1)(iv) of this section, that there is a proceeding pending against him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph; and

* * * * *

(2) A temporary license received in accordance with paragraph (d)(1) of this section shall be subject to the provisions of §§ 3.41, 3.42 and 3.43 of this part.

* * * * *

(f) *Reporting of dual and multiple associations.* (1) Except as otherwise provided in paragraph (f)(4) of this section, a person who is already registered as an associated person in any capacity whose registration is not subject to conditions or restrictions may become associated as an associated person with another sponsor if the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (B) of this part) files with the National Futures Association a Form 3–R in accordance with the instructions thereto. The filing of such a Form 3–R shall contain a certification signed by each sponsor that each sponsor has verified that the associated person is currently registered as an associated person in some capacity and that the associated person is not subject to a statutory disqualification as set forth in Section 8a(2) of the Act, and an acknowledgment that in addition to each sponsor's responsibility to supervise that associated person, each sponsor is jointly and severally responsible for the conduct of the associated person with respect to the:

(i) Solicitation or acceptance of customers' orders,

(ii) Solicitation of funds, securities or property for a participation in a commodity pool,

(iii) Solicitation of a client's or prospective client's discretionary account,

(iv) Solicitation or acceptance of leverage customers' orders for leverage transactions, and

(v) Associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any other futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the associated person is associated.

(2) Upon receipt by the National Futures Association of a Form 3–R filed in accordance with paragraph (f)(1) of this section from an associated person, the associated person named therein shall be registered as an associated person of the new sponsor.

(3) A person who is simultaneously associated with more than one sponsor in accordance with the provisions of paragraphs (f)(1) and (f)(2) of this section shall be required, upon receipt of notice from the National Futures Association, to file with the National Futures Association his fingerprints on a fingerprint card provided by the National Futures Association for that purpose as well as such other information as the National Futures Association may require. The National Futures Association may require such a filing every two years, or at such greater period of time as the National Futures Association may deem appropriate, after the associated person has become associated with a new sponsor in accordance with the requirements of paragraphs (f)(1) and (f)(2) of this section.

(4) If a person is associated with a futures commission merchant or with an introducing broker and he directs customers seeking a managed account to use the services of a commodity trading advisor(s) approved by the futures commission merchant or introducing broker and all such customers' accounts solicited or accepted by that associated person are carried by the futures commission merchant or introduced by the introducing broker with which the associated person is associated, such a person shall be deemed to be associated solely with the futures commission merchant or introducing broker and may not also register as an associated person of the commodity trading advisor(s).

* * * * *

(h) *Exemption from registration.* (1) A person is not required to register as an associated person in any capacity if that person is:

(i) Registered under the Act as a futures commission merchant, floor broker, or as an introducing broker;

(ii) Engaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration with the National Association of Securities Dealers as a registered representative, registered principal, limited representative or limited principal, and that person does not engage in any other activity subject to regulation by the Commission; or

(iii) The chief operating officer, general partner or other person in the supervisory chain-of-command, *provided* the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant engages in commodity interest related activity for customers as no more than ten percent of its total revenue on an annual basis, the firm is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, the person for whom exemption is sought and the person designated in accordance with paragraphs (h)(1)(iii)(C) or (h)(1)(iii)(D) of this section are listed as principals of the firm, the fitness examination conducted by the National Futures Association with respect to these persons discloses no derogatory information that would disqualify any of such persons as a principal or as an associated person, and the firm files with the National Futures Association corporate or partnership resolutions stating that:

(A) Such supervisory person is not authorized to:

(*1*) Solicit or accept customers' or leverage customers' orders,

(*2*) Solicit a client's or prospective client's discretionary account,

(*3*) Solicit funds, securities or property for a participation in a commodity pool, or

(*4*) Exercise any line supervisory authority over those persons so engaged;

(B) Such supervisory person has no authority with respect to hiring, firing or other personnel matters involving persons engaged in activities subject to regulation under the Act;

(C) Another person (or persons) designated therein, who is registered as an associated person(s) or who has applied for registration as an associated person(s) and is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, holds and exercises full and final supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm; and

(D) If the person (or persons) so designated in accordance with paragraph (h)(1)(iii)(C) of this section ceases to have the authority referred to therein, the firm will notify the National Futures Association within twenty days of such occurrence by means of a subsequent resolution which resolution must also include the name of another associated person (or persons) who has been vested with full supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm in the event that all of those previously designated in accordance with paragraph (h)(1)(iii)(C) of this section have been relieved of such authority. Subsequent changes in supervisory authority shall be reported in the same manner.

(2) A person is not required to register as an associated person of a commodity trading advisor if that person is:

(i) Registered as a commodity trading advisor, if that person is associated with a commodity trading advisor; or

(ii) Exempt from registration as a commodity trading advisor pursuant to the provisions of § 4.14(a)(1), § 4.14(a)(2) or § 4.14(a) (8) of this chapter or is associated with a person who is so exempt from registration: *Provided,* That the provisions of paragraph (h)(2)(ii) of this section shall not apply to the solicitation of a client's or prospective client's discretionary account, or the supervision of any person or persons so engaged, by, for or on behalf of a commodity trading advisor which is:

(A) Not exempt from registration pursuant to the provisions of § 4.14(a)(1), § 4.14(a)(2) or § 4.14(a)(8) of this chapter or

(B) Registered as a commodity trading advisor notwithstanding the availability of that exemption.

(3) A person is not required to register as an associated person of a commodity pool operator if that person is:

(i) Registered as a commodity pool operator, if that person is associated with a commodity pool operator;

(ii) Exempt from registration as a commodity pool operator pursuant to the provisions of § 4.13 of this chapter or is associated with a person who is so exempt from registration: *Provided,* That the provisions of paragraph (h)(3)(ii) of this section shall not apply to the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, by, for, or on behalf of a commodity pool operator which is

(A) Not exempt from registration pursuant to the provisions of § 4.13 of this chapter or

(B) Registered as a commodity pool operator notwithstanding the availability of that exemption; or

(iii) Where a commodity pool is operated or to be operated by two or more commodity pool operators, registered as an associated person of one of the pool operators of the commodity pool in accordance with the provisions of paragraphs (c), (d), (f), or (i) of this section: *Provided,* That each such commodity pool operator shall be jointly and severally liable for the conduct of that associated person in the solicitation of funds, securities, or property for participation in the commodity pool, or the supervision of any person or persons so engaged, regardless of whether that associated person is registered as an associated person of each such commodity pool operator.

(i) *Special registration or temporary licensing procedures when previous sponsor's registration ceases.* (1) Any person whose registration as an associated person in any capacity was not subject to conditions or restrictions, and was terminated within the preceding sixty days because the previous sponsor's registration was revoked or withdrawn, and who becomes associated with a new sponsor, will be registered as an associated person of such new sponsor upon the mailing by that new sponsor to the National Futures Association of written certifications stating:

(i) That such person has been hired or is otherwise employed by that sponsor;

(ii) That such person's registration as an associated person in any capacity is not suspended or revoked;

(iii) That such person is eligible to be registered in accordance with paragraph (i) of this section;

(iv) Whether there is a pending adjudicatory proceeding under sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act or §§ 3.55 or 3.60 of this part or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 of this part and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

(v) That the new sponsor has received a copy of the notice of the institution of a proceeding if the applicant for registration has certified, in accordance with paragraph (i)(1)(iv) of this section, that there is a proceeding pending against him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph;

(vi) That the Disciplinary History of such person's registration application contains no "Yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application; and

(vii) That the new sponsor will be responsible for supervising all activities of the person in connection with the sponsor's business as a registrant under the Act.

Provided, however, That if such person's prior registration as an associated person was subject to conditions or restrictions, the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (B) of this part) must also file a signed Supplemental Sponsor Certification Statement that contains conditions identical to those agreed to by the original sponsor and, in such case, the person will be granted a temporary license, subject to the provisions of §§ 3.41, 3.42 and 3.43 of this part.

(2) The certifications required by paragraphs (i)(1)(i), (i)(1)(v), and (i)(I)(vii) of this section must be signed

and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the proprietor, if a sole proprietorship. The certifications required by paragraphs (i)(1)(ii)–(iv) and (i)(1)(vi) of this section must be signed and dated by the applicant for registration as an associated person.

(3) A person who is registered in accordance with the provisions of paragraph (i)(1) of this section shall be required, upon receipt of notice from the National Futures Association, to file with the National Futures Association his fingerprints on a fingerprint card provided by the National Futures Association for that purpose as well as such other information as the National Futures Association may require. The National Futures Association may require such a filing every two years, or at such greater period of time as the National Futures Association may deem appropriate, after the associated person has become associated with a new sponsor in connection with the requirements of paragraph (i)(1) of this section.

(j) *Special temporary licensing and registration procedures for associated persons of futures commission merchants and introducing brokers involved only with certain commodity interests.* Notwithstanding any other provision of law, any person associated with a futures commission merchant or an introducing broker may be granted a temporary license or registration to act in the capacity of an associated person of such sponsor if such person restricts his activities only to those commodity interests listed in Appendix B to this part and if such person and his sponsor comply with any special temporary licensing or registration procedures applicable to persons involved solely with such commodity interests that have been adopted by the National Futures Association and approved by the Commission.

* * * * *

§§ 3.13 through 3.18 and 3.20 [Removed]

10. Sections 3.13 through 3.18 and § 3.20 are removed and reserved.

11. Section 3.21 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(c) *Outside directors.* Any futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of §§ 3.10(a)(2)(i), 3.32(a)(3)(i), 3.32(c) and 3.32(h) of this part, file a "Notice Pursuant to Rule 3.21(c)" with the National Futures Association. Such notice shall state, if true, that such outside director:

(1) Is not engaged in:

(i) the solicitation or acceptance of customers' orders,

(ii) the solicitation of funds, securities or property for a participation in a commodity pool,

(iii) the solicitation of a client's or prospective client's discretionary account,

(iv) the solicitation or acceptance of leverage customers' orders for leverage transactions;

(2) Does not regularly have access to the keeping, handling or processing of:

(i) Commodity interest transactions;

(ii) Customer funds, leverage customer funds, foreign futures or foreign options secured amount, or adjusted net capital; or

(iii) The original books and records relating to the items described in paragraphs (c)(2)(i) and (c)(2)(ii) of this section; and

(3) Does not have direct supervisory responsibility over persons engaged in the activities referred to in paragraphs (c)(1) and (c)(2) of this section; and

(4) The Notice Pursuant to Rule 3.21(c) shall also include:

(i) The name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, or applicant for registration in any of these capacities of which the person is an outside director;

(ii) The nature of the duties of the outside director for whom exemption under paragraph (c) of this section is sought;

(iii) The internal controls used to ensure that the outside director for whom exemption under paragraph (c) of this section is sought does not have access to the keeping, handling or processing of the items described in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section; and

(iv) The reasons why the outside director believes he should be exempted from the fingerprint requirement and why such an exemption would not be contrary to the public interest and the purposes of the provision from which exemption is sought.

(d) A firm that has filed a Notice Pursuant to Rule 3.21(c) with respect to an outside director described therein must file with the National Futures Association on behalf of such outside director a Form 8–R, completed in accordance with the instructions thereto and executed by the outside director. The exemption provided for in paragraph (c) of this section is limited solely to the outside director's fingerprint requirement and does not affect any other duties or responsibilities of the firm or the outside director under the Act or the rules set forth in this chapter. In appropriate cases, the Commission and the National Futures Association may require further information from the firm with respect to any outside director referred to in a Notice Pursuant to Rule 3.21(c).

12. Section 3.22 is amended by revising the introductory text and paragraphs (a) and (c) to read as follows:

§ 3.22 Supplemental filings.

Notwithstanding any other provision of this chapter, the Commission, the Directors of the Division of Trading and Markets or Division of Enforcement or either Director's designee, or the National Futures Association may, at any time, give written notice to any registrant, applicant for registration, or person required to be registered:

(a) (1) That derogatory information has come to the attention of the staff of the Commission or the National Futures Association which, if true, could constitute grounds upon which to base a determination that the person is unfit to become, or to remain, registered or temporarily licensed in accordance with the Act or the regulations thereunder and setting forth such information in the notice and requesting the person to provide evidence mitigating the seriousness of the statutory disqualification set forth in the notice and evidence that the person has undergone rehabilitation, or

(2) That the Commission or the National Futures Association has undertaken a routine or periodic review of the registrant's fitness to remain registered or temporarily licensed; and

* * * * *

(c) Failure to provide the information required under paragraph (b) of this section is a violation of the Commission's regulations which itself constitutes grounds upon which to base a determination that the person is unfit to become or to remain so registered.

* * * * *

13. Section 3.30 is revised to read as follows:

§ 3.30 Current address for purpose of delivery of communications from the Commission or the National Futures Association.

(a) The address of each registrant, applicant for registration and principal, as submitted on the application for registration (Form 7–R or Form 8–R) or as submitted on the biographical supplement (Form 8–R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or the National Futures Association, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant, applicant or principal specifies another address for this purpose: *Provided,* That the Commission or the National Futures Association may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the principal is affiliated and may address any correspondence relating to the registration of an associated person to the futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the associated person or the applicant for registration is or will be associated as an associated person.

(b) Each registrant, while registered and for two years after termination of registration, and each principal, while affiliated and for two years after termination of affiliation, must notify in writing the National Futures Association of any change of the address an the application for registration, biographical supplement, or other address filed with the National Futures Association for the purpose of receiving communications from the Commission or the National Futures Association. Failure to file a required response to any communication sent to the latest such address filed with the National Futures Association which is caused by a failure to notify in writing the National Futures Association of an address change may result in an order of default and award of claimed monetary damages or other appropriate order in any National Futures Association or Commission proceeding, including a reparation proceeding brought under part 12 of this chapter.

14. Section 3.32 is amended by revising paragraphs (a), (c), (e), (g), and (h) to read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

(a)(1) Except as otherwise provided in this section, if the registrant is a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant, registration is deemed to terminate and a new registration is required whenever a person not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration):

(i) Becomes the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or acquires the right to vote ten percent or more of the corporate registrant's voting securities;

(ii) Becomes entitled to receive ten percent or more of the registrant's profits;

(iii) Contributes ten percent or more of the capital: *Provided, however,* That if such capital contribution consists of subordinated debt contributed by an unaffiliated bank insured by the Federal Deposit Insurance Corporation, United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions, or insurance company regulated by any State, the termination of registration shall be deemed not to have occurred and the re-registration requirement shall not apply, provided such debt is not guaranteed by another party not listed as a principal;

(iv) Becomes a director of the corporate registrant;

(v) Becomes the chief executive officer of the corporate registrant or occupies a position of similar status or performs a similar function;

(vi) Acquires ownership of the registrant's business in the case of a sole proprietorship; or

(vii) Becomes a general partner of the registrant in the case of a partnership.

(2)(i) If the person who becomes a principal of the registrant because of an event described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section is a non-natural person and each natural person who would be deemed a principal, under the definition set forth in § 3.1(a) of this part, of the entity that is a non-natural person has a current Form 8–R on file with the Commission or the National Futures Association, the registrant's registration shall not be deemed to terminate and a new Form 7–R need not be filed: *Provided, however,* That within twenty days of the occurrence of the event described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section, the registrant must notify the National Futures Association of the name of such added principal on Form 3–R and must file written certifications with the National Futures Association stating:

(A) the ultimate day-to-day control of the registrant remains the same,

(B) the addition of the new principal will not affect the conduct or the day-to-day operations of the registrant, and

(C) the insertion of the new principal into the chain of ownership is not being done for the purpose, and will not have the effect, of limiting any liability of the registrant.

(ii) If the principals of the new non-natural person principal of the registrant are also non-natural person principals, the registrant's registration shall not be deemed to terminate and a new Form 7–R need not be filed only if the registrant files a Form 8–R and fingerprints for each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of such latter non-natural persons: *Provided, however,* That the provisions of paragraph (a)(2)(ii) of this section shall not apply if the non-natural person principal files reports under the Securities Exchange Act of 1934, has filed a registration statement under the Securities Act of 1933, is subject to regulation by the Securities and Exchange Commission, is an insurance company subject to regulation by any State, or is a bank or any other financial depository institution subject to regulation by any State or by the United States. The provisions of paragraph (a)(2)(ii) of this section do not apply to any natural person who has a current Form 8–R on file with the Commission or the National Futures Association. However, if such natural person is a foreign national who is regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification and whether such person is in good standing with the foreign futures authority to the National Futures Association, has been granted relief under § 30.10 of this chapter, or is employed by or a principal of a firm which has been granted relief under § 30.10 of this chapter, the National Futures Association may waive the requirement to file a Form 8–R and a fingerprint card. In appropriate cases, the Commission and the National Futures Association may require further information from the registrant with

respect to any natural persons or entities referred to in paragraph (a)(2)(ii) of this section.

(3) If a registrant adds a new director, the registrant's registration shall not be deemed to terminate and a new Form 7–R need not be filed pursuant to paragraph (a)(1)(iv) of this section if a majority of the board of directors remains the same and the registrant, within twenty days after the election of the director, files with the National Futures Association:

(i) A Form 8–R, completed in accordance with the instructions thereto and executed by the new director, accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose (unless such director qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part), unless the new director has a current Form 8–R on file with the National Futures Association or the Commission;

(ii) A Form 3–R amending the registrant's Form 7–R to identify the new director and, if such new director has a current Form 8–R on file with the National Futures Association or the Commission, a statement to that effect; and

(iii) A corporate resolution prohibiting the new director from exercising any authority or voting privilege as a director with respect to the conduct of the registrant's commodity interest related business until the National Futures Association has completed its fitness inquiry and has determined that the new director is not unfit to act as a principal of the registrant.

* * * * *

(c) Notwithstanding any other provision of this part, each Form 7–R filed in accordance with paragraph (b) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part.

* * * * *

(e)(1) Except where a registrant chooses to file an application pursuant to paragraph (d) of this section, if applicable, in the event of a change as described in paragraph (a)(1)(v) of this section, a new registration will not be required if the registrant submits a written notice on Form 3–R to the National Futures Association prior to the date of such change in control (and such change does not occur until the registrant receives written approval from the National Futures Association) and includes with such notice a Form 8–R, completed in accordance with the instructions thereto and executed by the registrant's new chief executive officer or person occupying a position of similar status or performing a similar function. The Form 8–R for such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided for that purpose by the National Futures Association: *Provided, however,* That a fingerprint card need not be provided under this paragraph for any individual who has a current Form 8–R on file with the National Futures Association or the Commission.

(2) No person who submits written notification in accordance with the provisions of paragraph (e)(1) of this section may become so affiliated with such registrant until that registrant receives a written confirmation from the National Futures Association that such affiliation has been approved.

* * * * *

(g) Notwithstanding the provisions of § 3.12(a), if a new registration is granted under this section, any person who is registered, or who has submitted an application for registration, as an associated person of the registrant on or prior to the date of any event described in paragraph (a) of this section, shall be deemed to be registered, or to have submitted an application for registration, as an associated person of such new registrant.

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant for registration subsequent to the filing of a Form 7–R in accordance with the requirements set forth in § 3.10(a) of this part, the applicant for registration must file a Form 8–R with the National Futures Association. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided for that purpose by the National Futures Association, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part. This filing need not be made for any such principal who has a current Form 8–R on file with the National Futures Association or the Commission: *Provided,* That within twenty days the applicant for registration must notify the National Futures Association of the name of such added principal on Form 3–R.

* * * * *

15. Section 3.33 is amended by revising paragraphs (a) introductory text, (e) and (f) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or floor broker may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or floor broker must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit, 2033 K Street NW., Washington, DC 20581. Within three business days of any determination by the National Futures Association under § 3.10(d) or § 3.11(d) of this part to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

(f) Except as otherwise provided in §§ 3.10(d) or 3.11(d) of this part, a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

* * * * *

Subpart B—Temporary Licenses

16. The authority for Subpart B continues to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and

13b, 12, 12a, 18, 19, 21, and 23; 5 U.S.C. 552 and 552b.

17. Section 3.40 is amended by revising paragraph (c) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person registration.

* * * * *

(c) The sponsor's certification required by § 3.12(c) of this part.

* * * * *

18. Section 3.42 is amended by revising paragraph (a) to read as follows:

§ 3.42 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the Commission or the National Futures Association pursuant to § 3.60 of this part that the applicant for registration may be found subject to a statutory disqualification from registration;

(2) Immediately upon termination of the association of the applicant with the registrant which filed the sponsorship certification described in § 3.40(c) of this part;

(3) Immediately upon the withdrawal of the registration application pursuant to § 3.40(d);

(4) Immediately upon failure to comply with an order to pay a civil monetary penalty within the time permitted under Sections 6(d) or 6b of the Act;

(5) Immediately upon failure to pay the full amount of a reparation order within the time permitted under Section 14(f) of the Act; or

(6) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to Part 180 of this chapter within the time permitted for such compliance as specified in Section 10(g) of National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum.

* * * * *

19. Section 3.44 is amended by revising paragraphs (a)(3) and (a)(5) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) * * *

(3) A Form 8–R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under Sections 8a(2) through 8a(4) of the Act, or none except those arising from a matter which already has been disclosed in connection with a previous application for a registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

* * * * *

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose: *Provided,* That a principal who has a current Form 8–R on file with the National Futures Association or the Commission is not required to submit a fingerprint card if the principal is not otherwise required to be registered as an associated person of the applicant.

* * * * *

Subpart C—Denial, Suspension or Revocation of Registration

20. The authority citation for subpart C continues to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

21. Section 3.50 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 3.50 Service.

(a) For purposes of this subpart, service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the applicant or registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing. Where a party effects service by mail, the time within which the person served may respond thereto shall be increased by three days.

(b) * * *

(1) Any registrant sponsoring the applicant or registrant pursuant to the provisions of § 3.12 of this part if the applicant or registrant is an individual registered as or applying for registration as an associated person; or

* * * * *

22. Section 3.51 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 3.51 Withdrawal of application for registration.

(a) *Notice.* Whenever information comes to the attention of the Commission that an applicant for initial registration in any capacity under the Act may be found subject to a statutory disqualification under Sections 8a(2) or 8a(3) of the Act, the Commission may serve written notice upon the applicant, which notice shall specify the statutory disqualifications to which the applicant may be subject and advise the applicant that:

* * * * *

(b) The applicant must serve the written confirmation referred to in paragraph (a)(3) of this section upon the Secretary of the Commission on or before twenty days after the date the notice described in paragraph (a) of this section is served.

§§ 3.52 through 3.54 [Removed]

23. Sections 3.52 through 3.54 are removed and reserved.

24. Section 3.55 is amended by revising paragraphs (a) introductory text, (a)(3), (b), (e), and (f) and by removing paragraphs (g), (h), (i), (j), and (k) to read as follows:

§ 3.55 Suspension and revocation of registration pursuant to Section 8a(2) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time serve notice upon a registrant in any capacity under the Act that:

* * * * *

(3) If the registrant is found to be subject to a statutory disqualification, the registration of the registrant may be suspended and the registrant ordered to show cause why such registration should not be revoked.

(b) *Written submission.* If the registrant wishes to challenge the accuracy of the allegations set forth in the notice, the registrant may submit written evidence limited to the type described in § 3.60(b)(1) of this part. Such written submission must be served upon the Division of Enforcement and filed with the Hearing Clerk within twenty days of the date of service of notice to the registrant.

* * * * *

(e) *Suspension and order to show cause.* (1) If the registrant is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the registrant's written submission, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring the registrant to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not

be revoked. The registration of the registrant shall be suspended, effective five days after the order to show cause is served upon the registrant in accordance with § 3.50(a) of this part, until a final order with respect to the order to show cause has been issued: *Provided, That* if the sole basis upon which the registrant is subject to statutory disqualification is the existence of a temporary order, judgment or decree of the type described in Section 8a(2)(C) of the Act, the order to show cause shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided, however,* That in no event shall the registrant be suspended for a period to exceed six months.

(2) If the registrant is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect and the Hearing Clerk shall promptly serve a copy of such order on the registrant, the Division of Trading and Markets and the Division of Enforcement. Such order shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a) of this part unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (e)(2) of this section.

(f) *Further proceedings.* If an order to show cause is issued pursuant to paragraph (e)(1) of this section, further proceedings on such order shall be conducted in accordance with the provisions of § 3.60(b)–(j) of this part.

§ 3.56 [Removed]

25. Section 3.56 is removed and reserved.

26. Section 3.60 is revised to read as follows:

§ 3.60 Procedure to Deny, Condition, Suspend, Revoke or Place Restrictions Upon Registration Pursuant to Sections 8a(2), 8a(3) and 8a(4) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time give written notice to any applicant for registration or any registrant in any capacity under the Act that:

(1) The Commission alleges and is prepared to prove that the registrant or applicant is subject to one or more of the statutory disqualifications set forth in section 8a(2), 8a(3) or 8a(4) of the Act;

(2) The allegations set forth in the notice, if true, constitute a basis upon which registration may be denied, granted upon conditions, suspended, revoked or restricted;

(3) The applicant or registrant is entitled to file a response within thirty days of the date of service of the notice to challenge the evidentiary basis of the statutory disqualification set forth in the notice or show cause why, notwithstanding the accuracy of those allegations, registration should nevertheless be granted, or granted upon condition, or should not be conditioned, suspended, revoked or restricted; and

(4) If the applicant or registrant does not file a timely response to the notice:

(i) The applicant or registrant will be deemed to have waived his right to a hearing on all issues and the facts stated in the notice shall be deemed to be true and conclusive for the purpose of finding that the applicant or registrant is subject to a statutory disqualification under sections 8a(2), 8a(3) or 8a(4) of the Act; and

(ii) A presiding officer may thereafter decide whether to issue an order of default in accordance with paragraph (g) of this section to deny, condition, suspend, revoke, or place restrictions upon registration based solely upon the facts set forth in the notice.

(b) *Response.* Within thirty days after service upon the applicant or registrant of a notice issued in accordance with the provisions of paragraph (a) of this section, the applicant or registrant shall file a response with the Hearing Clerk and serve a copy of the response on the Division of Enforcement.

(1) In the response, the applicant or registrant shall state whether he challenges the evidentiary basis of the statutory disqualification set forth in the notice. The grounds for such a challenge shall include evidence as to:

(i) The applicant's or registrant's identity,

(ii) The existence of a clerical error in any record documenting the statutory disqualification,

(iii) The nature or date of the statutory disqualification,

(iv) The post-conviction modification of any record of conviction, or

(v) The favorable disposition of any appeal. The applicant or registrant shall state the nature of each challenge and submit a verified statement or affidavit to support facts material to each challenge raised in the response.

(2)(i) In the response, if the person is not an associated person or a floor broker or an applicant for registration in either capacity, the applicant or registrant shall also state whether he intends to show that registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the person is an associated person or floor broker or an applicant for registration in either capacity, the applicant or registrant shall also state whether he intends to show that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the applicant or registrant is an associated person or floor broker or an applicant for registration in either capacity and intends to make such a showing, he must also submit a letter signed by an officer or general partner authorized to bind the sponsor or, in the case of a floor broker or applicant for registration as a floor broker, another floor broker, whereby the sponsor or floor broker agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant as a result of a statutory disqualification proceeding under this section: *Provided, That,* with respect to such sponsor or supervising floor broker:

(A) An adjudicatory proceeding pursuant to the provisions of sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act is not pending; and

(B) In the case of a sponsor which is a futures commission merchant or a leverage transaction merchant, the sponsor is not subject to the reporting requirements of §§ 1.12(b) or 31.7(b) of this chapter, respectively; and

(C) In the case of a supervising floor broker, such supervising floor broker is not barred from service on self-regulatory organization governing boards or committees based on disciplinary history in accordance with § 1.63 of this chapter.

(ii) If, in the response, the applicant or registrant states that he intends to make the showing referred to in paragraph (b)(2)(i) of this section, he shall also, within fifteen days after filing his initial response under paragraph (b) of this section, file with the Hearing Clerk and serve a copy on the Division of Enforcement a submission which includes a statement of the applicant, registrant or his attorney identifying and summarizing the testimony of each witness whom the applicant or registrant intends to have testify in support of facts material to his showing, and copies of all documents which the applicant or registrant intends to introduce to support facts material to his showing. The factors forming the basis for a disqualified applicant's or registrant's showing referred to in

paragraph (b)(2)(i) of this section may include:

(A) Evidence mitigating the seriousness of the wrongdoing underlying the statutory disqualification set forth in the notice;

(B) Evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification; and

(C) If the person is an associated person or floor broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from the applicant's or registrant's future wrongdoing, including proposed conditions or restrictions.

(c) *Reply.* Within thirty days after the latter of the date the applicant or registrant serves a copy of the response on the Division of Enforcement (if no further submission is to be made in accordance with paragraph (b)(2)(ii) of this section), or the date the applicant or registrant serves a copy of the further submission made in accordance with paragraph (b)(2)(ii) of this section on the Division of Enforcement, the Division of Enforcement shall file a reply thereto with the Hearing Clerk and serve a copy of the reply on the applicant or registrant. The Division of Enforcement's reply shall include either:

(1) A motion for summary disposition stating that there are no genuine issues of material fact to be determined and that registration should be denied or revoked, based upon the applicant's or registrant's response and further submission, if any, and any other materials which are attached to the reply and would be admissible under § 10.91 of this chapter; or

(2) A description of factual issues raised in the applicant's or registrant's response and further submission, if any, that the Division of Enforcement regards as material and disputed. Such a reply shall also include the identity and a summary of the expected testimony of each witness whom the Division intends to have testify, and copies of all documents which the Division intends to introduce.

(d) *Oral Presentation.* Within thirty days of the date the Division of Enforcement files its reply in accordance with the provisions of paragraph (c) of this section to the applicant's or registrant's response and further submission, if any, the Administrative Law Judge shall issue an order:

(1) If the Administrative Law Judge finds, based on the motion for summary disposition, that a party is entitled to judgment as a matter of law, granting, denying, suspending, or revoking the registration of an applicant or registrant, or dismissing the notice issued in accordance with paragraph (a) of this section, and such order shall be made in accordance with the standards set forth in paragraphs (e) and (f) of this section; or

(2) Notifying the parties of a time and place of hearing. At such hearing, the parties shall be limited to presentation of witnesses and documents listed in previous filings except, for good cause shown, the parties may request that the witness and document lists be supplemented for purposes of rebuttal. Such oral hearing shall be conducted in accordance with §§ 10.61–10.81 and 10.83 of this chapter. The Administrative Law Judge shall file an initial decision after completion of the oral hearing in accordance with the standards set forth in paragraphs (e) and (f) of this section.

(3) Upon notice that the Administrative Law Judge has concluded that an oral presentation is appropriate, the parties may elect to participate by telephone in accordance with the terms set forth in § 12.209(b) of this chapter. To effect such an election, the party shall file a notice with the Hearing Clerk and serve a copy on all opposing parties within fifteen days of the date the Administrative Law Judge's notice is served. The filing of an election to participate by telephone will be deemed a waiver of the party's right to a full oral hearing on the parties' material disputes of fact. The Administrative Law Judge shall schedule a telephonic hearing only if all parties to the proceeding elect such a procedure. The Administrative Law Judge shall conduct such a hearing in accordance with § 12.209(b) of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision in accordance with the standards set forth in paragraphs (e) and (f) of this section.

(e) *Determination by Administrative Law Judge—Standards of Proof.* The Administrative Law Judge's written determination shall specifically consider whether the Division of Enforcement has shown by a preponderance of the evidence that the applicant or registrant is subject to the statutory disqualification set forth in the notice issued by the Commission and, where appropriate:

(1) In actions involving statutory disqualifications set forth in section 8a(2) of the Act, whether the applicant or registrant has made a clear and convincing showing that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification; or

(2) In actions involving statutory disqualifications set forth in sections 8a(3) or 8a(4) of the Act, whether the applicant or registrant has shown by a preponderance of the evidence that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification.

(f) *Determination of Administrative Law Judge—Findings.* In making his written determination, the Administrative Law Judge shall set forth the facts material to his conclusion and provide an explanation of his decision in light of the statutory disqualification set forth in the notice and, where appropriate, his findings regarding:

(1) Evidence mitigating the seriousness of the wrongdoing underlying the applicant's or registrant's statutory disqualification;

(2) Evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification; and

(3) If the person is an associated person or floor broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from future wrongdoing by the applicant or registrant. Any decision providing for a conditioned or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on such statutory disqualification, and shall fix a time period after which the registrant and his sponsor or supervisory floor broker may petition to lift or modify the conditions or restrictions in accordance with § 3.64 of this part.

(g) *Default.* The procedures for obtaining a default order and the setting aside of a default order in a proceeding instituted under this section shall follow the procedures set forth in §§ 10.93 and 10.94 of this chapter.

(h) *Settlements. (1)* When offers may be made. Parties may, at any time during the course of the proceeding, propose offers of settlement. All offers of settlement shall be in writing.

(2) *Content of offer.* Each offer of settlement made by a respondent shall:

(i) Acknowledge service of the notice;

(ii) Admit the jurisdiction of the Commission with respect to the matters set forth in the notice;

(iii) Include a waiver of:

(A) A hearing,

(B) All post-hearing procedures,

(C) Judicial review, and

(D) Any objection to the staff's participation in the Commission's consideration of the offer;

(iv) Stipulate the record basis on which an order may be entered, which may consist solely of the notice and any findings contained in the offer of settlement; and

(v) Consent to the entry of an order reflecting the terms of settlement agreed upon, including, where appropriate:

(A) Findings that the respondent is subject to statutory disqualification under sections 8a(2), 8a(3), or 8a(4) of the Act, and

(B) The revocation, suspension, denial or granting of full registration or imposition of conditioned or restricted registration.

(3) *Submission of offer.* Offers of settlement made by a respondent shall be submitted in writing to the Division of Enforcement, which shall present them to the Commission with the Division's recommendation. The respondent will be informed if the recommendation will be unfavorable, in which event the offer shall not be presented to the Commission unless the respondent so requests. Any offer of settlement not presented to the Commission shall be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer and shall not be used in any manner in the proceeding by any party thereto.

(4) *Acceptance of offer.* The offer of settlement will only be deemed accepted upon issuance by the Commission of an opinion and order based on the offer. Upon issuance of the opinion and order, the proceeding shall be terminated as to the respondent involved and so noted on the docket by the Hearing Clerk.

(5) *Rejection of offer.* When an offer of settlement is rejected, the party making the offer shall be notified by the Division of Enforcement and the offer of settlement shall be deemed withdrawn. A rejected offer of settlement and any documents relating thereto shall not constitute a part of the record in the proceeding; and the offer will be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer and shall not be used in any manner in the proceeding by any party thereto.

(i) *Effect of the Administrative Law Judge's Determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Hearing Clerk serves the determination on the parties unless:

(1) One or more of the parties files and serves a timely notice of appeal in accordance with § 10.102 of this chapter; or

(2) The Commission issues an order staying the effective date of the determination and notifying the parties of its intention to undertake sua sponte review in accordance with § 10.105 of this chapter.

(j) *Appeal.* Following the filing of a notice of appeal, the rules of appellate procedure set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any proceeding brought under this section.

(k) With the exception of §§ 10.2 through 10.5, 10.7 through 10.12(a) (1), 10.12(a) (3) through 10.12(g), 10.26(a)–(d), 10.34, 10.43, 10.44 and 10.84 of this chapter, or unless otherwise provided in §§ 3.50 through 3.64 of this part, the provisions of the Commission's Rules of Practice in part 10 of this chapter shall not apply in any proceeding brought under this part to deny, suspend, revoke, restrict or condition registration pursuant to sections 8a(2), 8a(3) or 8a(4) of the Commodity Exchange Act.

27. Section 3.61 is revised to read as follows:

§ 3.61 Extensions of time for proceedings brought under § 3.55 and § 3.60 of this part.

(a) *In general.* Except as otherwise provided by law or by these rules, for good cause shown, the Commission or an Administrative Law Judge before whom a proceeding brought under § 3.55 or § 3.60 of this part is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by those rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken concerning any matter, the Commission or the Administrative Law Judge may set a time limit for that action.

(b) *Motions for extension of time.* Absent extraordinary circumstances, in any instance in which a time limit that has been prescribed for an action to be taken concerning any matter exceeds seven days from the date of the order establishing the time limit, requests for extension of time shall be filed at least five (5) days prior to the expiration of the time limit and shall explain why an extension of time is necessary.

§ 3.62 [Removed]

28. Section 3.62 is removed and reserved.

29. Section 3.63 is revised to read as follows:

§ 3.63 Service of order issued by an Administrative Law Judge or the Commission.

A copy of any order issued pursuant to § 3.60 of this part shall be served promptly upon the applicant or registrant, the Division of Trading and Markets, the Division of Enforcement, the National Futures Association, and any contract markets where the applicant or registrant is a member or has trading privileges in accordance with the provisions of § 3.50(a) of this part.

30. Section 3.64 is added to read as follows:

§ 3.64 Procedure to lift or modify conditions or restrictions.

(a) *Petition.* The registrant and his sponsor or supervising floor broker may file a petition with the Hearing Clerk and serve a copy of the petition on the Division of Enforcement to lift or modify conditions or restrictions on the registrant's registration.

(1) The petition may be filed after the period specified in the order imposing the conditioned or restricted registration.

(2) In the petition, the registrant and his sponsor or supervising floor broker shall be limited to a showing, by affidavit, that the conditions or restrictions have been satisfied pursuant to the order which imposed them. A sponsor's or supervising floor broker's affidavit must be sworn to by a person with actual knowledge of registrant's activities on behalf of the sponsor or supervising floor broker.

(b) *Response.* (1) Within thirty days of receipt of the petition, pursuant to paragraph (a) of this section, the Division of Enforcement shall file a response with the Hearing Clerk. The response must include a recommendation by the Division of Enforcement as to whether to continue the conditions or restrictions, modify the conditions or restrictions, or to allow for a full registration.

(2) If the Division of Enforcement agrees with the petitioner's request to lift or modify conditions or restrictions on the petitioner's registration, it shall so recommend to the Commission. Such recommendation will only be deemed accepted upon issuance by the Commission of an order lifting or

modifying conditions or restrictions on the petitioner's registration. Such order shall be so noted on the docket by the Hearing Clerk.

(c) *Oral Presentation.* If the Division of Enforcement requests a continuation, or a modification other than in accordance with the terms of the petition, of the restrictions or conditions on the registration, the Administrative Law Judge shall, within thirty days of the date that the response is filed pursuant to paragraph (b) of this section, determine whether an oral presentation is appropriate to the reliable resolution of the registrant's petition.

(1) If the Administrative Law Judge determines that an oral presentation is appropriate, he shall notify the parties of his determination and shall schedule and conduct an oral hearing in accordance with §§ 10.61 through 10.81 of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision or an order.

(2) If the Administrative Law Judge concludes that an oral presentation is unnecessary, he shall notify the parties and issue a written decision or an order.

(d) *Effect of the Administrative Law Judge's Determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Hearing Clerk serves the determination on the registrant, the registrant's sponsor or supervising floor broker and the Division of Enforcement unless one or more of the parties files a timely notice of appeal in accordance with § 10.102 of this chapter.

(e) *Appeal.* Following the filing of a notice of appeal, the rules of appellate procedure set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any proceeding brought under this section.

Subpart D—Notice Under Section 4k(5) of the Act

31. The authority citation for subpart D continues to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, and 13b, 12, 12a, 18, 19, 21, and 23; 5 U.S.C. 552 and 552b.

32. Section 3.70 is amended by revising paragraphs (a) and (c) to read as follows:

§ 3.70 Notification of certain information regarding associated persons.

(a) *Notice.* A registrant must notify the Commission under section 4k(5) of the Act of any facts regarding an associated person of the registrant or an applicant for registration as an associated person whom it has sponsored pursuant to the provisions of § 3.12 of this part or whom it intends to hire or otherwise employ as an associated person which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days of the date upon which the registrant first knows or should have known such facts. Notice to the Commission shall be sufficient if the registrant gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, DC office (Attn: Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581).

* * * * *

(c) *Proceedings under Subpart C.* Upon notification to the Commission by the registrant under paragraph (a) of this section, the Commission may promptly issue notice under §§ 3.55 or 3.60 of this part, as appropriate, to suspend and revoke the registration of the associated person of the registrant or to deny the registration of the applicant for registration as an associated person of the registrant.

Subpart E—Delegation and Reservation of Authority

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

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, and 13b, 12, 12a, 18, 19, 21, and 23; 5 U.S.C. 552 and 552b.

34. Section 3.75 is amended by revising paragraph (c) to read as follows:

§ 3.75 Delegation and reservation of authority.

* * * * *

(c) The Commission reserves to itself the decision in any case to proceed by order, upon notice and hearing, to deny, suspend, condition or restrict the registration of any person pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

* * * * *

Issued in Washington, DC on May 26, 1992 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-12661 Filed 6-1-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AD24

Federal Old-Age, Survivors, and Disability Insurance Benefits, Consolidation of Old Methods of Computing Primary Insurance Amounts

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules amend our regulations concerning the methods used to compute the primary insurance amounts of certain workers to reflect sections 5117 (a), (b), and (c) of Public Law (Pub. L.) 101-508, the Omnibus Budget Reconciliation Act of 1990, enacted November 5, 1990. Section 5117 consolidates and eliminates complex and little-used computation methods and will simplify the computation of the primary insurance amounts of certain workers. No benefits paid to individuals already receiving benefits will be revised as a result of this provision.

EFFECTIVE DATE: These rules are effective on June 2, 1992. However, they will not affect any benefits payable for months prior to June 1992.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1769.

SUPPLEMENTARY INFORMATION:

Background

The primary insurance amount is the figure we use in calculating the amount of monthly cash benefits actually payable to an insured worker and his or her dependents and survivors. The primary insurance amount is computed under several methods contained in the Social Security Act (the Act). Factors considered in determining the appropriate computation method include the worker's age, amount of earnings covered by the Act, date of dealth of the worker, and whether a period of disability was ever established for the worker. Generally, when more than one computation may be used, the computation yielding the highest primary insurance amount will be used.

Section 5117(a) of Public Law 101-508 amends section 215 of the Act. Section 5117(a) simplifies benefit computations by consolidating the methods used to

compute the primary insurance amounts of certain workers and by eliminating complex and little-used computation methods. These final rules amend the regulations that explain how we determine the proper computation method to be used in determining the primary insurance amount for certain workers under the amended law. The amended regulations will not affect benefits payable for months prior to June 1992.

Under section 5117(a) certain workers or survivors of workers, who could not previously have had a primary insurance amount computed using a computation method under either § 404.220(b) or § 404.241, can now have the primary insurance amount calculated under these computation methods if the following requirements are met:

- A worker or survivor of a worker becomes entitled to benefits payable for June 1992 or later, and,
- No person is entitled to social security benefits based on the same wages and self-employment income as the applicant in the month before the month the applicant becomes entitled to benefits.

Moreover, these computation methods will be available for a recomputation that is first effective for benefits payable for June 1992 or later months.

Section 5117(b) amends section 217(b) of the Act so that the special rules for determining fully insured status of certain veterans of World War II who died before July 27, 1954 (§ 404.111), will not apply to a person applying for benefits as the survivor of such a veteran after May 1992 unless another person was receiving benefits on such veteran's earnings record for the month preceding the month of the first person's application. We are amending § 404.111 to reflect this provision.

Section 5117(c) amends section 213(c) of the Act. This amendment involves the crediting of quarters of coverage (QCs) for fully insured status in the years from 1937 through 1950. Section 213(c), as amended, provides that if a worker has at least $400 of earnings prior to 1951, the worker is deemed to have at least one QC in that period for purposes of meeting the one QC test in § 404.241. This provision applies to all workers who file an application in June 1992 or later and are not entitled to a benefit under § 404.380 or section 227 of the Act in the month the application is made. The effect of this provision is to reduce the need to analyze 1937–1950 earnings to determine the number of QCs during that period or if the worker has at least one QC in that period.

New Regulatory Provisions

We are amending §§ 404.110, 404.111 and 404.241 to reflect the provisions of sections 5117 (a), (b), and (c). We are also revising § 404.111 to correct inaccurate cross-references contained therein. Since sections 5117 (a) and (c) only make persons meeting particular eligibility requirements eligible for existing computation methods and do not change these computation methods, the existing regulatory descriptions of the computation methods themselves do not require any further changes.

Regulatory Procedures

We are publishing these rules without prior notice and the opportunity for public comment thereon. The Department, even when not required by statute, as a matter of policy, generally follows the Notice of Proposed Rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of proposed rulemaking and public comment procedures in the case of these rules because we are only reflecting statutory changes which are not discretionary and do not involve the setting of policy and are correcting inaccurate cross-references in one regulatory section. Therefore, opportunity for prior public comment on these amendments to the regulations is unnecessary, and these amendments to our regulations are being issued as final rules.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the issuance of these regulations is not expected to result in significant administrative or program costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations impose no reporting/recordkeeping requirements requiring clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act of 1980, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security—Disability Insurance; 93.803, Social Security—Retirement Insurance; and, 93.804, Social Security—Survivor's Insurance.)

List of Subjects in 20 CFR Part 404

Administrative Practice and Procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability.

Note: This document was received in the Office of the Federal Register on May 27, 1992.

Dated: October 11, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: November 12, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 404 of Chapter III of title 20, Code of Federal Regulations, is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for part 404, subpart B continues to read as follows:

Authority: Secs. 205(a), 212, 213, 214, 216, 217, 223, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 412, 413, 414, 416, 417, 423, and 1302.

2. Section 404.110(d)(1) is revised to read as follows:

§ 404.110 How we determine fully insured status.

* * * * *

(d) *How we credit QCs for fully insured status based on your total wages before 1951.*

(1) *General.* For purposes of paragraph (b) of this section, we may use the following rules in crediting QCs based on your wages before 1951 instead of the rule in § 404.141(b)(1).

(i) We may consider you to have one QC for each $400 of your total wages before 1951, as defined in paragraph (d)(2) of this section, if you have at least 7 elapsed years as determined under paragraph (b)(2) or (b)(3) of this section; and the number of QCs determined under this paragraph plus the number of QCs credited to you for periods after 1950 make you fully insured.

(ii) If you file an application in June 1992 or later and you are not entitled to a benefit under § 404.380 or section 227 of the Act in the month the application

is made, we may consider you to have at least one QC before 1951 if you have $400 or more total wages before 1951, as defined in paragraph (d)(2) of this section, provided that the number of QCs credited to you under this paragraph plus the number of QCs credited to you for periods after 1950 make you fully insured.

* * * * *

3. Section 404.111 is amended by replacing the cross-references to §§ 404.1315 and 404.1316 with a cross-reference to § 404.1350 in paragraph (c) and by adding a paragraph (d) to read as follows:

§ 404.111 When we consider a person fully insured based on World War II active military or naval service.

* * * * *

(d) The provisions of this section do not apply to persons filing applications after May 31, 1992, unless a survivor is entitled to benefits under section 202 of the Act based on the primary insurance amount of the fully insured person for the month preceding the month in which the application is made.

4. The authority citation for part 404, subpart C continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 1102 of the Social Security Act; 42 U.S.C. 402(a), 405(a), 415 and 1302.

5. Section 404.241 is amended by revising paragraph (a) and adding new paragraphs (c)(1) (v) and (vi) to read as follows:

§404.241 1977 Simplified old-start method.

(a) *Who is qualified.*

To qualify for the old-start computation, you must meet the conditions in paragraphs (a) (1), (2), or (3) of this section:

(1) You must—

(i) Have one "quarter of coverage" (see §§ 404.101 and 404.110 of this part) before 1951;

(ii) Have attained age 21 after 1936 and before 1950, or attained age 22 after 1950 and earned fewer than 6 quarters of coverage after 1950;

(iii) Have not had a period of disability which began before 1951, unless it can be disregarded, as explained in §404.320 of this part; and,

(iv) Have attained age 62, become disabled, or died, after 1977.

(2)(i) You or your survivor becomes entitled to benefits for June 1992 or later;

(ii) You do not meet the conditions in paragraph (a)(1) of this section, and,

(iii) No person is entitled to benefits on your earnings record in the month before the month you or your survivor becomes entitled to benefits.

(3) A recomputation is first effective for June 1992 or later based on your earnings for 1992 or later.

(b) * * *

(c) * * *

(1) * * *

(v) If you die before 1951, we allocate your 1937–1950 earnings under paragraphs (c)(1) (i) through (iv), except that in determining the number of years, we will use the year of death instead of 1951. If you die before you attain age 21, the number of years in the period is equal to 1.

(vi) For purposes of paragraphs (c)(1) (i) through (v), if you had a period of disability which began before 1951, we will exclude the years wholly within a period of disability in determining the number of years.

* * * * *

[FR Doc. 92–12760 Filed 6–1–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 355

[DoD Directive 5105.56]

Central Imagery Office

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part provides the responsibilities, functions, relationships and authorities of the Director, Central Imagery Office (CIO), a Combat Support Agency of the Department of Defense under the overall supervision of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, to ensure that United States Government intelligence, mapping, charting and geodesy, and other needs for imagery are met effectively and efficiently in a manner conducive to national security.

EFFECTIVE DATE: May 6, 1992.

FOR FURTHER INFORMATION CONTACT: David Addington, telephone (703) 697–8388.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 355

Organization and functions (Government agencies).

Accordingly, title 32 of the Code of Federal Regulations, chapter I, subchapter R, is amended to add part 355 to read as follows:

PART 355—CENTRAL IMAGERY OFFICE

Sec.

355.1 Purpose and applicability.
355.2 Mission.
355.3 Organization and management.
355.4 Responsibilities and functions.
355.5 Relationships.
355.6 Delegations of authority.
355.7 Administration.

Authority: 10 U.S.C. 301 and E.O. 12333, 3 CFR, 1981 Comp., p. 200.

§ 355.1 Purpose and applicability.

(a) This part establishes a Central Imagery Office (CIO) within the Department of Defense to ensure that United States Government intelligence, mapping, charting and geodesy, and other needs for imagery are met effectively and efficiently in a manner conducive to national security, consistent with the authorities and duties of the Secretary of Defense and the Director of Center Intelligence under Title 10, U.S.C., E.O. 12333, and DoD Directive 5240.1.[1]

(b) This part applies to the Office of the Secretary of Defense; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Combatant Commands; the Defense Agencies; and DoD Field Activities.

§ 355.2 Mission.

The Central Imagery Office shall provide support to the Department of Defense, the Central Intelligence Agency, and other Federal Government departments and agencies on matters concerning imagery relating to the national security.

§ 355.3 Organization and management.

The Central Imagery Office is hereby established as a defense agency of the Department of Defense under 10 U.S.C. and is hereby designated as a combat support agency. The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence shall exercise overall supervision over the Central Imagery Office. The Central Imagery Office shall consist of a Director of the Central Imagery Office and such subordinate organizational elements, including the central imagery tasking authority required by § 355.5(a)(4), as the Director establishes within the resources made available.

§ 355.4 Responsibilities and functions.

The Director of the Central Imagery Office shall:

[1] Copies may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(a) Organize, direct, and manage the Central Imagery Office and all assigned resources.

(b) Manage the establishment of national imagery collection requirements consistent with guidance received from the Director of Central Intelligence under E.O. 12333.

(c) Ensure responsive imagery support to the Department of Defense, the Central Intelligence Agency, and, as appropriate, other Federal Government departments and agencies, including by coordination of imagery collection tasking, collection, processing, exploitation, and dissemination.

(d) Task imagery collection elements of the Department of Defense to meet national intelligence requirements, including requirements established by the Director of Central Intelligence in accordance with the National Security Act of 1947 and E.O. 12333, except that the Director of the Central Imagery Office shall advise an imagery collection element on collection of imagery to meet such national intelligence requirements when the collection element both:

(1) Is assigned to or under the operational control of the Secretary of a Military Department or a commander of a unified or specified command and,

(2) Is not allocated by the Secretary of Defense to meet national intelligence requirements.

(e) Advise imagery collection elements of the Department of Defense on the collection of imagery to meet non-national intelligence requirements.

(f) Establish, consistent to the maximum practicable extent with the overall functional architectures of the Department of Defense, the architectures for imagery tasking, collection, processing, exploitation, and dissemination within the Department of Defense, and, to the extent authorized by the heads of other departments or agencies with imagery tasking, collection, processing, exploitation, and dissemination functions establish the architectures for imagery tasking, collection, processing, exploitation, and dissemination within those departments or agencies.

(g) Establish, in coordination with the Director of the Defense Information Systems Agency, as appropriate, standards for imagery systems for which the Department of Defense has responsibility and ensure compatibility and interoperability for such systems, and, to the extent authorized by the heads of other departments or agencies with imagery systems, establish standards and ensure compatibility and interoperability with respect to the systems of those departments or agencies.

(h) Serve as the functional manager for a Consolidated Imagery Program within the National Foreign Intelligence Program consistent with applicable guidance received from the Director of Central Intelligence in accordance with the National Security Act of 1947 and E.O. 12333.

(i) Serve as the functional manager for the Tactical Imagery Program within the budget aggregation known as the Tactical Intelligence and Related Activites.

(j) Evaluate the performance of imagery components of the Department of Defense in meeting national and non-national intelligence requirements, and to the extent authorized by the heads of other departments or agencies with imagery tasking, collection, processing, exploitation, and dissemination functions evaluate the performance of the imagery components of those departments or agencies in meeting national and non-national intelligence requirements.

(k) Develop and make recommendations on national and non-national imagery policy, including as it relates to international matters, for the approval of appropriate Federal Government officials.

(l) Support and conduct research and development activities related to imagery tasking, collection, processing, exploitation, and dissemination, consistent with applicable law and Department of Defense directives.

(m) Protect intelligence sources and methods from unauthorized disclosure in accordance with guidance received from the Director of Central Intelligence under the National Security Act of 1947 and E.O. 12333.

(n) Ensure the compliance of the Central Imagery Office with 10 U.S.C. the National Security Act of 1947, E.O. 12333, DoD Directive 5240.1[2] and 5240.1-R[3] and other applicable laws and Department of Defense directives.

(o) Establish standards for training personnel performing imagery tasking, collection, processing, exploitation, and dissemination functions.

(p) Advise the Secretary of Defense and the Director of Central Intelligence on future needs for imagery systems.

(q) Ensure that imagery systems are exercised to support military forces.

(r) Perform such other functions related to imagery as the Secretary of Defense may direct.

[2] See footnote 1 to § 355.1(a).

[3] Copies may be obtained from Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, ATTN: M. O'Byrne, Washington, DC 20301.

§ 355.5 Relationships.

(a) In performing assigned functions, the Director of the Central Imagery Office shall:

(1) Communicate directly with the heads of Department of Defense components concerning imagery matters as appropriate.

(2) Maintain liaison with Executive branch entities on imagery matters as appropriate.

(3) To the extent permitted by law, make use of established facilities and services in the Department of Defense or other governmental agencies, whenever practicable, to achieve maximum efficiency and economy, with special emphasis on maximizing use of the existing personnel, facilities, and services of the Defense Intelligence Agency, the Defense Mapping Agency, the National Security Agency, and, to the extent authorized by the Director of Central Intelligence, the Central Intelligence Agency.

(4) Establish within the Central Imagery Office a central imagery tasking authority to execute the imagery collection tasking authority of the Director of the Central Imagery Office.

(b) The Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, and the heads of other Department of Defense components shall support the Director of the Central Imagery Office in the performance of the Director's functions, including by:

(1) Ensuring compliance with national intelligence tasking issued under § 355.4(d).

(2) Ensuring compliance with the architectures and standards established by the Director of the Central Imagery Office under § 355.4(f), (g), and (o).

(3) Assisting the Director in his role as functional manager for the Consolidated Imagery Program and the Tactical Imagery Program under § 355.4(h) and (i).

(4) Submitting imagery collection requirements to the Director.

§ 355.6 Delegations and authority.

(a) The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence is hereby delegated the authority to issue instructions to Department of Defense components to implement DoD Directive 5105.56 [4]. Instructions to the Military Departments shall be issued through the Secretaries of the Military Departments. Instructions to the commanders in chief of the Unified and Specified Combatant Commands shall be issued through the Chairman of the Joint Chiefs of Staff.

[4] See footnote 1 to § 355.1(a).

(b) The Director of the Central Imagery Office is hereby delegated the authority to obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5 [5], as necessary, in the performance of the Director's assigned functions.

§ 355.7 Administration.

(a) The Director of the Central Imagery Office shall be appointed by the Secretary of Defense on the recommendation of the Director of Central Intelligence.

(b) The Director of the Central Imagery Office shall obtain administrative support, including personnel, budget execution, and contracting services, from the Defense Intelligence Agency and, to the extent permitted by law and approved by the Secretary of Defense and the Director of Central Intelligence, the Central Intelligence Agency.

(c) Resources for the Central Imagery Office shall be provided through the National Foreign Intelligence Program and the budget aggregation known as Tactical Intelligence and Related Activities, in accordance with applicable planning, programing, and budgeting system processes.

Dated: May 28, 1992.

L. M. Bynum,

OSD Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-12807 Filed 6-1-92; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7541]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638-7418.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Minnesota: Otsego, City of, Wright County	270747	Apr. 7, 1992	
Texas: Iredell, City of, Bosque County	481072	do	Nov. 1, 1975.
Vermont: Jay, Town of, Orleans County	500253	do	Nov. 5, 1976.
Iowa: Winterset, City of, Madison County	190944	Apr. 24, 1992	
Tennessee: Parsons, City of, Decatur County	478316	Apr. 28, 1992	June 11, 1976.
Texas: Mills County, Unincorporated areas	480935	do	

[5] See footnotes 1 to § 355.1(a).

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Regular Program			
Minnesota: Pine County, Unincorporated Areas	470704	Apr. 7, 1992	Nov. 2, 1991.
Tennessee: Henry County, Unincorporated areas	470228	Apr. 28, 1992	July 5, 1993.
Reinstatements—Regular Program			
Tennessee: Newry, Borough of, Blair County	422333	Mar. 10, 1976, Emerg.; Jan. 18, 1984, Reg.; Jan. 18, 1984, Susp.; Apr. 7, 1992, Rein.	Jan. 18, 1984.
Washington: Pomeroy, City of, Garfield County	530048	Feb. 15, 1974, Emerg.; July 17, 1978, Reg.; Nov. 15, 1979, Susp.; Apr. 16, 1992, Rein.	July 17, 1978.
Louisiana: Provencal,[1] Village of, Natchitoches County	220132	June 27, 1975, Emerg.; Apr. 15, 1985, With.; Apr. 28, 1992, Rein.	Oct. 15, 1985.
Texas: Kinney County, Unincorporated areas	481176	Aug. 3, 1980, Emerg.; Oct. 15, 1985, Reg.; Sept. 2, 1988, Susp.; Apr. 28, 1992, Rein.	Do.
Regular Program Conversions— Region VI			
Oklahoma:			
Bethel Acres, Town of, Pottawatomie County	400346	Apr. 2, 1992, Suspension withdrawn	Apr. 2, 1992.
Pottawatomie County, Unincorporated areas	400496	....do	Do.
Region I			
Maine: Lubec, Town of, Washington County	230139	Apr. 15, 1992, Suspension withdrawn	Apr. 15, 1992.
New Hampshire:			
Bath, Town of, Unincorporated areas	330043	....do	Do.
Bradford, Town of, Merrimac County	330106	....do	Do.
Charlestown, Town of, Sullivan County	330153	....do	Do.
Kingston, Town of, Rockingham County	330217	....do	Do.
Lyme, Town of, Grafton County	330067	....do	Do.
Oxford, Town of, Grafton County	330070	....do	Do.
Raymond, Town of, Rockingham County	330140	....do	Do.
Region III			
Pennsylvania: Girardville, Borough of, Schuylkill County	420772	....do	Do.
Maryland: Kingston, Town of, Rockingham County	330217	....do	Do.
Region V			
Illinois: Cahokia, Village of, St. Clair County	170620	....do	June 27, 1980.
Region VII			
Nebraska: Nemaha County, Unincorporated areas	310460	....do	Apr. 15, 1992.

[1] Village of Provencal is being reinstated in the Emergency Program.
Code for reading fourth column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension, Rein.-Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: May 26, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-12799 Filed 6-01-92; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 86-285; DA 92-542]

Schedule of Charges for Mass Media and Common Carrier Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules pertaining to the use of fee type codes. These amendments are necessary to facilitate accurate processing of Mass Media and Common Carrier license applications. These rule changes pertain to a matter of agency management and procedure.

EFFECTIVE DATE: June 2, 1992.

FOR FURTHER INFORMATION CONTACT: Wanda P. Stiness, Office of Managing Director, (202) 632-7194.

SUPPLEMENTARY INFORMATION:

Order

Adopted: April 23, 1992;

Released: May 12, 1992.

By the Office of the Managing Director, this Order hereby amends the Commission's rules pertaining to the use of fee type codes and addresses, 47 CFR part 1, subpart G, §§ 1.1104 and 1.1105. These amendments are necessary to facilitate accurate processing of mass media and common carrier license applications.

Accordingly, *it is ordered*, That, effective upon publication of this order in the **Federal Register**, part 1 of the Commission's rules, 47 CFR part 1, is amended as set forth in the appendix. Authority for such action is found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and pursuant to authority delegated under 47 CFR 0.231(d).

These rules changes concern a matter of agency management and procedure and, therefore, public comment is not required by the Administrative Procedure Act, 5 U.S.C. 553(a)(2), (b)(A).

For further information regarding this ORDER, contact Wanda P. Stiness at (202) 632-7194.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Andrew S. Fishel,

Managing Director.

Rule Changes

I. Part 1 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation in 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.

§ 1.1104 [Amended]

2. Section 1.1104 is amended by revising paragraphs 8(a), (b), (c), and (d) to read as follows:

Action	FCC form No.	Fee amount	Fee type code	Address
* * *	*	*	*	*
8. * * *				
a. New construction Permit and Facilities Changes CP (per application).	FCC 155, 309	1,705	MSN	Federal Communications Commission, Mass Media Bureau, P.O. Box 358200, Pittsburgh, PA 15251-5200.
b. License (per application)	FCC 155, 310	385	MNN	Federal Communications Commission, Mass Media Bureau, P.O. Box 358200, Pittsburgh, PA 15251-5200.
c. Assignment or Transfer (per station license).	FCC 155, 314/315/316	60	MCN	Federal Communications Commission, Mass Media Bureau, P.O. Box 358200, Pittsburgh, PA 15251-5200.
d. License Renewal (per application).	FCC 155, 311	95	MFN	Federal Communications Commission, Mass Media Bureau, P.O. Box 358200, Pittsburgh, PA 15251-5200.
* * *	*	*	*	*

§ 1.1105 [Amended]

3. Section 1.1105 is amended by revising paragraph 7(f) to read as follows:

Action	FCC form No.	Fee amount	Fee type code	Address
* * *	*	*	*	*
7. * * *				
f. Extension of Construction Authority (per station).	FCC 701 and FCC 155	110.00	CHM	Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155.
* * *	*	*	*	*

[FR Doc. 92-12854 Filed 6-1-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 1

[DA 92-543]

Forfeiture Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the Commission's rules pertaining to payment in forfeiture proceedings. These amendments are necessary to facilitate payment to the proper address. These rule changes pertain to a matter of agency management and procedure.

EFFECTIVE DATE: June 2, 1992.

FOR FURTHER INFORMATION CONTACT: Wanda P. Stiness, Office of Managing Director, (202) 632-7194.

SUPPLEMENTARY INFORMATION:

Order

Adopted: April 23, 1992;

Released: May 12, 1992.

By the Office of the Managing Director, this Order modifies the Commission's rules pertaining to payment in forfeiture proceedings, 47 CFR part 1, § 1.80(h). These amendments are necessary to facilitate payment to the proper address.

Accordingly, it is ordered, That, effective upon publication of this order in the **Federal Register**, part 1 of the Commission's rules, 47 CFR part 1, is amended as set forth in the appendix. Authority for such action is found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i) and 303(r), and pursuant to § 0.231(d) of the Commission's Rules.

These rule changes pertain to a matter of agency management and procedure, and, therefore, public comment is not required by the Administrative Procedure Act, 5 U.S.C. 553(a)(2), (b)(A).

For further information regarding this order, contact Wanda P. Stiness at (202) 632-7194.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

Rule Changes

I. Part 1 of title 47 of the Code of Federal Regulations is amended to read:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read:

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.

§ 1.80 [Amended]

2. 47 CFR 1.80 is amended by revising paragraph (h) to read as follows:

* * * * *

(h) *Payment.* The forfeiture should be paid by check or money order drawn to the order of the Federal Communications Commission. The Commission does not accept responsibility for cash payments sent through the mails. The check or money order should be mailed to the Commission's designated lockbox. This address will be provided in the written notice of apparent liability (1.80(f)(3)) and/or forfeiture order (1.80(f)(4)).

* * * * *

[FR Doc. 92-12853 Filed 6-1-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-316; RM-7834]

Radio Broadcasting Services; Corrales, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of LV Broadcasting Educational Foundation, Inc., substitutes Channel 236C1 for Channel 236A at Corrales, New Mexico, and modifies Station KSVA's construction permit to specify operation on the higher class channel. See 56 FR 57302, November 8, 1991. Channel 236C1 can be allotted to Corrales in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.5 kilometers (15.2 miles) southwest to accommodate petitioner's desired transmitter site, at coordinates North Latitude 35-03-55 and West Longitude 106-46-27. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 13, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-316, adopted May 15, 1992, and released May 28, 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 New Mexico, is amended by removing Channel 236A and adding Channel 236C1 at Corrales.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-12856 Filed 6-1-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-99; RM-6640]

Radio Broadcasting Services; North Crossett, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 274C2 for Channel 274A at North Crossett, Arkansas, and modifies the permit of South Arkansas Broadcasting, Inc., successor-in-interest to Contemporary Communications, for Station KWLT(FM) to specify operation on the higher-powered channel, as requested. See 54 FR 20874, May 15, 1989. Coordinates for Channel 274C2 at North Crossett are 33-08-23 and 92-04-14. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 13, 1992.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-99, adopted May 18, 1992, and released May 28, 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 Arkansas, is amended by removing Channel 274A and adding Channel 274C2 at North Crossett.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-12857 Filed 6-1-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-263; RM-7793]

Radio Broadcasting Services; Los Alamos, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jeffrey Rochlis, allots Channel 298C to Los Alamos, New Mexico, as the community's third local commercial FM service. See 56 FR 47178, September 18, 1991. Channel 298C can be allotted to Los Alamos in compliance with the Commission's minimum distance separation requirements with a site restriction of 38.1 kilometers (23.7 miles) northeast to avoid a short-spacing to Station KMYI, Channel 296C2, Armijo, New Mexico, and Station KAMX-FM, Channel 300C, Albuquerque, New Mexico, at coordinates North Latitude 36-04-51 and West Longitude 105-58-41. With this action, this proceeding is terminated.

DATES: Effective July 13, 1992. The window period for filing applications will open on July 14, 1992, and close on August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-263, adopted May 15, 1992, and released May 28, 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 New Mexico, is amended by adding Channel 298C at Los Alamos.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-12858 Filed 6-1-92; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[APD 2800.12A CHGE 39]

General Services Administration Acquisition Regulation; Late Offers Provision (Leases of Real Property)

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise the text of the late offers provision in § 552.270-3 to provide a 2-day-late-offer rule for offers mailed by U.S. Postal Service Express Mail Next Day Service and recognize the contracting officer's ability to authorize the submission of offers and modifications or withdrawals via facsimile.

EFFECTIVE DATE: June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

A notice of proposed rulemaking was published in the **Federal Register** on April 11, 1991, 56 FR 14676 (GSAR Notice 5-292). No public comments were received. However, comments received from various GSA offices have been considered and where appropriate incorporated in the final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because this rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public that require approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 552

Government procurement.

48 CFR part 552 is amended as set forth below.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 552.270-3 is revised to read as follows:

552.270-3 Late Submissions, Modifications, and Withdrawals of Offers.

As prescribed in 570.701-3, insert the following provision:

Late Submissions, Modifications, and Withdrawals of Offers (June 1992)

(a) Any offer received at the office designated in the solicitation after the exact time specified for receipt of best and final offers will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of offers. The term "working days" excludes weekends and U.S. Federal holidays; or

(4) Is the only offer received.

(b) A modification resulting from the Contracting Officer's request for "best and final" offers received after the date and time specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after timely receipt at the Government installation.

(c) The only acceptable evidence to establish the date of mailing of a late offer or modification sent either by U.S. Postal Service registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the offer wrapper or other documentary evidence of receipt maintained by the installation.

(e) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(g) Offers may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Offers may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the offer before award.

(End of Provision)

Dated: May 22, 1992.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 92-12802 Filed 6-1-92; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in statistical area 61

in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), June 3, 1992, until 12 noon, A.l.t., June 29, 1992.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock TAC to statistical area 61 is 2,248 metric tons, determined in accordance with § 672.20(a)(2)(iv).

Under § 672.20(c)(2), the Director of the Alaska Region, NMFS, has determined that the second quarterly allowance of pollock TAC to statistical area 61 will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in statistical area 61, effective from 12 noon A.l.t., June 3, 1992, until 12 noon, A.l.t., June 29, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

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, Recordkeeping and reporting requirements.

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

Dated: May 27, 1992.

David S. Crestin,

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

[FR Doc. 92–12787 Filed 6–1–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 106
Tuesday, June 2, 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 Chapter I

[Summary Notice No. PR-92-6]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 3, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 26782, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Angela M. Washington, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-5571.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 27, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Rulemaking

Docket No.: 26782.
Petitioner: Charles Webber.
Regulations Affected: 14 CFR 67.3.
Description of Petition: The petitioner proposes to amend the regulations by eliminating § 67.3 of the Federal Aviation Regulations in its entirety.
Petitioner's Reason for the Request: The petitioner expresses the need for eliminating § 67.3 of the Federal Aviation Regulations (FAR) as follows: "FAR 67.3 violates our rights under the Privacy Act, 5 U.S.C. 552a, by coercing us to surrender these rights or not get an airman certificate. Since the Privacy Act is a law, it is superior to any conflicting regulation which is therefore unenforceable. FAR 67.3 should be removed from the records immediately."

[FR Doc. 92-12793 Filed 6-1-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 23

[Docket No. 097CE, Special Conditions 23-ACE-65]

Special Conditions; Extra-Flugzeugbau GmbH Model 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Extra-Flugzeugbau GmbH Model 300 Series airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These design features include the use of composite materials for primary structure for which the regulations do not contain adequate or appropriate airworthiness standards and structural design criteria utilizing higher design load factors, because the design flight envelope of the Extra 300 far exceeds the minimum required design limits of part 23. This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

DATES: Comments must be received on or before August 3, 1992.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 097CE, room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 097CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 097CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of

the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On July 2, 1989, Extra-Flugzeugbau GmbH located in Germany applied to the FAA for type certification of the model Extra 300. The Extra 300 is a single-engine, acrobatic category FAR part 23 airplane capable of performing "Flick Rolls" producing high angular rotation rates. The configuration is conventional with a low horizontal tail, and tubular steel frame fuselage. The wing and empennage are constructed with composite material. The airplane is designed for high performance acrobatic maneuvers with a design flight envelope of ±10g. The current FAR part 23 acrobatic category design requires that the flight envelope shall not be less than +6.0g, −3.0g.

Type Certification Basis

The type certification basis for the Extra 300 airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29 and § 21.183(c); part 23 of the FAR, effective February 1, 1965, including amendments 23–1 through 23–34; part 36 of the FAR, effective December 1, 1969, including amendments 36–1 through the amendment effective on the date of type certification; exemptions, if any, and the special conditions that may result from this final rule.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis as provided by § 21.17(a)(2).

The type design of the Extra 300 contains novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Model Extra 300 airplane.

Composite Flight Structure

The Extra-Flugzeugbau GmbH Model Extra 300 airplane is made of composite material and is assembled differently from the typical semi-monocoque aluminum airframes that have been predominant since the early 1940's. Composite materials of the type used on the Extra 300 are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the fatigue requirements of §23.572 are inadequate to ensure that composite material structure can withstand the repeated loads of variable magnitude expected in service. The use of composite materials and bonding of these materials in primary flight structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of part 23. Because the requirements of part 23 do not require the level of substantiation necessary for composite material structure, a special condition is being issued to include the necessary airworthiness standards as a part of the certification basis for the Model Extra 300 airplane. This special condition is being issued to ensure that a level of safety exists for airplanes made from composite materials equivalent to those existing for aluminum airplanes.

The special conditions will require composite structural components critical to safe flight be evaluated by damage tolerance criteria. The damage tolerance consideration includes principal structural elements, such as the fuselage, and the vertical and horizontal stabilizers and their carry-through structure, since failure of these structures could have catastrophic results. When damage tolerance is shown to be impractical, the special condition is worked to permit approval based on safe-life testing. Metal detail designs may continue to be evaluated to the fatigue requirements of § 23.572. Damage tolerance criteria for composite structure, in combination with the existing material requirements of part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material airframe structure used in the Model Extra 300 airplane equivalent to that required by the airworthiness standards of part 23.

In addition to those components requiring fatigue/damage tolerance evaluations, other components that are critical to flight safety, such as movable control surfaces and wing flaps, must also be protected against loss of strength or stiffness. Protection conventionally is provided through design and inspection. Since composite material strength is susceptible to manufacturing defects and damage from discrete sources, including lightning strikes, process controls and inspectability are limited; therefore, structures design must provide for these limits with adequate protection allowances.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate issuing special conditions to ensure an appropriate level of safety for the Model Extra 300 airframe structure. This special condition is intended to require: (1) Accounting for environmental effects, that is, temperature and humidity on material mechanical properties in all structural substantiation analyses and tests; (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability; and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used instead of design features provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable nondestructive testing techniques do not yet exist in state of the art composite technology to reliably identify weak bonds. However, proof testing of each production article may be discontinued if such tests are developed and accepted by the FAA. Because the composite material and bonding may require maintenance and inspection procedures different from those commonly utilized for existing aluminum airframes, this special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

Structural Design and Loads Criteria

An analysis of world championship acrobatic sequences shows a significant number of occurrences of high load factors, up to ±10g.

Wing

For airplanes capable of performing "flick rolls" (snap rolls), the wing should be designed for 100/0 percent maximum wing load distribution, in addition to the roll maneuver criteria of § 23.349(b), unless lower values can be substantiated. These load conditions are based on a V_A and $C_{l\ max}$ corresponding to the selected positive 10g design load factor. Unbalanced aerodynamic moments about the center of gravity must be reacted in a rational or conservative manner, considering the principal masses furnishing the reacting inertia forces. Furthermore, consideration should be given to the fact that pilots may make significant aileron control input above V_A; therefore, a warning prohibiting unrestricted contol system input above V_A should be included in the Pilot Operating Handbook/Airplane Flight Manual (POH/AFM) and on a cockpit placard.

Empennage

Extra conducted flight tests to develop and record acrobatic generated unsymmetrical load values in the horizontal tail and torsion load values in the fuselage. Flight tests were conducted to specifically generate maximum unsymmetric loading by varying speed and phasing of maximum elevator and rudder inputs (elevator and rudder inputs were made to full deflection in approximately 0.15 seconds).

The use of rational flight test results is preferred as a basis for design. Pilots may make significant rudder and elevator control inputs above V_A; therefore, adequate pilot warnings such as discussed above are necessary.

In lieu of the 1.3 factor specified for rudder maneuver conditions of § 23.441(a)(2), a value of 1.5 for the overswing factor should be used unless a lower value can be substantiated by flight test.

Rational chord load distributions should be used for the vertical and horizontal tail surfaces. These may be developed by flight test data, wind tunnel test data, theoretical analysis, or a combination thereof.

Gyroscopic Forces

Since the aircraft will be performing maneuvers which generate high pitch and yaw rates, the airplane, including the engine, engine mount, and fuselage attachment, must be designed for rational gyroscopic forces generated in specific acrobatic maneuvers.

Fatigue

The fatigue load should be developed from representative sequences and cross country flight profiles.

Conclusion

This action affects only novel and unusual design features on the Extra-Flugzeugbau GmbH model Extra 300 airplane. It is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the Extra-Flugzeugbau GmbH Model Extra 300 airplane.

Evaluation of Composite Structures

In lieu of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, i.e., each wing, wing carry-through and its attaching structure, horizontal stabilizer, and horizontal stabilizer carry-through and its attaching structure, fuselage, vertical stabilizer and its attaching structure, and all movable control surfaces and their attaching structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (i) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (j) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (g) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstration, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operations and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that, after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) Each wing and horizontal stabilizer carry-through and attaching structure, and vertical stabilizer and attaching structure, and all movable control surfaces and their attaching structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(g) In lieu of a non-destructive inspection technique which ensures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (f) of this special condition must be determined by analysis, test, or both. Disbonds of each bonded joint

greater than this must be prvented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(h) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(i) The airplane must be shown to be free from flutter with the extent of damage for which residual strength is demonstrated.

(j) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon test must be performed to establish the fatigue scatter and environmental effects. Impact damage in composite material components that may occur may be considered in the demonstration. The impact damage level considered must be consistent with detectability of the inspection procedures employed.

Structural Design and Loads Criteria

Wing

In addition to the roll maneuver criteria of § 23.349(b), for airplanes designed to perform "flick-rolls" (snap rolls), the wing must be designed for 100/0 percent maximum wing load distribution. Accurate flight test load measurements may be used in lieu of 100/0 percent maximum airload distribution. A notation shall be placed in the Limitations Section of the POH/AFM, and an appropriate warning placard shall be installed on the main instrument panel prohibiting full or abrupt control inputs above V_A.

Empennage

The horizontal tail and its attachments to the fuselage, and the aft fuselage must be designed for the worst case load condition using either accurate flight test load measurements or an acceptable analytical method.

Unsymmetrical load combinations acting on the wing and on the horizontal tail are assumed to be turning the airplane in the same direction around the roll axis. A notation shall be placed in the limitation section of the POH/AFM, and an appropriate warning placard shall be installed on the main instrument panel prohibiting full or abrupt control inputs above V_A. In lieu of the 1.3 factor specified for rudder maneuver, conditions of § 23.441(a)(2), a value of 1.5 for the overswing factor must be used, unless a lower value is substantiated by flight test. Rational chord load distributions must be used for the vertical and horizontal tail surfaces. Appropriate data must be used to develop unsymmetrical loading of the horizontal tail surface and as a basis for fuselage torsion. This must include simultaneous application of full rudder and elevator input.

Gyroscopic Forces

The airplane, including the engine, engine mount and fuselage attachment, must be designed for representative gyroscopic forces generated in acrobatic maneuvers.

Fatique

Representative acrobatic maneuver sequences and cross-country flight profiles must be used in establishing a rational fatigue load spectrum.

Issued in Kansas City, Missouri, May 20, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-12794 Filed 6-1-92; 8:45 am]

BILLING CODE 4910-01-M

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14 CFR Part 39

[Docket No. 91-NM-205-AD]

Airworthiness Directives; British Aerospace Model BAe/HS/DH/BH 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe/HS/DH/BH 125 series airplanes. This proposal would require replacement of certain components associated with the main landing gear (MLG) in accordance with maximum life limits. This proposal is prompted by an engineering analysis, which revealed that the expected life limit of the MLG sidestay upper arms before cracking or failure is likely to occur is 12,000 landings. The actions specified by the proposed AD are intended to prevent reduced structural capability of the MLG.

DATES: Comments must be received by July 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-205-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

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 shall identify the Rules 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-205-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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–205–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe/HS/DH/BH 125 series airplanes. The CAA advises that results of an engineering analysis have revealed that the expected life limit of the main landing gear (MLG) sidestay upper arms before cracking or failure is likely to occur is 12,000 landings. Failure to replace the MLG components at maximum life limits could result in reduced structural capability of the MLG.

British Aerospace has issued Service Bulletin 32–216, Revision 1, dated March 21, 1988, which establishes maximum life limits for the MLG sidestay upper arm assemblies and describes procedures for replacement of those components at established maximum life limits. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the MLG sidestay upper arm assemblies at established maximum life limits. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 420 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $10,130 per airplane (2 sidestays per airplane at $5,065 per sidestay). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,809,000. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the 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 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.

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 adding the following new airworthiness directive:

British Aerospace: Docket 91–NM–205–AD.

Applicability: Model BAe/HS/DH/BH 125 series airplanes, excluding Model BAe 125–1000A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of the main landing gear (MLG) sidestay upper arm assembly, accomplish the following:

(a) Prior to the accumulation of 12,000 landings on any MLG sidestay upper arm assembly, or within 9 months after the effective date of this AD, whichever occurs later, replace the assembly with a serviceable assembly, in accordance with British Aerospace Service Bulletin 32–216, Revision 1, dated March 21, 1988.

(b) Following the accomplishment of paragraph (a) of this AD, replace any MLG sidestay upper arm assembly prior to the accumulation of 12,000 landings on that assembly.

(c) For purposes of this AD, overhauled sidestay upper arm assemblies for which the total number of landings is not recorded must be assumed to have accumulated 8,000 landings at the time of installation.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(e) 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.

Issued in Renton, Washington, on May 20, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–12795 Filed 6–1–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–ANE–07]

Airworthiness Directives; Precision Airmotive (formerly Facet Aerospace Products and Marvel-Schebler) Carburetors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to Precision Airmotive (formerly Facet Aerospace Products and Marvel-Schebler) Model MA–3A, MA–3PA, MA–3SPA, and MA–4SPA carburetors. This proposal would require removing the two-piece venturi from the affected

carburetors and replacing it with a one-piece venturi. This proposal is prompted by reports of accidents, incidents, and service difficulties reports involving loose or missing components of two-piece venturis. The actions specified by the proposed AD are intended to prevent disruption of fuel flow to the engine resulting in engine power loss, or engine failure.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–07, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Precision Airmotive Corporation, 3220 100th St. SW., Bldg E, Everett, Washington 98204. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Jon A. Regimbal, Seattle Aircraft Certification Office, ANM–140S, FAA, Northwest Mountain Region, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, (206) 227–2687; fax (206) 227–1181.

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 Rules 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–07." 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–07, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Discussion

The FAA has received reports of 9 accidents, 5 incidents, and 26 service difficulty reports involving loose or missing components of two-piece venturis on Precision Airmotive (formerly Facet Aerospace Products and Marvel-Schebler) Model MA–3A, MA–3PA, MA–3SPA, and MA–4SPA carburetors. In 1963, the FAA issued AD 63–22–03 (Amendment 636 Part 507, October 30, 1963) for similar service problems involving loose or missing components of two-piece venturis on the Marvel-Schebler Model MA–4–5 carburetors. Facet Aerospace Products acquired the Marvel-Schebler carburetor product line, and subsequently Precision Airmotive acquired the product line from Facet Aerospace Products. That AD requires the removal of the two-piece venturi and replacement with a one-piece venturi on the Marvel-Schebler Model MA–4–5 carburetors, but does not require similar action on other carburetor models.

On January 24, 1992, the National Transportation Safety Board issued Safety Recommendation A–92–5, describing the carburetors' history of service difficulties and recommending the removal of two-piece venturis and replacement with one-piece venturis on Model MA–3A, MA–3PA, MA–3SPA, and MA–4SPA carburetors in addition to the Model MA–4–5.

A venturi failure can result in disruption of fuel flow to the engine. Engine backfires or intake stack fires are known to loosen components of the two-piece venturi. The loose components can separate from the two-piece venturi, and subsequently lodge in various locations in the engine intake system. The separated components of the failed two-piece venturi can block the mixing chamber/throttle bore or nozzle outlet, lodge against the throttle valve, or become inserted into the engine intake manifold/cylinder assembly. Depending on where the separated components of the failed two-piece venturi become lodged, they can cause a disruption of fuel flow to the engine resulting in engine power loss, or engine failure.

The FAA has reviewed and approved the technical contents of Precision Airmotive Corporation Service Bulletin No. MSA–2, Revision 1, dated November 11, 1991, that describes procedures for removing the two-piece venturi from the carburetor and replacing it with a one-piece venturi.

Since an unsafe condition has been identified that is likely to exist or develop on other carburetors of this same type design, the proposed AD would require removing the two-piece venturi from the carburetor and replacing it with a one-piece venturi. The proposed AD would also require that the data plate be specifically marked with a "V" to indicate compliance with the AD. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 100,000 carburetors installed on aircraft of U.S. registry would be affected by this proposed AD, and that it would take approximately 6 work hours per carburetor to accomplish the proposed actions. The average labor rate is $55 per work hour. Required parts would cost approximately $325 per carburetor. Based on these figures, the total cost impact is estimated to be $65,500,000.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have 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 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.

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. App. 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 airworthiness directive:

Precision Airmotive Corporation: Docket No. 92–ANE–07.

Applicability: Precision Airmotive (formerly Facet Aerospace Products and Marvel-Schebler) Model MA–3A, MA–3PA, MA–3SPA, and MA–4SPA carburetors installed on but not limited to Textron Lycoming Model O–235, O–290, and O–320 series engines, and Teledyne Continental A–65, A–75, C–75, C–85, C–90, C–115, C–125, C–145, O–200, and O–300 series engines installed on but not limited to normally aspirated piston engine powered aircraft manufactured by Cessna, Piper, Beechcraft, and Mooney.

Compliance: Required as indicated, unless accomplished previously.

To prevent disruption of fuel flow to the engine resulting in engine power loss, or engine failure, accomplish the following:

(a) At the next removal of the carburetor for overhaul or repair, but not later than 48 months after the effective date of this AD, whichever occurs first, inspect the carburetor to determine if a two-piece venturi is installed. Carburetors with the letter "V" stamped or etched on the lower portion of the data plate, or with a black Precision Airmotive data plate, already contain the one-piece venturi and are not affected by this AD.

(1) If a two-piece venturi is installed, prior to further flight, remove the two-piece venturi and replace it with a one-piece venturi in accordance with the Accomplishment Instructions of Precision Airmotive Corporation Service Bulletin (SB) MSA–2, Revision 1, dated November 11, 1991, or install a serviceable carburetor with a one-piece venturi.

(2) Stamp or etch a "V" on the lower portion of the data plate in accordance with the Accomplishment Instructions of Precision Airmotive Corporation SB MSA–2, Revision 1, dated November 11, 1991, to indicate compliance with this AD.

(b) An alternative method of compliance or adjustment of the compliance time, that provides an acceptable level of safety, may be used if approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle Aircraft Certification Office.

(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.

Issued in Burlington, Massachusetts, on May 12, 1992.

Jack A. Sain,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–12797 Filed 6–1–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 33, 35 and 290

[Docket No. RM92–10–000]

Streamlining Electric Power Regulation

Issued May 27, 1992.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise its electric power regulations to delete regulations that are obsolete or require information that the Commission either no longer needs or which is readily available from other sources.[1]

DATES: An original and 14 copies of the written comments on these proposed rule changes must be filed with the Commission by July 2, 1992. All comments should reference Docket No. RM92–10–000.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Wayne W. Miller, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0466.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, at the Commission's Headquarters, 941 North Capitol Street NE., Washington, DC 20426. The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of the proposed revisions will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to revise its electric power regulations to eliminate requirements for information that the Commission no longer needs or which is readily available from other sources.

II. Public Reporting Burden

These proposed rules eliminate electric filing regulations that are obsolete, that require data that the Commission no longer needs, or that require data that are readily obtainable elsewhere. Consequently, the Commission's filing regulations will more accurately identify currently required data. As a result, the public should be able to identify more efficiently the types of applications and related information that the Commission requires. In particular, the Commission estimates that the proposed rules will reduce the public reporting burden for FERC–519, "Corporate Applications," as a result of the deletion of requirements that applicants seeking authority for sale, lease or other disposition, merger or consolidation of facilities, or for purchase or acquisition of securities of a public utility, furnish certain information and exhibits; FERC–516, "Electric Rate Schedules," as a result of: (a) The deletion of certain filing requirements

[1] The current versions of these regulations bear the following Office of Management and Budget approval numbers: Part 33, No. 1902–0082; Part 35, No. 1902–0096; and Part 290, No. 1902–0042.

for rate change applicants, (b) the deletion of certain filing requirements for utilities collecting rates subject to refund and (c) the deletion of certain filing requirements for advance Commission approval of rate treatment for certain research, development, and demonstration expenditures; and FERC–557, "PURPA Section 133: Cost of Retail Electric Service Information," as a result of the deletion of requirements for collection of cost-of-service information under section 133 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[2]

The annual reporting burden for collection of information is estimated to be 614,775 hours for FERC–516, "Electric Rate Schedules," 1,700 hours for FERC–519, "Corporate Applications," and 10,800 hours for FERC–557, "PURPA Section 133: Cost of Retail Electric Service Information." These estimates include 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 these burden estimates or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415); and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (Attention: Desk Officer for Federal Energy Regulatory Commission).

III. Discussion

Based on its review, the Commission has preliminarily determined that several of its electric power regulations should be deleted or revised in order to streamline the Commission's processing of its workload and reduce regulatory burdens on the electric industry.

For the reasons discussed below, the Commission proposes to delete or revise the following regulations:

1. Sections 33.2(b), (d), (g), (h), (i), (n), and Section 33.2(e), in part

Sections 33.2(b), (d), (g), (h), (i), and (n) require that applicants seeking authority under section 203 of the Federal Power Act [3] to sell, lease or otherwise dispose of jurisdictional facilities with a value in excess of $50,000, merge or consolidate, or purchase or acquire the securities of another public utility, file the following information: (1) The states or other sovereign power under which the applicant is incorporated, the dates of incorporation and the states in which the utility is domesticated;[4] (2) the names, titles and addresses of their principal officers;[5] (3) references to any license from the Federal Energy Regulatory Commission;[6] (4) for each class and series of capital stock and funded debt, a description, the amount authorized, the amount outstanding, the amount held as reacquired securities, the amount pledged, the amount owned by affiliated corporations and the amount held in any fund;[7] and (5) the names and addresses of counsel and of firms who have provided opionions of counsel regarding the legality of the proposed transaction.[8] The Commission's preliminary view is that the information required by these sections is either obsolete, unnecessary or can be obtained from other sources, including public documents required to be filed by public utilities regulated by this Commission.[9] In evaluating corporate transactions there is no need for this Commission to have applicants furnish the names of their officers or the state of incorporation or domicile. To the extent a corporate application affects or requires a change in a license issued by the Commission, the utility would be required to file an application, under Part I of the Federal Power Act, requesting that its license be modified. There is no need to require an applicant to identify its licenses as part of a Section 203 application. A description of an applicant's capital structure is available from other public documents, such as FERC Form 1.[10] Finally, there is no need for an applicant to furnish the names of its counsel for the Commission to evaluate corporate transactions. The Commission proposes to eliminate that portion of § 33.2(e) which requires a description of the general character of the business done and to be done. Because applicants are public utilities and as such engage in sales of electric energy at wholesale in interstate commerce or transmission of electricity in interstate commerce, a description of their general business activities is not necessary as part of the explanation of a proposed jurisdictional corporate transaction. The Commission, however, proposes to retain the requirement of § 33.2(e) that section 203 applicants designate the territories served, by counties and states.

2. Section 33.3, Exhibits A (a copy of the Charter and Articles of Incorporation), B (a Copy of the By-Laws), D (Copies of all Mortgages, Trusts, Deeds or Indentures Securing any Obligation of Each Party to the Transaction) and E (a Signed Opinion of Counsel as to the Legality of the Proposed Transaction).

These exhibits provide information indicating that certain conditions have been satisfied in order for a transaction approved pursuant to section 203 to be legally binding (*e.g.*, all releases from liens have been obtained, the applicant's charter and bylaws permit the proposed transaction, and applicant believes the transaction is valid). Since such determinations are outside the scope of this Commission's jurisdiction, there is no need to require applicants to submit these exhibits.

3. Sections 35.13(d)(6) and 35.13(h)(7)(iv)

These sections require rate change applicants to file: (1) Quarterly updates of their finances, construction plans and regulatory activities;[11] and (2) for each major functional classification under Statement AD, the component balances for research, development and demonstration expenditures for Account 188.[12] The Commission does not use the data required by § 35.13(d)(6) in processing applications for rate changes. These data also are available from other sources, such as annual reports and other public documents. Further, since public utilities have not requested authority to include Account 188 in rate base, the Commission sees no need to retain § 35.13(h)(7)(iv).

4. Sections 35.19a(b)(2) and (3)

Section 35.19a(b)(2) requires utilities collecting increased rates or charges subject to refund to file annually, for each billing period: (a) The monthly billing determinants; (b) the revenues that would result under the previously effective rates; (c) the revenues that would result under the suspended rates; and (d) the difference between the latter two. Section 35.19a(b)(3) gives the Director of the Office of Electric Power Regulation authority to require individual utilities to make such filings on a more frequent basis when deemed

[2] 16 U.S.C. 2643.

[3] 16 U.S.C. 824b.

[4] Section 33.2(b).

[5] Section 33.2(d).

[6] Section 33.2(g). In Order No. 541, Deletion of Certain Outdated or Nonessential Regulations, 157 FR 21730; 59 FERC ¶ 61122 (1992), the Commission revised 18 CFR parts 35 and 131 to replace references to "Federal Power Commission" with references to "Federal Energy Regulatory Commission."

[7] § 33.2(h) and (i).

[8] § 33.2(n).

[9] *See* CFR parts 131 and 141.

[10] *See* 18 CFR 141.1.

[11] § 35.13(d)(6).

[12] § 35.13(h)(7)(iv).

appropriate or necessary, or upon request where good cause is shown. The Commission finds preliminarily that in processing applications for increased rates or charges subject to refund there is no reason to burden utilities with having to submit these voluminous data. The data requested are used to calculate refunds. If, after the Commission approves a new rate, a dispute arises over the amount of refunds, the Commission can require the utility to submit these data at that time.

5. Section 35.22.

This section provides for the filing of a detailed research and development clause for advance Commission approval of rate treatment for research, development and demonstration expenditures of $50,000 or more. The Commission has never had any filings under this section since its implementation in 1973. Consequently, there appears to be no need to retain this regulation.

6. Part 290.

This regulation requires the collection of cost-of-service data under section 133 of PURPA. However, all but seven entities have been permanently exempted from compliance.[13] The Commission proposes to revise part 290 to require all non-exempt public utilities [14] to file the data required by section 133(a) of PURPA with their state regulatory authorities and require all non-exempt non-public utilities [15] to make these data publicly available.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[16] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[17] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective or procedural or that does not substantially change the effect of legislation or regulations being amended.[18] The proposed rules are procedural in nature. They merely make clerical changes and delete reporting requirements and regulations that the Commission has decided, preliminarily, are no longer necessary. Accordingly, no environmental consideration is necessary.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [19] requires rulemakings to either contain a description and analysis of the impact the proposed rule will have on small entities or to certify that the rule will not have a substantial economic impact on a substantial number of small entities. The proposed rule would remove unnecessary and obsolete regulations; it does not establish any new reporting requirements. Further, the data that the Commission would no longer require be filed are either no longer necessary or could, if necessary, still be obtained from other existing sources. Consequently, the Commission certifies that this proposed rule will not have "a significant economic impact on a substantial number of small entities."

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations [20] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this proposed rule are contained in FERC–516, "Electric Rate Filings," (1902–0096), FERC–519, "Corporate Applications," (1902–0082) and FERC–557, "PURPA Section 133: Cost of Retail Electric Service Information," (1902–0042).

The Commission used the data collected in these information requirements to carry out its regulatory responsibilities pursuant to the FPA, PURPA, the Pacific Northwest Electric Power Planning and Conservation Act and delegations to the Commission from the Secretary of Energy. The Commission's Office of Electric Power Regulation used the data for determination of electric rate filings; filings submitted by the electric industry for sale, lease or other disposition, mergers or consolidations, or to purchase or acquire securities of a public utility; and applications that encourage the use of small power production facilities. The Commission proposes to delete reporting requirements and regulations that the Commission, preliminarily, no longer considers necessary.

The Commission is submitting the proposed rule to OMB for its review. Interested persons may obtain information on the requirements of the proposed rule by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415). Comments on the requirements of this proposed rule can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

VII. Public Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this Notice of Proposed Rulemaking. An original and 14 copies of the comments must be filed with the Commission no later than July 11, 1992. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, and should refer to Docket No. RM92–10–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capital Street NE., Washington, DC 20426, during regular business hours.

List of Subjects

18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirement, Securities.

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 290

Electric utilities, Penalties, Reporting and recordkeeping requirements, Uniform system of accounts.

In consideration of the foregoing, the Commission proposes to amend parts 33, 35 and 290, chapter I, title 18, code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

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[13] See 18 CFR 290.101(b), and appendix A. The seven non-exempt entities are: Jersey Central Power & Light Company, the Department of Water and Power of the City of Los Angeles, California, Pacific Gas & Electric Company, San Diego Gas & Electric Company, Atlantic City Electric Company, Southern California Edison Company and the Western Area Power Administration.

[14] Jersey Central Power & Light Company, Pacific Gas & Electric Company, San Diego Gas & Electric Company, Atlantic City Electric Company and Southern California Edison Company.

[15] The Department of Water and Power of the City of Los Angeles, California, and the Western Area Power Administration.

[16] Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. and Regs. ¶ 30,783 (1987).

[17] 18 CFR 380.4.

[18] 18 CFR 380.4(a)(2)(ii).

[19] 5 U.S.C. 601–612.

[20] 5 CFR 1320.12.

PART 33—APPLICATION FOR SALE, LEASE, OR OTHER DISPOSITION, MERGER OR CONSOLIDATION OF FACILITIES, OR FOR PURCHASE OR ACQUISITION OF SECURITIES OF A PUBLIC UTILITY

1. The authority citation for part 33 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 33.2, paragraphs (b), (d), (g), (h), (i), and (n) are removed, paragraph (c) is redesignated as paragraph (b), paragraphs (e), (f), and (j) are redesignated as paragraphs (c) (d), and (e), paragraphs (k), (l), and (m) are redesiganted as paragraphs (f), (g), and (h), and paragraphs(o), (p), (q), and (r) are redesignated as paragraphs (i), (j), (k), and (l), and newly redesigned paragraph (c) is revised to read as follows:

§ 33.2 Contents of application; filing fee.

* * * * *

(c) Designation of the territories served, by counties and States.

* * * * *

3. In § 33.3, Exhibits A, B, D, and E are removed, Exhibit C is redesignated as Exhibit A, Exhibits F through M, are redesignated as Exhibits B through I, respectively, the final "Note" paragraph is removed, and the introductory text is revised to read as follows:

§ 33.3 Required exhibits.

There shall be filed with the application as part thereof one certified copy and five uncertified copies plus one for each State affected of Exhibits B, C, D, E, F, G, H, and I, described as follows:

* * * * *

PART 35—FILING OF RATE SCHEDULES

4. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 35.13 [Amended]

5. In § 35.13, paragraph (d)(6) is removed, paragraph (d)(7) is redesignated as paragraph (d)(6), paragraph (h)(7)(iv) is removed, and paragraphs (h)(7)(v) and (h)(7)(vi) are redesignated as paragraphs (h)(7)(iv) and (h)(7)(v).

6. In § 35.19a, paragraph (b) is revised to read as follows:

§ 35.19a Refund requirements under suspension orders.

* * * * *

(b) *Reports.* Any public utility whose proposed inreased rates or charges were suspended and have gone into effect pending final order of the Commission pursuant to section 205(e) of the Federal Power Act shall keep accurate account of all amounts received under the increased rates or charges which became effective after the suspension period, for each billing period, specifying by whom and in whose behalf such amounts are paid.

§ 35.22 [Removed]

7. Section 35.22 is removed.

§§ 35.23 Through 35.31 Redesignated as §§35.22 Through 35.30.

8. Sections 35.23 through 35.31 are redesignated as §§ 35.22 through 35.30.

PART 290—COLLECTION OF COST OF SERVICE INFORMATION UNDER SECTION 133 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

9. The authority citation for part 290 is revised to read as follows:

Authority: 16 U.S.C. 791a–828c, 2601–2645 (1988); 42 U.S.C. 7101–7352 (1988).

10. Section 290.102 is revised to read as follows:

§290.102 Information gathering and filing.

All non-exempt public utilities shall file the data required by section 133(a) of the Public Utility Regulatory Policies Act of 1978 with their state regulatory authorities. All non-exempt non-public utilities shall make these data publicly available.

§§ 290.103 through 290.701 [Removed]

11. §§290.103 through 290.701 are removed.

[FR Doc. 92–12818 Filed 6–1–92; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 334

[Docket No. 78N–036L]

RIN 0905–AA06

Laxative Drug Products for Over-The-Counter Human Use; Tentative Final Monograph; Reopening of Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is reopening the administrative record for the rulemaking for over-the-counter (OTC) laxative drug products to include data on the stimulant laxative active ingredient derived from senna and data on the combination of psyllium and bran laxative active ingredients. This action is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by August 3, 1992.

ADDRESSES: 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: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 21, 1975 (40 FR 12902), 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 laxative, antidiarrheal, emetic, and antiemetic drug products together with the recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The agency's proposed regulation, in the form of a tentative final monograph, for OTC laxative drug products was published in the Federal Register of January 15, 1985 (50 FR 2124).

In the advance notice of proposed rulemaking, the Panel classified senna preparations as Category I (safe and effective) stimulant laxatives and recommended dosages for the various senna preparations, i.e., senna leaf powder, senna fluidextract, senna fruit extract, senna syrup, sennosides A and B crystalline, and senna pod concentrate (40 FR 12902 at 12909).

In the tentative final monograph (50 FR 2124 at 2141), the agency stated that the available data show that the active constituents in the various senna preparations are sennosides A and B. In many submissions to the Panel, the dosage of various senna preparations was standardized to sennosides A and B only. Because the active constituent in the senna compounds is sennosides A

and B, the agency proposed a dosage only for sennosides A and B in the tentative final monograph. The allowable sources of sennosides A and B, i.e., senna leaf powder, senna fluidextract, senna pod concentrate, senna fruit extract, senna syrup, or sennosides A and B crystalline, were listed in the tentative final monograph, but specific dosages for each individual senna preparation were not provided. The agency also stated that manufacturers may market their products in the formulation of their choice, using any of the allowable sources of senna, provided that the equivalent dosage conforms to the dosages for sennosides A and B set out in the tentative final monograph (50 FR 2124 at 2141, 2152, and 2156).

On July 10, 1991, the agency received a citizen petition (Ref. 1) requesting that the stimulant laxative active ingredient from the senna plant be listed as "sennosides" and not be limited to "sennosides A and B." The request was based on scientific studies isolating and identifying the various anthracene derivatives from the leaves and pods of senna. The petition stated that sennosides A, B, C, and D, and rhein and aloe-emodin in the free and glycoside form may be present. The petition added that Khafagy, S. M. et al. (Ref. 2) confirmed the presence of the different sennosides in a thin layer chromatographic-spectroscopic method developed to separate and quantitate sennosides A, B, C, and D in senna leaves, pods, and various senna-containing pharmaceutical preparations. The petition noted that the British Pharmacopoeia 1988 (Ref. 3) identifies sennosides A, B, C, and D, and rhein–8–glucoside as the hydroxyanthracene glucosides present in senna leaves and fruit. In addition, the United States Pharmacopeia XXII (Ref. 4) refers to the "partially purified natural complex of anthraquinone glucosides found in senna" collectively as sennosides.

According to the petition, several studies have investigated the pharmacologic effect of various anthracene derivatives in senna. Marvola, M. et al. (Ref. 5) compared the laxative effect of commercial sennosides and senna extracts of varying purity. They found the pure sennoside to be a less potent laxative than the sennoside extracts, but with a corresponding lower acute toxicity, indicating the presence of other similar compounds which have a laxative potency that is either higher than sennosides A and B alone, or that is synergistic with these sennosides.

The petition contended that sennosides A and B are not the only active ingredients responsible for laxation, and product labeling based on sennosides A and B as the only active ingredients is inaccurate and misleading. The petition, therefore, requested that the stimulant laxative active ingredient derived from senna be listed as "sennosides" and that all dosage schedules be based on the amount of total sennosides contained in the drug product.

In the tentative final monograph, the agency agreed with the Panel's Category I classification of both psyllium and bran as bulk-forming laxative active ingredients (50 FR 2124 at 2149). The agency also stated that both the "General Guidelines for OTC Drug Combination Products" (Ref. 6) and the regulations in § 330.10(a)(4)(iv) provide that an OTC drug product may combine two or more safe and effective active ingredients provided the product meets the combination policy in all respects (50 FR 2124 at 2145). The agency noted that if a manufacturer could show, with supportive data, that a laxative combination meets the general guidelines for OTC combination drug products, the agency would not object to the product containing two or more Category I laxative ingredients (50 FR 2145).

On December 18, 1990, the agency received a citizen petition (Ref. 7) requesting that the tentative final monograph for OTC laxative drug products be amended to allow the combination in a single product of two generally recognized safe and effective bulk-forming active ingredients, psyllium and bran, used within monograph-specified dosage limits. The request cited § 330.10(a)(4)(iv), which states that an OTC drug may combine two (or more) safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect, the combination does not decrease the safety or effectiveness of either individual ingredient, and the combination provides rational concurrent therapy for a significant proportion of the target population.

The petition stated that psyllium and bran each were proposed as generally recognized as safe and effective bulk-forming laxative ingredients in the tentative final monograph (50 FR 2124 at 2152). When formulated together as a combination product, each contributes to the claimed laxation effect, and neither ingredient detracts from the safety and/or effectiveness of the other. The petition contended that the combination of psyllium and bran provides rational concurrent therapy on the basis of consumer acceptance as well as quality of product formulation. The petition added that in order to achieve a form of a psyllium-based laxative product suitable for teaspoon dosing, it is necessary to use an ingredient (usually inactive) as an extender, typically in the form of a polysaccharide, such as sucrose or maltodextrin. Substitution of bran for sucrose or maltodextrin offers three advantages: (1) Bran is compatible with psyllium in terms of physical characteristics (e.g., color, texture) and chemical characteristics (e.g., product stability); (2) bran does not contribute significant caloric value to the product and obviates the need for an additional extender; and (3) at the therapeutic levels proposed in 21 CFR 334.31, bran would contribute towards the overall laxation effect.

FDA has carefully considered these requests and believes that it would be appropriate to reopen the administrative record for the rulemaking for OTC laxative drug products to include the information included in these petitions on the stimulant laxative active ingredient derived from senna and on the psyllium-bran combination drug product. The petition on sennosides contains new evidence demonstrating that sennosides A and B are not the only active principles and that dosage schedules based upon the amount of total sennosides in the product are more accurate. The petition on the psyllium-bran combination drug product provides good reasons why such a product increases consumer acceptance and improves the quality of product formulation. (See discussion above.) Therefore, the agency considers that good cause exists, as stated in § 330.10(a)(7)(v), to consider at this time: (1) listing the stimulant laxative active ingredient as "sennosides" instead of "sennosides A and B" as was proposed in § 334.18(h); and (2) the possible monograph status of a psyllium-bran

combination laxative drug product. The agency is currently developing the final monograph. The agency believes that it is appropriate to resolve these issues before the final monograph is published.

At this time, the agency is unaware of any OTC laxative drug product that contains psyllium and bran as active ingredients in combination on the market in the United States. Therefore, unless and until the agency determines that the combination of psyllium and bran as active ingredients in OTC laxative drug products is Category I and states its position in the **Federal Register**, the marketing of such a combination is prohibited in the absence of an approved new drug application.

Interested persons may on or before August 3, 1992, submit to the Dockets Management Branch (address above) written comments regarding the stimulant laxative active ingredient derived from senna and the ingredients psyllium and bran used in combination in laxative drug products. At this time, comments should not be submitted on any other laxative drug product. Three 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. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

References

(1) Comment No. CP11, Docket No. 78N–036L, Dockets Management Branch.

(2) Khafagy, S. M. et al., "Estimation of Sennosides A, B, C, and D in Senna Leaves, Pods and Formulations," *Planta Medica*, 21:304–309, 1972.

(3) "British Pharmacopoeia," The British Pharmacopoeia Commission, vol. 1, p. 501, 1988.

(4) "The United States Pharmacopeia XXII—The National Formulary XVII," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 1246, 1990.

(5) Marvola, M. et al., "The Effect of Raw Material Purity on the Acute Toxicity and Laxative Effect of Sennosides," *Journal of Pharmacy and Pharmacology*, 33:106–109, 1981.

(6) FDA, "General Guidelines for OTC Drug Combination Products, September, 1978," Docket No. 78D–0322, Dockets Management Branch.

(7) Comment No. CP9, Docket No. 78N–036L, Dockets Management Branch.

Dated: May 27, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92–12785 Filed 6–1–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–260–82]

RIN 1545–AE26

Definition of Passive Investment Income; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMAMRY: This document provides notice of cancellation of public hearing on proposed Income Tax Regulations that relate to the definition of passive investment income.

DATES: The public hearing originally scheduled for Thursday, June 4, 1992, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9236 or 202–566–3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1362 of the Internal Revenue Code of 1986. A notice appearing in the **Federal Register** for Friday, April 17, 1992 (57 FR 13680), announced that the public hearing on the proposed regulations would be held on Thursday, June 4, 1992, beginning at 10 a.m., in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Thursday, June 4, 1992, has been cancelled.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–12763 Filed 6–1–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

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

ACTION: Proposed rule; reopening of public comment period

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 51 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has proposed additional revisions to the State's earlier submission of Program Amendment Number 51. Together, Program Amendments Number 51 and Revised 51 are intended to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an adjacent unreclaimed area.

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

DATES: Written comments must be received on or before 4 p.m. on June 17, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on June 12, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 8, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requeste may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the

general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated July 9, 1991 (Administrative Record No. OH–1546), the Director of OSM provided Ohio with clarification concerning OSM's position on the reclamation of abandoned mined lands by a mine operator in conjunction with surface coal mining and reclamation operations. The Director noted that a contract for reclamation approved under title IV of SMCRA (or under an equivalent State AML program) is equivalent to a permit and bond and is thus consistent with the excess spoil disposal requirements of section 515 of SMCRA. State programs which issue such contracts under a non-federally funded program must provide a degree of security comparable to that afforded by a federally funded AML reclamation project. Before issuing such contracts, States must first submit and receive OSM approval of the State policies and procedures applicable to such non-federally funded contracts.

In response to the Director's letter, Ohio submitted proposed Program Amendment Number 51 by letter dated July 22, 1991 (Administrative Record No. OH–1547). The amendment proposed to add a new paragraph (H) to Ohio Administrative Code (OAC) section 1501:13–9–07 to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an adjacent unreclaimed area. As part of and in support of proposed Program Amendment Number 51, Ohio also submitted Administrative Record information on the relevant provisions of the Ohio Revised Code, a draft policy statement clarifying eligibility requirements and performance standards for off-permit spoil placement, and an example of a reclamation contract executed pursuant to § 1513.27 of the Ohio Revised Code.

OSM announced receipt of proposed Program Amendment Number 51 in the August 9, 1991 **Federal Register** (56 FR 37871), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on September 9, 1991. The public hearing scheduled for September 3, 1991, was not held because no one requested an opportunity to testify.

By letter dated January 10, 1992 (Ohio Administrative Record No. OH–1627), OSM provided Ohio with its questions and comments about the July 22, 1991 amendment submissions. By letter dated April 27, 1992 (Ohio Administrative Record No. OH–1687), Ohio responded to OSM's questions and comments and provided Revised Program Amendment Number 51. This new amendment submission contains one revised rule, revised Administrative Record information, and a revised policy statement. All of the revisions concern the disposal of excess spoil on unpermitted areas adjacent to a coal mining permit.

Ohio is further revising OAC section 1501:13–9–07 paragraph (H) to delete reference to Ohio Revised Code section 1513.18 concerning reclamation of forfeitures by Ohio. The additional policy and clarifying information provided by Ohio cover the topics of State-funded vs. Federally funded AML projects, creation of fills in excess of approximate original contour, facilitation of mining, monitoring during and after construction, reclamation standards, contractor incentives, bond forfeiture, and environmental review of proposed excess spoil placement sites.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on June 8, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

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

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

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency determination on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1992.

Ronald C. Recker,

Acting Assistant Director Eastern Support Center.

[FR Doc. 92–12771 Filed 6–1–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 56 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns measurement of productivity on pasture or grazing land, areas for which the postmining land use is "undeveloped land" or recreation, and vegetative ground cover standards for previously disturbed areas.

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

DATES: Written comments must be received on or before 4 p.m. on July 2, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on June 29, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 17, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated May 1, 1992 (Administrative Record No. OH–1690), Ohio submitted proposed Program Amendment Number 56. The substantive changes proposed by Ohio in this amendment are discussed briefly below:

1. Measurement of Productivity on Pasture or Grazing Land

OAC 1501:13–9–15 paragraph (J)(3)(c)(i): Ohio is revising this paragraph to provide that, for areas to be planted with a permanent cover of herbaceous species and for which the approved postmining land use is pasture or grazing land, the Chief shall determine that the revegetation is successful for Phase III bond release when the area meets ground-cover standards for the last year of the five-year period of extended responsibility and one additional year, except the first year.

OAC 1501:13–9–15 paragraph (J)(3)(c)(ii): Ohio is adding this new paragraph to establish the production standards that pasture and grazing land must meet for Phase III bond release. The operator may use a soil survey of the reclaimed area and an on-site analysis of vegetative growth on the reclaimed area to demonstrate that the land has been restored to a condition equivalent or better than nonmined pasture or grazing land of the same soil type in the surrounding area. Alternatively, the operator may use vegetative yield measurements to demonstrate that the reclaimed area equals or exceeds an average county yield for pasture published by the Ohio Agricultural Statistics Service. The bond release area must meet one of these two production standards for any two years of the five-year period of extended responsibility, except the first year. As part of and in support of Program Amendment Number 56, Ohio has also submitted a draft policy statement entitled "Measurement of productivity on pasture and grazing land." This proposed policy statement elaborates on the soil restoration and yield data requirements proposed in OAC 1501:13–9–15 paragraph (J)(3)(c)(ii).

2. Areas for Which the Postmining Land Use Is Undeveloped Land

OAC 1501:13–9–15 paragraphs (I) and (J)(9): Ohio is adding these new paragraphs to create an "undeveloped land" postmining land use which incorporates tree and shrub planting for wildlife enhancement. The Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) shall, after consultation with the Division of Wildlife, determine the appropriate stocking levels, mixtures of species, and planting arrangements for value as wildlife habitat in such areas. The Chief shall determine the success of revegetation for these areas based on sufficient herbaceous ground cover to control erosion, the absence of barren areas, and the proper planting of appropriate tree and shrub species in compliance with the approved planting plan. Planting plans will require six hundred trees per acre for designated planting acres, with those designated acres covering ten to fifty percent of the revegetated area.

OAC 1501:13–9–15 paragraph (J)(8)(d): Ohio is deleting this paragraph which currently provides that the five-year period of extended responsibility for areas revegetated primarily with woody plant species shall begin on the date of the planting of the approved woody plant species or the last augmented seeding of the herbaceous species, whichever occurs later.

OAC 1501:13–9–15 paragraphs (J)(8)(d)(i) and (e)(1): Ohio is revising these paragraphs to provide that tree and shrub counts for Phase II and III bond releases shall be made on each acre on which trees and shrubs are to be planted.

OAC 1501:13–9–17: paragraph (B)(2): Ohio is deleting this paragraph which currently requires that postmining land use of undeveloped land shall be judged based on the surrounding lands which have received proper management.

As part of and in support of Program Amendment Number 56, Ohio has also submitted a draft policy statement entitled "Identification of areas for which the premining land use is undeveloped land." This proposed policy statement establishes criteria for determining that the premining land use

is "undeveloped land." The proposed criteria cover existing vegetation, field indicators of managed land use, and historical records of managed land use. The draft policy statement also proposes guidelines for permit revisions to reclassify premining land use as "undeveloped land" and to change postmining land use designations to the "undeveloped" land use category.

Ohio has also submitted a draft policy statement entitled "Planting plans for areas for which the approved postmining land use is undeveloped land." This proposed policy statement provides standard criteria for selection of herbaceous, tree, and shrub species; stocking levels; plant spacing; planting configurations; block plantings; travel lanes; and edge improvements.

Ohio has also submitted a draft policy statement entitled "Verification of proper planting of tree seedlings." This proposed policy statement elaborates on the procedures for inspecting tree plantings on areas for which the postmining land use is "undeveloped land" to ensure proper planting according to the approved planting plan.

3. Areas for Which the Postmining Land Use Is Recreation

Ohio Administrative Code (OAC) 1501:13–9–15 paragraph (F): Ohio is revising this paragraph to add a reference to renumbered paragraph (J)(3) of this rule. The reference would allow that, if appropriate, areas for which the approved postmining land use is recreation may, in accordance with the requirements of paragraph (J)(3), have a permanent vegetative cover of herbaceous species rather than trees.

4. Vegetative Ground Cover Standards for Previously Disturbed Areas

OAC 1501:13–9–15 paragraph (K): Ohio is adding this new paragraph to provide that, for inadequately reclaimed areas that are remined or redisturbed, the final vegetative ground cover shall be adequate to control erosion and shall not be less than the ground cover which existed prior to the redisturbance of the area.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on June 17, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

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

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

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 [56 FR 55195, October 25, 1991] on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency determination on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1992.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–12770 Filed 6–1–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 53 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has proposed further revisions to one rule in the Ohio Administrative Code concerning the characteristics of highwalls which are not entirely eliminated in areas to be covered by impoundments. The revisions concern the final slope of the reduced portion of the highwall.

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

DATES: Written comments must be received on or before 4 p.m. on June 17, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on June 12, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 8, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written

comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement

Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated September 10, 1991 (Administrative Record No. OH–1581), Ohio submitted proposed Program Amendment Number 53. The amendment proposed to delete Ohio Administrative Code (OAC) section 1501:13–9–04 paragraph (H)(2)(e). This paragraph currently requires operators to eliminate highwalls in areas which are to be covered by permanent impoundments. In place of this existing provision, Program Amendment Number 53 proposed a new paragraph (H)(1)(i) to OAC section 1501:13–9–04. This new paragraph would require that the vertical portion of any remaining highwall beneath the surface of impoundments shall be located far enough below the low-water line of the impoundment to provide adequate safety and access for future users of the impoundment.

OSM announced receipt of proposed Program Amendment Number 53 in the October 2, 1991 **Federal Register** (56 FR 49856), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the pr posed amendment. The public comment period ended on November 1, 1991. The public hearing scheduled for November 28, 1991, was not held because no one requested an opportunity to testify.

By letter dated December 17, 1991 (Ohio Administrative Record No. OH–1617), Ohio submitted Revised Program Amendment Number 53 containing four additional proposed revisions to OAC section 1501:13–9–04. The four new revisions proposed in the December 17, 1991, submission concerned the remaining vertical portion of the highwall below the water line, the final slope of the reduced portion of the highwall, and the vegetative cover of the reduced portion of the highwall.

OSM announced receipt of proposed Revised Program Amendment Number 53 in the January 17, 1992 **Federal Register** (57 FR 2066), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on February 18, 1992. The public hearing scheduled for February 1, 1992, was not held because no one requested an opportunity to testify.

By letter dated March 25, 1992 (Ohio Administrative Record No. OH–1670), OSM provided Ohio with its questions and comments about the September 10 and December 17, 1991 amendment submissions. By letter dated April 27, 1992 (Ohio Administrative Record No. OH–1688), Ohio responded with two further revisions to OAC section 1501:13–9–04. In this newest version of Revised Program Amendment Number 53, Ohio is deleting reference to the "remaining" portion of the highwall and is deleting proposed language which would have established the maximum allowable final slope of the reduced portion of the highwall. Ohio is now proposing that OAC section 1501:13–9–04 paragraph (H)(2)(g) read:

"The reduced portion of any highwall shall have a final slope appropriate for the postmining land use and shall have a minimum static safety factor of 1.3;"

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on June 8, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

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

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

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15

and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 6, 1992.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-12769 Filed 6-1-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 944

Utah Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM Is announcing the receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Utah rules pertaining to the definition for "highwall," backfilling and grading, spoil and waste, refuse piles, previously mined areas, and approximate original contour. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

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

DATES: Written comments must be received by 4 p.m., m.d.t. July 2, 1992. If requested, a public hearing on the proposed amendment will be held on June 29, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on June 17, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, STe. 350, Salt Lake City, UT 84180-1203, Telephone: (801) 538-5340

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program.

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** 46 FR 5899. Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment.

By letter dated April 30, 1992, Utah submitted a proposed amendment to its program pursuant to SMCRA (Administrative record No. UT-758). Utah submitted the proposed amendment in response to a May 12, 1986, letter that OSM sent to Utah in accordance with 30 CFR 732.17(c) (Administrative Record No. UT-429). The provisions of the Utah Coal Mining Rules that Utah proposes to amend are: R645-100-200, definition for "highwall;" R645-301-553.100 and 130, backfilling and grading; R645-301-553.210 and 220, spoil and waste; R645-301-553.260, refuse piles; R645-301-553.510, 520, and 521, previously mined areas; and R645-301-553.620 through 655, approximate original contour.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written Comments

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

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m., m.d.t. on June 17, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

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

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

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the administrative record.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of

sections 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92-12772 Filed 6-1-92; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50582F; FRL-4063-2]

1,3-Benzenediol, Bis[[2[(dimethylamino ethoxy)carbonyl] phenyl]azo]-, Dihydrochloride; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new toxicity test data and on a reevaluation by EPA of expected water releases. The data and revised water release estimates indicate that the substance will not present an unreasonable risk of injury to the environment and further regulation under section 5 of TSCA is not warranted at this time.

DATES: Written comments must be submitted to EPA by July 2, 1992.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, room E-105, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the new chemical substance covered in this SNUR is OPPTS-50582F. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, TSCA Assistance Office (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 15, 1990 (55 FR 33307), EPA issued a SNUR establishing significant new uses for bis(substituted) carbomonocyclicazocarbomonocylicol, the generic name of the PMN substance, reflecting the claim of confidentiality for the specific chemical identity of the substance in the PMN submission. Subsequent to the issuance of that SNUR, the original PMN submitter waived its claim of confidentiality for the specific chemical identity at the time of submitting a Notice of Commencement. The specific chemical identity of the substance is 1,3-benzenediol, bis[[2[(dimethyl aminoethoxy)carbonyl]phenyl]azo]-, dihydrochloride. Because of additional data EPA has received for this substance and a reevaluation by EPA of expected water releases, EPA is proposing to revoke this SNUR.

I. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS-50582. This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name, CAS number, basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation deleted in the regulatory text section of this rule.

PMN Number P-88-1753

Chemical name: (generic) Bis(substituted) carbomonocyclic azocarbomonocylicol; 1,3-benzenediol, bis[[2[(dimethylaminoethoxy) carbonyl]phenyl]azo]-, dihydrochloride.

CAS Number: Not available.

Effective date of revocation of section 5(e) consent order: February 27, 1992.

Basis for revocation of section 5(e) consent order: The order was revoked based on submitted toxicity test data and on EPA's reevaluation of release information for this type of use. The results of the toxicity testing were as follows:

Fish humic acid (Rainbow trout)	96-h LC50 = 62.0 mg/L Chronic value = 6.0 mg/L
Daphnid	48-h LC50 = 41.0 mg/L Chronic value = 2.7 mg/L
Green algae	96-h EC50 = 6.3 mg/L Chronic value = 0.920 mg/L

Based on these test data and a reevaluation of expected releases to surface waters, EPA found for purposes of TSCA section 5 that this substance will not present an unreasonable risk of injury to the environment and concludes that further regulation under section 5 is not warranted at this time.

CFR Citation: 40 CFR 721.766.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this

revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 26, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is proposed to be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.766 [Removed]

2. By removing § 721.766.

[FR Doc. 92-12825 Filed 6-1-92; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 763

[OPTS-62105; FRL-3892-5]

Asbestos; Proposed Exemption from Asbestos Ban on Manufacture, Processing and Distribution in Commerce

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant an exemption from the prohibitions against processing asbestos for a "new use" under the Asbestos Ban and Phaseout Rule (ABPO) (40 CFR 763.167(a)), to Omega Phase Transformations, Inc. (Omega) for its vitrification process that converts asbestos-containing waste material into glass. EPA has determined that processing asbestos for this "new use" will not present an unreasonable risk of injury to human health or the environment, provided Omega complies with the requirements specified in the proposed exemption.

DATES: Written comments must be received by the Agency no later than August 3, 1992.

ADDRESSES: Comments should be submitted in triplicate to: TSCA Docket Office (TS-793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460, Attention: OPTS-62105.

Comments containing confidential business information (CBI) should be submitted in triplicate to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-105, 401 M St., SW., Washington, DC 20460, Attention: OPTS-62105. A sanitized copy of confidential comments must be provided in triplicate to the TSCA Public Docket Office.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-3949, TDD: 202-554-0551.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 6(a) of TSCA authorizes EPA to impose regulatory controls if there is a reasonable basis to conclude that the manufacture, importation, processing, distribution in commerce, use, or disposal of a substance or mixture, or any combination of these activities presents, or will present, an unreasonable risk of injury to health or to the environment. To determine whether a risk is unreasonable, EPA balances the probability that harm will occur from the chemical substance under consideration against social and economic costs to society of placing restrictions on the substance. If EPA determines that an unreasonable risk exists, the least burdensome of one or more of several specified regulatory measures may be applied to the extent necessary to protect adequately against the risk.

EPA also has authority under section 6(a) to require reporting and recordkeeping related to the regulatory requirements imposed by EPA. TSCA section 6 authorizes EPA to require persons who process chemical substances to retain records relating to such activities. This is particularly important where, as here, such records and reports are necessary for effective enforcement of the section 6 rule. EPA has used this recordkeeping and reporting authority previously in other TSCA section 6 rules.

II. Background

A. Summary of the Asbestos Ban and Phaseout Rule (ABPO)

In the Federal Register of July 12, 1989, EPA issued the Asbestos Ban and Phaseout Rule (ABPO) under section 6 of TSCA to prohibit, at staged intervals, the manufacture, importation, processing and distribution in commerce of asbestos in categories of products identified in the rule. In addition, the rule prohibits the manufacture, importation, processing, or distribution in commerce, of any "new asbestos product" or "new uses of asbestos." "New Uses," under ABPO, are any commercial uses of asbestos not identified in the rule for which manufacture, importation, or processing was initiated for the first time after August 25, 1989.

Subsequently, in *Corrosion Proof Fittings* v. *EPA* No. 89-4596, slip op. at 558-592 (October 18, 1991), the United States Court of Appeals for the Fifth Circuit vacated and remanded much of the ABPO, but left intact the Agency's decision to ban "products that were not being manufactured, imported, or processed on July 12, 1989." *Corrosion Proof Fittings*, slip op. at 1007 (November 15, 1991). By definition, any "new use" of asbestos could not have been initially manufactured, imported or processed on that date, and therefore such a use continues to be regulated by the ABPO rule.

New uses of asbestos are banned effective after August 27, 1990, unless EPA grants an exemption for the otherwise banned activity. The rule specifies that applications for new asbestos products, or new uses of asbestos, will be treated as petitions to amend ABPO pursuant to section 21 of TSCA. The rule also established general exemption requirements for submission of data that are needed for Agency decisions on all exemption applications, including those submitted as section 21 petitions (40 CFR 763.173). Petitioners must submit evidence which demonstrates, among other requirements, that the proposed manufacture, importation, processing, distribution in commerce, and use, as proposed, will not present an unreasonable risk of injury to human health (40 CFR 763.173(d)(1)(ix)).

B. Interpretation of ABPO Applicability to the "New Use" of Asbestos to Produce Non-asbestos Glass

EPA concluded, in response to two requests for clarification of ABPO applicability (from the State of California and from Omega), that using asbestos or asbestos-containing material (ACM) to produce glass (a process known as "vitrification") for commercial purposes constitutes a "new use" of asbestos within the meaning of the rule, because such use was not a use identified in the rule and was not initiated for the first time on or before August 25, 1989. (See 40 CFR 763.163 - "New Uses of Asbestos").

In addition, because asbestos is the feedstock from which Omega proposes to produce its glass product, unless the conditions proposed in this exemption are met and all of the asbestos is transformed into glass, Omega's glass product will contain asbestos, which would then be carried into commerce with the glass. The conditions proposed in this exemption are necessary to ensure, for purposes of enforcement and compliance, that this does not happen, or that EPA knows about it if it does. Only in this way can EPA conclude that Omega's process does not pose an unreasonable risk.

C. Petitioner's Request for an Exemption under ABPO

On October 9, 1990, Omega submitted a TSCA section 21 petition requesting an exemption from the rule's prohibitions for the Omega vitrification process that converts ACM (e.g., demolition debris from asbestos abatement projects) into glass, which Omega proposes to sell as aggregate for paving material, among other uses. In addition, the metal ingots produced from the molten metal waste by-product would be sold as scrap metal. Generally, the vitrification process is a modification of glassmaking technology which utilizes high temperatures to melt the asbestos fibers. When asbestos is exposed to temperatures over 2000 °F, the needle-like structure of asbestos fibers breaks down to form amorphous molten glass. The process has a provision for both glass aggregate production, and for drawing off and ingot casting of the metal contaminants commonly found in asbestos-containing demolition debris.

D. Action on Omega's TSCA Section 21 Petition

As stated above, the ABPO requires that requests for exemptions of new products or "new uses" be treated as petitions to amend the rule pursuant to section 21 of TSCA. Section 21 of TSCA provides, in part, that any person may petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8 (15 U.S.C. 2620(a)). The petition must set forth the facts which it is claimed establish the need for the action. EPA is required to grant or deny the petition within 90 days after filing. If EPA grants the petition, EPA must promptly commence an appropriate proceeding.

On January 7, 1991, EPA granted Omega's section 21 petition to initiate a proceeding under TSCA section 6 (15 U.S.C. 2605) to amend ABPO. This proposed rule implements EPA's petition response.

EPA is proposing to grant this exemption from ABPO, contingent on Omega's compliance with certain conditions. Omega would be required to comply with all the conditions, regulatory requirements, and other specific EPA requirements during the operation of the vitrification facility, as set forth in § 763.174(a), (b), (c), and (d) of this proposed rule.

E. Relationship of Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) Regulations to Omega's Vitrification Process

Processes that convert asbestos-containing waste material into nonasbestos material (vitrification operations) also fall within the jurisdiction of the revised asbestos NESHAP. The revised NESHAP established a new emission standard at 40 CFR 61.155, *Standard for Operations that Convert Asbestos-Containing Waste Material into Nonasbestos (asbestos-free) Material*, as an alternative to land disposal of asbestos waste (55 FR 48406, November 20, 1990). The new standard establishes permit and performance requirements, including a requirement to obtain EPA approval to construct such an asbestos conversion facility, as well as monitoring, recordkeeping, and reporting requirements. Any exemption from the "new use" prohibitions under ABPO would be contingent, in part, upon Omega obtaining permitting approval, as specified under the NESHAP.

III. Review and Analysis of the Petition

A. Data Submitted

The data submitted by Omega in support of its exemption petition from "new use" prohibitions under ABPO consists of data Omega previously submitted to State and local permitting authorities in the State of California, including the San Bernandino County Air Pollution Control District, for permits to construct and operate a vitrification facility in that county. The proposed location of Omega's vitrification facility is in the City of Adelanto, San Bernandino County, California. The City of Adelanto has submitted a letter to EPA supporting Omega's proposal to construct an asbestos vitrification facility in that city.

The information supporting Omega's petition contains details of Omega's asbestos vitrification process design, facility plans, standard operating procedures, and details of the proposed facility site location that have been claimed confidential. The data also detail proposed emergency plans for handling process variability or upset, and worker protection control measures.

If the conditions as represented by Omega in its petition are met, EPA has concluded that asbestos exposure potential would be limited primarily to malfunctions or accidents, or inadvertent releases such as could result from outdoor stockpiling during equipment shutdowns. In its submission, Omega describes its plan for addressing any such upsets. EPA concludes that Omega's contingency plan, as proposed in the exemption application, would provide adequate protection against asbestos exposure in the event of malfunctions or accidents, or as might occur from asbestos releases during equipment shutdown.

B. Agency Request for Public Comments and Additional Information

Since commercial operation of Omega's proposed asbestos vitrification process has not been initiated, there are no data to substantiate actual operational experience. EPA must therefore rely on data presented by Omega concerning projected operations. Although Omega addressed a number of hypothetical processing scenarios for different types of asbestos-containing materials, EPA requests submission by the public, or by persons who might be knowledgeable about the operation of thermal processors, of any additional information that may be available, including the following:

1. The potential impact on populations residing in areas surrounding the proposed vitrification site if the operations at the facility should malfunction and/or other accidental asbestos, or other toxic releases occur.

2. The potential for toxic pollutants to be emitted to the outside air as incomplete combustion or decomposition products in the event of process failure. Such pollutants might include halogenated phenols, such as dioxins, furans, chlorine, or halogenated

compounds, as well as particulate pollutants.

3. The projected impact of processing large batches of asbestos-containing waste, such as asphalt roofing materials, or other high British Thermal Unit (BTU) waste, on the efficiency of emissions control by the quench, High Efficiency Particulate Air (HEPA) filter, baghouse, and scrubber, and on the operation of the furnace.

4. The potential for operational malfunctions or process disruptions from insertion of asbestos-containing flammable or explosive waste into the thermal processor.

5. The effect of steam, created by introduction of wetted asbestos abatement waste, on the operation of the processor.

6. The potential for surface water asbestos contamination due to accidental water discharges from the facility in the event of a catastrophe (e.g., a natural disaster).

7. The destruction efficiency of high temperature thermal processors.

IV. Conclusions

Based on a demonstration test of a comparable process conducted for the Office of Air Quality Planning and Standards (OAQPS), EPA believes that it is possible to use asbestos, or ACM, to produce glass. This demonstration of a process that could convert ACM into non-asbestos material was a basis for establishment of a new standard for processes that convert asbestos waste into non-asbestos material as an alternative to land disposal under the revised asbestos NESHAP (55 FR 48406, November 20, 1990).

Approach to "Unreasonable Risk" Finding

As discussed in Unit I of this preamble, ABPO requires a petitioner to demonstrate that granting an exemption from the rule's prohibitions would not result in an unreasonable risk of injury to human health or the environment. To determine whether a risk is unreasonable, EPA balances the probability that harm will occur against the benefits and the ascertainable costs to society of granting or denying the petition. Specifically, EPA considered the following factors:

1. *Effects of asbestos on human health.* The effects of asbestos on human health are well documented and are described in various documents that supported ABPO and are part of the rulemaking record for ABPO (Docket control number OPTS–62036). These documents include reports evaluating the extensive data base on human health hazards posed by asbestos exposure, including *Airborne Asbestos Health Assessment Update, EPA, 1986, Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Asbestos, CPSC, 1983, and Asbestiform, Fibers: Non-occupational Health Risks, 1984.* Documents evaluating the magnitude of potential routes of human exposure to asbestos, and which analyze levels of ambient and consumer exposures, include *Asbestos Exposure Assessment, EPA, 1988, Asbestos Modeling Study, EPA 1988, and Non-Occupational Exposure Report, EPA, 1988.* Copies of these documents can be obtained from the Agency, or reviewed in the TSCA Public Docket Office located in Room NE–G004, 401 M St., SW., Washington, DC.

EPA concluded, in its regulatory assessment supporting the ABPO, that exposure to asbestos during the life cycles of many asbestos-containing products poses an unreasonable risk of injury to human health. Activities that might lead to the release of asbestos include mining, processing, transport, installation, use, maintenance, repair, removal, and disposal of asbestos-containing products.

Once released to the air, asbestos fibers pose an ongoing exposure risk. Asbestos fibers are extremely durable, can travel long distances because of aerodynamic characteristics, and can persist and accumulate in the environment for extended periods of time after their original release. Therefore, exposures can take place long after the release of asbestos during manufacture, processing and use, and at distant locations from the source of release. The ability of released asbestos fibers to persist and to spread in the environment may increase exposures to both members of the general population and to workers where asbestos is used or is present in occupational settings.

Because no separate environmental effects of asbestos have been identified, EPA has not evaluated environmental risks separate from health risks.

2. *Benefits and costs of granting or denying the exemption.* EPA has taken into consideration the relative risks and benefits of Omega's vitrification process and those of ongoing land disposal of asbestos waste, including the benefits and reasonably ascertainable costs of granting or denying this exemption. The major benefit to society of granting an exemption to Omega is that, by converting asbestos into glass, it provides an alternative to land disposal of asbestos waste and produces a commercially useful non-asbestos product. Granting the exemption would avoid costs of landfilling (an equivalent volume of asbestos waste as is transformed in the Omega vitrification process), and of any health costs associated with exposure to asbestos waste. These costs could include a substantial burden on the individual and society, including medical costs of treating asbestos-related diseases, resulting from exposure to asbestos throughout the life cycle of asbestos products, and disposal of asbestos waste. Omega's asbestos vitrification process, under the anticipated operating conditions specified in the proposed exemption, completely destroys asbestos and eliminates any risks from asbestos exposure which occur in the disposal and landfill stages of the fiber life cycle. Under these anticipated operating conditions, the probability of asbestos fiber release drops to zero when asbestos waste is destroyed by the vitrification process, whereas the potential for release is ongoing with current landfill disposal methods.

The costs of denying this exemption include the increasing costs to society for asbestos disposal as landfill capacity decreases and the need for asbestos disposal increases, if there are no alternatives to land disposal.

As building materials deteriorate, or as buildings are renovated or demolished, much of this asbestos waste will require disposal. In a national survey of asbestos-containing friable materials in buildings, conducted in 1984, EPA estimated that approximately 20 percent of all buildings have some asbestos-containing friable materials. EPA further estimated that buildings targeted in the survey contained approximately 1.2 billion square feet of sprayed or trowelled-on ACM (in an estimated range of 18,000 and 365,000 buildings), and that approximately 16 percent (or between 239,000 - 888,000 buildings) contain asbestos pipe and boiler insulation. The Agency also estimates that approximately 31,000 schools contain asbestos.

In addition to building materials, asbestos is a component of automotive brakes, clutches and transmission components, as well as other commercial and industrial friction materials which are eventually discarded for disposal after the components' useful life. The magnitude of asbestos waste that will require disposal will place an increasing economic burden on society as landfill capacity decreases.

3. *Unreasonable risk finding.* EPA finds that granting Omega's exemption request would not present an unreasonable risk of injury to human health or the environment if Omega complies with EPA and other regulatory

requirements specified under proposed § 763.174(a), (b), (c), and (d) for construction of, and during the operation of, the vitrification facility. EPA's unreasonable risk finding is based upon the following findings concerning Omega's operation of its vitrification process:

(1) Releases of asbestos at the Omega vitrification facility are expected to be significantly lower than those emitted by the types of facilities, such as primary and secondary manufacturing facilities for brake products, friction materials, gasket and coatings manufacturing facilities, among others, for which risks of concern were identified during ABPO rulemaking. Incoming ACM will be packaged in leak-tight containers in compliance with the asbestos NESHAP, and secured and stored in isolated areas equipped with a HEPA filter and under negative pressure to prevent asbestos emissions before the ACM is converted into non-asbestos products.

(2) Workers in the facility are expected to be minimally exposed because the ACM processing area is under negative pressure to prevent asbestos releases. In addition, the ACM will be introduced into (charged in) a three-stage hydraulic system which does not require shredding of the waste material, thus minimizing airborne asbestos and worker contact before the ACM is converted into non-asbestos glass.

(3) Omega will also comply with all the requirements under the Occupational Safety and Health Administration (OSHA) standard for occupational exposure to asbestos in the workplace (29 CFR parts 1910 and 1926).

(4) Under the anticipated operating conditions specified in the proposed exemption, there will be minimal releases of asbestos to the environment. The vitrification operation should result in asbestos destruction, and yield a non-asbestos product (glass), (which will be monitored by the Company), and metal by-product which will exit as ingots from the thermal processor. Emission controls for the vitrification operation will include a baghouse (fabric filter) and a HEPA filter through which the gases will be exhausted after an adiabatic quench. A countercurrent aqueous caustic scrubber with demister will be installed to neutralize acidic gases coming off the HEPA filter. This process design will minimize the release of asbestos fibers or other toxic substances to the atmosphere. Releases to land and water will also be controlled. All drains are equipped with a filtration system, and the process does not generate any net water waste. A closed loop process is achieved by returning all spent filters and other solid wastes to the thermal processor for disposal.

(5) Omega will obtain approval to construct its facility from federal and State permitting authorities. The facility must be constructed and operated in accordance with the asbestos NESHAP requirements specified in 40 CFR 61.155. These provisions require, among other things, that during normal operations, Omega demonstrate by laboratory analysis that ACM is completely destroyed. If laboratory testing reveals that the vitrification product contains asbestos, Omega must reprocess the ACM, or dispose of it as asbestos-containing waste material according to 40 CFR 61.150. In addition, continuous monitoring requirements are imposed under § 61.155 of the asbestos NESHAP.

(6) Asbestos waste transported into the facility will not be accepted unless it is packaged and labeled in accordance with NESHAP requirements for friable asbestos (§ 61.150), or with other State, or local government asbestos requirements, and complies with federal and State transport requirements.

(7) Omega will report all annual releases of asbestos, as well as any other applicable reporting, as required under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). EPCRA reporting requirements cover both routine releases associated with normal operations and with accidental releases, as well as for reporting of storage. For purposes of re-evaluation of exemption renewal applications, annual Toxics Release Inventory reporting requirements under EPCRA, section 313, will greatly assist evaluation of future asbestos releases and risks. In addition, Omega will report as required under the source reduction and recycling provisions in section 6607 of the Pollution Prevention Act.

(8) The major benefit to society of granting an exemption to Omega is that, by converting asbestos into a commercially useful glass product, it provides an alternative to land disposal of asbestos waste. Granting the exemption would avoid health costs associated with the disposal stage of the asbestos life cycle, and costs of landfilling an equivalent volume of asbestos waste as would be transformed in the Omega vitrification process.

EPA has concluded that granting a 4-year exemption for the Omega asbestos vitrification process will not present an unreasonable risk of injury to human health or the environment if: (1) The operation is conducted in accordance with Omega's representations in its exemption application, (2) under the conditions set forth, in part, above, and (3) Omega complies with regulatory requirements specified under proposed § 763.174(a), (b), (c), and (d).

V. Recordkeeping and Notification Requirements

To facilitate adequate enforcement of this exemption, proposed § 763.174(b) would establish recordkeeping requirements. The proposal incorporates the information which must be kept under the asbestos NESHAP, 40 CFR 61.155(f)(1) through (f)(5), and expands the required retention of disposition records for materials where no analysis was performed, to include retention of records for the disposition of all products of the vitrification facility, regardless of whether or not analyses were performed. EPA would be concerned if output materials were produced, but not distributed for purposes set forth in Omega's application. Thus, proposed § 763.174(c) would establish a requirement for notification any time output materials are not distributed for use in commerce. EPA will require notification of any change in commercial activity affecting output materials. When used in conjunction with the records of sale and disposal of output materials, this notification requirement will enable the Agency to monitor the vitrification facility operated by Omega and facilitate compliance inspections and other enforcement activities.

VI. Exemption Period

The Agency proposes to grant this exemption for a period of 4 years (as provided in § 763.173(d)(1)(iv)) and to renew Omega's exemption every 4 years unless EPA receives or obtains information indicating that Omega's vitrification process, operation or facility poses an unreasonable risk of injury to human health or the environment .

ABPO § 763.173, General Exemptions, provides for granting limited exemptions from the manufacturing, processing, distribution in commerce, and use bans for certain asbestos-containing products. The intent of the exemption provision under ABPO is to allow continued use of otherwise banned products or uses of asbestos under controlled conditions beyond the effective dates of the manufacturing, processing, and distribution in commerce bans pending development of satisfactory substitutes. Limiting exemption periods provides an impetus for substitutes development and minimizes ongoing addition to the stockpile of existing asbestos-containing

material over extended periods of time. However, this rationale for limiting the exemption period is not relevant for the process which is the subject of this proposed exemption because the asbestos vitrification process removes asbestos from the environment rather than contributing to the existing stockpile of asbestos-containing material. Granting an exemption for the Omega asbestos vitrification process would be a pollutant source reduction action and is consistent with the objective of ABPO to reduce levels of asbestos in the environment by eliminating most sources. The product of the Omega vitrification process would be asbestos-free.

Section 763.173(j) provides that an exemption may be extended and specifies the procedures for submission of exemption renewal applications. Because Omega's process destroys asbestos and EPA has concluded that Omega's process does not pose an unreasonable risk, EPA would not terminate Omega's operation by not renewing Omega's exemption unless the presumption in favor of continuing Omega's operation was overcome by a clear showing of unreasonable risk of injury to human health or the environment.

If EPA receives information affecting EPA's unreasonable risk finding from any source, EPA will ask Omega to justify the renewal of its exemption in light of the new information. If Omega files an application for a renewal, EPA will publish a notice inviting public comment. Until EPA grants or denies the renewed exemption, Omega could continue to operate its vitrification process in accordance with the conditions proposed under the initial exemption application.

VII. Administrative Record

EPA has established a record of those documents the Agency considered in granting Omega's petition. The record consists of documents located in the file designated by Docket Control Number, OPTS-62105 located at the TSCA Public Docket Office. A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office for reviewing and copying from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the following address: Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

VIII. Paperwork Reduction Act

Because the information and notification requirements under this proposed rule are obtained through the asbestos NESHAP reporting requirements (40 CFR 61.155(f)(1) through (f)(5)), Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., is not required.

List of Subjects in 40 CFR Part 763

Administrative practice and procedure, Asbestos, Confidential business information, Environmental protection, Hazardous substances, Imports, Intergovernmental relations, Labeling, Occupational safety and health, Reporting and recordkeeping requirements, Schools.

Dated: May 14, 1992.

William K. Reilly,

Administrator.

Therefore, it is proposed that 40 CFR part 763 be amended as follows:

PART 763—[AMENDED]

1. The authority citation for part 763 would continue to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. By adding § 763.174 to read as follows:

§ 763.174 Manufacturing, processing, and distribution in commerce exemptions.

(a) The Administrator grants an exemption to Omega Phase Transformations, Inc. (Omega), 110 North Essex Avenue, P. O. Box 960, Narberth, PA 19072, for the "new use" of asbestos, or asbestos-containing material (ACM), to produce glass, using an asbestos vitrification process. This exemption is granted, contingent upon compliance by Omega with the operation description, design and procedures specified in its asbestos "new use" exemption application dated October 9, 1990, and contingent upon compliance with the following regulatory requirements:

(1) Omega must comply with applicable requirements for General Exemptions stipulated in § 763.173, including § 763.173 (d)(l)(i), (d)(1)(iii), (d)(1)(ix), (e), (h), (i) and (j).

(2) Omega must obtain approval from EPA to construct an asbestos vitrification facility and comply with all the requirements specified in § 61.155 of this title for the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), for operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material. These requirements require, among other things, that during normal operations, Omega demonstrate by laboratory analysis that ACM is completely destroyed. If laboratory testing reveals that the vitrification product contains asbestos, Omega must reprocess the ACM, or dispose of it as asbestos-containing waste material according to § 61.150 of this title. In addition, Omega must comply with the continuous monitoring requirements imposed under § 61.155 of this title.

(3) Omega must obtain a permit to construct and operate an asbestos vitrification facility from the local permitting authority, and comply with State and local government regulations applicable to operation of an asbestos vitrification facility.

(4) Omega must accept incoming ACM only if it is packaged in leak-tight containers in compliance with the asbestos NESHAP requirements under § 61.150 of this title, or in compliance with other State or local government regulations, and has been transported to the vitrification facility in compliance with federal and State waste transport regulations.

(5) Omega must secure and store incoming ACM in isolated areas equipped with a High Efficiency Particulate Air (HEPA) filter and under negative pressure to prevent asbestos emissions before the ACM is converted into non-asbestos products.

(6) Omega must comply with all the applicable requirements of the OSHA standard for occupational exposure to asbestos (29 CFR parts 1910 and 1926) for protection of workers at the vitrification facility.

(7) Omega must comply with all applicable requirements of the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). Omega must report all annual releases of asbestos, as well as comply with any other applicable reporting, as required under section 313 of EPCRA and under section 6607 of PPA.

(b) *Recordkeeping and notification requirements.* (1) The following records shall be maintained for a period of 4 years from the date they are created:

(i) Records required to be kept under § 61.155(f)(1) through (f)(5) of this title.

(ii) For all output materials, the name and location of the purchaser or disposal site to which the materials were sold or deposited, the quantity of output materials sold or disposed of, and the date of sale or disposal.

(2) Omega must notify EPA if any output materials are stored or distributed in commerce from the vitrification facility for purposes other than sale or use. A notification for the purposes of this paragraph shall:

(i) Be in writing.

(ii) Be submitted to the Agency prior to the cessation of distribution in

commerce of all output materials from the facility.

(iii) Include the effective date of the cessation of distribution in commerce of all output materials from the facility.

(3) Omega must notify EPA of the initiation or resumption of distribution in commerce of any output material from the vitrification facility. A notification for the purposes of this paragraph shall:

(i) Be in writing.

(ii) Be submitted to the Agency within 5 days after the initiation or resumption of such distribution in commerce.

(iii) Include the date of the initiation or resumption of commercial activity.

(c) *Asbestos-contaminated output material.* Output materials in which asbestos is detected, or output materials produced during a period when the operating parameters deviated from those established under § 61.155(b)(4) of this title, unless shown by transmission electron microscopy (TEM) analysis to be asbestos-free, shall be reprocessed while all of the established operating parameters are being met, or shall be disposed of as asbestos-containing waste material according to § 61.150 of this title.

(1) Cessation of processing ACM for commercial output products would result in requirements for compliance with any applicable federal waste disposal requirements under the Resource Conservation and Recovery Act (RCRA), or with State hazardous waste disposal requirements.

(2) [Reserved]

(d) *Exemption period.* (1) The exemption in paragraph (a) of this section is granted for a period of 4 years, as provided in § 763.173(d)(1)(iv).

(2) Notwithstanding § 763.173(j), Omega may, in accordance with the following procedures and conditions, obtain an extension of the exemption period specified above:

(i) Within the timeframes specified in § 763.173(j), Omega must submit an application for extension following the procedures specified in §§ 763.173(c) and 763.173(d). Omega need not resubmit data submitted to EPA by Omega in support of its initial exemption application, unless such data has changed. Applications received within the specified timeframes will be acted upon by the Agency as soon as possible.

(ii) Omega must certify that its asbestos vitrification process and facility continues to be operated in accordance with all the conditions set forth in paragraph (a) of this section, and that, to the best of its knowledge, no information on which EPA relied in granting the initial exemption has changed. If any such information has changed, Omega must submit the new information to EPA as part of Omega's renewal application.

(iii) EPA will publish a proposed exemption renewal in the **Federal Register** for public comment.

(iv) If EPA does not receive or obtain any information about the Omega process, operation, or facility that affects the unreasonable risk determination made by EPA for the initial exemption period, EPA will presume that the continued operation of Omega's vitrification facility does not present an unreasonable risk of injury to human health or the environment, and EPA will grant Omega's exemption renewal application for an additional 4-year period under conditions deemed appropriate by EPA.

(v) If EPA receives or obtains information from any source about Omega's process, operation, or facility that affects the unreasonable risk determination made by EPA for the initial exemption period, EPA will notify Omega by certified mail, return receipt requested, and allow Omega 2 weeks from the date of receipt to comment on the new information. At the end of 2 weeks, EPA may proceed with its review of the renewal application, notwithstanding any failure of Omega to comment. If EPA decides to grant the exemption renewal, a notice of this final decision will be published in the **Federal Register.**

(vi) If EPA decides to deny the request for an exemption renewal, Omega will be notified in writing of EPA's decision and the reasons for EPA's decision.

(vii) Until EPA acts on the exemption renewal application, Omega may continue the operations covered by Omega's initial exemption in accordance with the conditions of such exemption.

[FR Doc. 92-12824 Filed 6-1-92; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-120, RM-7968]

Radio Broadcasting Services; Hartford, VI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Family Broadcasting, Inc., seeking the substitution of Channel 282C3 for Channel 282A at Hartford, Vermont, and the modification of Station WGLV-FM's construction permit to specify operation on the higher powered channel. Channel 282C3 can be allotted to Hartford in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.2 kilometers (7.6 miles) north to accommodate Family's desired site. The coordinates for Channel 282C3 are 43-46-08 and 72-21-35. Since Hartford is located within 302 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been solicited. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 282C3 at Hartford or require Family Broadcasting, Inc., to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before July 20, 1992, and reply comments on or before August 4, 1992.

ADDRESSES: Federal Communications Commission, Washingotn, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph E. Dunne III, Esq., May & Dunne, 1000 Thomas Jefferson Street NW., Suite 520, Washington, DC 20007 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-120, adopted May 15, 1992, and released May 28, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-12855 Filed 6-1-92; 8:45 am]

BILLING CODE 6712-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 9903 and 9905

Cost Accounting Standards Board; Application of Cost Accounting Standards Board Regulations To Educational Institutions

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Cost Accounting Standards Board (CASB) invites public comments on proposed amendments to the regulatory provisions contained in chapter 99 of title 48. The proposed amendments would apply to educational institutions receiving a negotiated Federal contract or subcontract award, in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers which are already subject to CASB regulations), and require that such educational institutions comply with certain proposed CASB regulations and Cost Accounting Standards (CAS).

DATES: Comments should be received by August 3, 1992.

Requests for the proposed Disclosure Statement Form, CASB-DS-2, (see proposed amendment number 11) should be received by August 3, 1992.

ADDRESSES: Comments should be addressed to Mr. Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW. room 9001, Washington, DC 20503. Attn: CASB Docket No. 91-07.

The proposed Disclosure Statement Form, CASB DS-2 (see proposed amendment number 11) may be obtained by providing the requestor's name, organizational affiliation, if any, and mailing address to Barbara J. Diering, Special Assistant, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW. room 9001, Washington, DC 20503. Attn: CASB Docket No. 91-07.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone 202-395-3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules, regulations and Standards are codified at 48 CFR chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. The process generally consists of the following four steps:

(1) Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard (e.g., promulgation of a Staff Discussion Paper).

(2) Promulgate an Advance Notice of Proposed Rulemaking.

(3) Promulgate a Notice of Proposed Rulemaking.

(4) Promulgate a Final Rule.

This proposal is step two of the four step process.

B. Background and Report

Prior Promulgations

Based on recent information that some institutions of higher education were improperly allocating indirect costs to Federal programs, the Board initiated a case to consider issues related to the application of CAS to educational institutions. On October 8, 1991, the CASB published a notice in the **Federal Register**, 56 FR 50737, requesting public comments from interested parties concerning a Staff Discussion Paper on the topic of applying CAS to educational institutions. The purpose of the Staff Discussion Paper was to solicit public views concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts awarded to educational institutions as a result of the application of certain CASB regulations and Standards to educational institutions.

Public Comments

Ten sets of public comments were received in a timely manner from universities, accounting organizations, a professional association, a Federal agency, a public accounting firm, and other individuals. The majority of the comments were generally supportive of the proposed concepts included in the Staff Discusion Paper, e.g., to require the consistent application of cost accounting practices and the disclosure of an educational institution's cost accounting practices. The supportive comments, as well as the concerns expressed by university representatives, are discussed below in greater detail, under Section E, Public Comments. The Board and the CASB staff express their appreciation for the constructive suggestions and criticisms provided by the commenters, particularly those provided by the professional accounting associations and others with regard to the content of an appropriate Disclosure Statement for use by educational institutions. Many of the suggested Disclosure Statement revisions have been incorporated in the Disclosure Statement being proposed today.

Benefits

After consideration of all comments received, the Board believes that the application of selected CAS provisions, as set forth in this ANPRM, will improve the cost accounting practices followed by educational institutions when estimating, accumulating and reporting costs deemed allocable to Federal contracts, and that the costs of implementation will be minimal. Costs associated with the initial preparation of a Disclosure Statement and subsequent efforts to ensure compliance with CAS should be offset by significant reductions in the costs of institutional efforts presently devoted in response to recurring Federal and non-Federal auditors' inquiries concerning the institution's complex and often unique cost accounting practices being applied to Federal contracts. CAS compliance and disclosure should also tend to reduce the amount of testing considered necessary by auditors and reduce the potential for disagreements between the contracting parties regarding the institution's cost accounting practices. Thus, the Board believes the potential benefits to the audit, negotiation and general contract administration processes accruing from the increase in visibility and in uniformity of cost accounting treatment will be substantial and will greatly outweigh any added costs.

Proposed Amendments

A brief description of the proposed amendments follows:

Part 9903, Contract Coverage

In Subpart 9903.2, CAS Program Requirements, existing subparagraph 9903.201–1(b)(10), exempting educational institutions from CAS, is deleted. Subsection 9903.201–2 is amended to identify which Standards shall continue to be applied to contractors other than educational institutions, and a new paragraph (9903.201–2(c)) is added to establish the unique CAS applicability criteria, definitions and Standards to be applied to educational institutions. Subsection 9903.201–3 is amended to conform the prescribed solicitation notice for use by educational institutions. Subsection 9903.201–4 is amended to establish unique contract clause language for inclusion in contracts awarded to educational institutions. Section 9903.202 is amended to require the submission of a prescribed Disclosure Statement by educational institutions. In subpart 9903.3, section 9903.301 is amended to incorporate cross-references to definitions for certain new and existing terms. Section 9903.304 is amended to clarify applicability to educational institutions.

Part 9905, Cost Accounting Standards For Educational Institutions

A new part 9905 is added to incorporate four new Cost Accounting Standards to be applied to educational institutions, i.e., one requiring consistency in estimating, accumulating and reporting costs (section 9903.501), one requiring consistency in allocating costs (section 9903.502), one requiring contractor identification of specific unallowable costs (section 9903.505), and one requiring consistency in the selection and use of a cost accounting period (section 9903.506).

Summary Description of Proposed CAS Coverage

The proposed amendments require that a CAS contract clause be incorporated in any negotiated Federal contract or subcontract awarded, in excess of $500,000, to an educational institution. An institution receiving such CAS-covered awards will be contractually required to consistently follow its established cost accounting practices when estimating (proposed costs), accumulating, reporting and allocating costs under that and any subsequent CAS-covered award(s). An institution would additionally be required contractually to (1) formally disclose, in writing, and consistently follow its disclosed cost accounting practices, (2) identify costs that are not reimbursable as allowable costs, and (3) consistently use the same cost accounting period for purposes of estimating, accumulating and reporting costs, when the institution:

(a) Received more than $10 million of CAS-covered contracts and subcontracts in a prior fiscal year,

(b) Received CAS-covered contracts and subcontracts that comprise ten (10) or more percent of the institution's or segment's revenues in a prior fiscal year,

(c) Receives a CAS-covered contract or subcontract of $10 million, or more, during the current fiscal year, or,

(d) Receives a CAS-covered contract or subcontract of $500,000, or more, and is listed in Exhibit A of OMB Circular A–21.

The proposed contract clauses further provide for price adjustments in the event the institution changes its established or disclosed cost accounting practices, fails to consistently follow established or disclosed cost accounting practices, or fails to comply with applicable Standards. Part 9903 in its entirety, as amended, will apply to educational institutions.

C. Paperwork Reduction Act

The collection of information that would be imposed by this proposed rule is being submitted to the Office of Management and Budget for Review pursuant to the Paperwork Reduction Act, Public Law 96–511.

1. *Title of the Information Collection:*—"Paperwork Imposed by the Cost Accounting Standards Educational Institutions' Disclosure Statement."

2. *Need for the Information Collection:*—The paperwork imposed by this collection of information is for record keeping and reporting of cost information to allow the government to assure that proper costs are charged to Federal Contracts.

3. *Likely Respondents:*—Educational Institutions that are awarded negotiated Federal government contracts exceeding $500,000.

4. The reporting and record keeping burden that would be imposed by this rule is estimated as follows:

(Total respondents)—100
Times (Average burden per respondent)—1 response per respondent
Times 40 hours per response
Total estimated burden—4,000 burden hours (one time only)

The burden imposed by this rule on educational institutions is primarily expected to be a one-time reporting event. Completion of the CASB–DS–2 Disclosure Statement is required only once, absent subsequent changes to a contractor's disclosed cost accounting practices. Should a change to a previously disclosed cost accounting practice ensue, a contractor is required to update only that section of the Disclosure Statement that relates to the changed cost accounting practice. In addition, although from time-to-time there may be changes in the list of the top 100 institutions that receive Federal funding, these changes are expected to be relatively small, and should have minimal impact on the record keeping burden imposed by this rule.

Copies of the information collection request may be obtained from: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503, telephone: 202–395–3254.

Comments on the paperwork aspects of this rule should be directed to: Office of Information and Regulatory Affairs, Attention: Desk Officer for OMB, Office of Management and Budget, Washington, DC 20503.

D. Executive Order 12291 and the Regulatory Flexibility Act

This proposal affects educational Institutions receiving negotiated Federal contracts in excess of $500,000. The economic impact on educational institutions resulting from this proposal is expected to be minor. Therefore, the Chairman has determined that this is not a "major rule" under Executive Order 12291, and that a regulatory impact analysis is not required. Furthermore, this regulation will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This ANPRM is based upon concepts contained in the Staff Discussion Paper made available for public comment through a notice published in the **Federal Register** on October 8, 1991, 56 FR 50737, wherein public comments were invited. The comments received and the Board's actions taken in response thereto are summarized in the paragraphs that follow:

Comment: Several commenters were "* * * unclear how CASB standards will be integrated with [OMB Circular] A–21 * * *" Some felt the use of two sets of rules will confuse rather than simplify the procurement process. A few recommended that the proposed Standards be incorporated into OMB Circular A–21.

Response: The CASB has the exclusive statutory authority to establish CAS regulations and Standards governing negotiated Federal contracts. The proposed requirements are intended to be compatible with OMB Circular A–21, Cost Principles for Educational Institutions. It is not the intent of the Board to establish CAS requirements that conflict with or supersede the requirements of OMB Circular A–21. However, the Board wishes to clarify that in the event a promulgated Standard conflicted with Circular A–21 requirements, the CAS coverage would take precedence. In that circumstance, educational institutions would, under the CASB's statutory authority, be legally required to comply with the Standards applicable under their CAS-covered contracts or subcontracts. To ensure compatibility, there is in place, an ongoing coordination effort between members of the CASB staff and members of the OMB Task Force reviewing Circular A–21 for possible revision.

Once CAS is formally established for educational institutions, it is expected that OMB will extend such CAS coverage to grants and other forms of financial assistance by formal revision to OMB Circular A–21. In so doing, OMB may, after determining appropriate thresholds for the application of selected CASB requirements to financial assistance awards, recommend that the CASB establish similar thresholds for contracts. Within the statutory limitations imposed by 41 U.S.C. 422(f), the CASB may then consider the establishment of contract thresholds that would permit the use of similar or joint criteria for purposes of applying CAS-coverage to both Federal contracts and financial assistance awards placed with educational institutions.

Comments Regarding Disclosure Statement

Different points of view regarding the merits, advantages and disadvantages of a Disclosure Statement (DS) were received. Some educational institutions and their association representatives advised that the DS is not a "good" approach, because it: (1) Imposes an administrative burden; (2) civilian agencies are not staffed to administer DS requirements; and, (3) the topics covered by the DS are already subject to audit review. On the other hand, one institution, two accounting organizations and a Federal agency generally supported the proposed DS approach.

Response: Under the proposed approach, educational institutions will be required to directly provide Federal representatives with a description of their cost accounting practices; whereas, under current procedures, contracting officials administering Federal contracts must, in an unstructured manner, ascertain what the institutions' cost accounting practices are. This is usually accomplished through the performance of costly audits, which also require the assistance and cooperation of an institution's otherwise busy accounting staff.

The Board is of the opinion that disclosure will benefit both the institutions' staff, and external audit staffs (independent auditors and cognizant Federal auditors). (See Benefits under B above.) The issue of the Government's ability to administer CAS should become a nullity as all negotiated contracts awarded by civilian agencies become CAS-covered.

Comment: Several commenters advocated that the Disclosure Statement illustrated in the Staff Discussion Paper be revised to make it more compatible with the requirements of OMB Circular A–21, e.g., removal of certain terminology associated with manufacturing processes, inclusion of certain methods and procedures specified in OMB Circular A–21.

Response: The terminology in question has been removed or otherwise modified. Numerous revisions were made in recognition of the educational institutions' organizational structures and unique financial accounting systems; as well as for purposes of achieving more compatibility with the requirements of the Circular. The more significant changes made are summarized below.

(1) Questions regarding the use of "Standard Cost Methods" were deleted from the Disclosure Statement.

(2) Personal Services Cost Distribution Methods permitted by Circular A–21 were addressed in Item 2.4.0. of the Disclosure Statement.

(3) Part IV of the Disclosure Statement, on Indirect Costs, was substantially revised for greater compatibility with the standard principles prescribed in Circular A–21.

(4) The defined terms "business unit" and "segment" were modified to facilitate the application of part 9903 provisions to Educational Institutions (See proposed 9903.201–2(c)).

Comment: One commenter suggested that the term "educational institution" be defined.

Response: The term has been defined (see proposed 9903.201–2(c)).

Comment: An individual commented that the Board should establish a Standard governing an institution's cost accounting period.

Response: The Board agrees. The ANPRM includes the proposed application of Cost Accounting Standard 506, Cost Accounting Period.

Comment: One commenter suggested that the effective date of any CAS should be ". . . no sooner than 2 years after issuance of Standards . . ." because ". . . many educational institutions do not have systems that would provide cost information required to comply with the Standards . . ."

Response: The Board believes that the CAS requirements being proposed today are consistent with fundamental financial management practices that are generally expected to be followed by any Federal contractor. Because most educational institutions are now aware of the Board's intent to apply CAS and in view of the lengthy regulatory promulgation process involved, the Board intends to require implementation, prospectively, for all new awards made on or after the date of publication of a final rule in the Federal Register. An institution's inability to presently comply with such basic CAS requirements, however, remains a matter of concern to the Board. The Board welcomes any additional comments that amplify the basis for such concerns.

F. Additional Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this ANPRM. All comments must be in writing and submitted to the address indicated in the "**ADDRESSES**" section of this ANPRM.

List of Subjects in 48 CFR Parts 9903, 9905

Government procurement, Cost accounting standards.

Allan V. Burman,

Administrator for Federal Procurement Policy, and Chairman, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for part 9903 continues to read as follows:

Authority: Public Law 100–679, 102 Stat. 4056, 41 U.S.C. 422.

9903.201–1 [Amended]

2. Section 9903.201–1 is proposed to be amended by removing and reserving paragraph (b)(10).

3. Section 9903.201–2 is proposed to be amended by revising the first sentence of paragraph (a) to read as follows:

9903.201-2 Types of CAS coverage.

(a) Full Coverage. Full coverage requires that the business unit comply with all of the CAS in Parts 9904 that are in effect on the date of contract award and with any CAS that become applicable because of later award of a CAS-covered contract. * * *

* * * * *

9903.201-2 [Amended]

4. Section 9903.201-2 is proposed to be amended in paragraph (a)(3) by adding the words "or revenues" after the word "sales" at the end of the sentence.

5. Section 9903.201-2 is proposed to be amended in paragraph (b) by adding the words "or revenues" after the word "sales" in the three locations where the word "sales" appears, and, by inserting the words "or revenue of" between the words "sale by" and "the transferor" at the end of the last sentence.

6. Section 9903.201-2 is proposed to be amended by adding a new paragraph (c) to read as follows:

* * * * *

(c) Educational Institutions.

(1) CAS Applicability and Other Requirements. All part 9903 provisions apply to Educational Institutions except as otherwise provided below.

(2) Definitions.

(i) The following term is prominent in parts 9903 and 9905. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (c)(2)(ii) of this subsection requires otherwise.

Educational institution means a public or nonprofit institution of higher education, e.g., an accredited college or university, as defined in section 1201(a) of Public Law 89-329, November 8, 1965, Higher Education Act of 1965; (20 U.S.C. 1141(a)).

(ii) The following modifications of terms defined elsewhere in this chapter 99 are applicable to educational institutions:

Business unit means any segment of an educational institution, or an entire educational institution which is not divided into segments.

Segment means one of two or more divisions, campus locations, or other subdivisions of an educational institution that operate as independent organizational entities under the auspices of the parent educational institution and report directly to an intermediary group office or the governing central system office of the parent educational institution. The term includes Government-owned contractor-operated (GOCO) facilities, Federally Funded Research and Development Centers (FFRDC's), and joint ventures and subsidiaries (domestic and foreign) in which the institution has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the institution has less than a majority of ownership, but over which it exercises control.

(3) Full CAS coverage shall be incorporated in contracts and subcontracts awarded to educational institutions meeting the criteria specified in paragraph (a) of this subsection or in negotiated contract or subcontract awards of $500,000, or more, if the institution is listed in Exhibit A of Office of Management and Budget Circular A-21, Cost Principles for Educational Institutions. Under such awards, full coverage requires that the institution comply with all of the CAS in part 9905 that are in effet on the date of contract award and with any CAS that become applicable because of later award of a CAS-covered contract.

(4) Modified CAS coverage shall be applied to contracts and subcontracts awarded to educational institutions in accordance with the criteria specified in paragraph (b) of this subsection. Under modified coverage, the institution must comply with the requirements of CAS 9905.501, Consistency in Estimating, Accumulating, and Reporting Costs, and CAS 9905.502, Consistency in Allocating Costs Incurred for the Same Purpose.

(5) Federally Funded Research and Development Centers (FFRDC's). Contracts awarded to a FFRDC operated by an educational institution are subject to the full or modified CAS coverage prescribed in paragraphs (a) and (b) of this subsection. CAS-covered FFRDC contracts shall be excluded from the institution's universe of contracts when determining CAS applicability for contracts other than those to be performed by the FFRDC.

7. Section 9903.201-3 is proposed to be amended by revising the solicitation notice date, and paragraphs (a), (b) above the "caution" paragraph and (c)(1) in Part I of the basic clause, to read as follows:

9903.201-3 Solicitation provisions.

* * * * *

Cost Accounting Standards Notices and Certification (April 1992)

* * * * *

I. Disclosure Statement—Cost Accounting Practices and Certification

(a) Any contract in excess of $500,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, will be subject to the requirements of the Cost Accounting Standards Board (48 CFR chapter 99), except for those contracts which are exempt as specified in 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 9903.202.

* * * * *

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2. Forms may be obtained from the cognizant ACO.)

* * *

* * * * *

8. Section 9903.201-4 is proposed to be amended by adding a new subparagraph (a)(3), revising the contract clause date, revising the first sentence in paragraph (d) of the basic clause, and adding a new Alternate I at end of the basic clause to read as follows:

9903.201-4 Contract clauses.

(a) * * *

(3) For contracts with educational institutions other than those to be performed by Federally Funded Research and Development Centers (FFRDC's) operated by such institutions, the contracting officer shall use the basic clause with its Alternate I.

Cost Accounting Standards (April 1992)

* * * * *

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. * * *

* * * * *

(End of clause)

Alternate I (APRIL 1992) For contracts with educational institutions other than

those to be performed by FFRDC's operated by such institutions, substitute the following subparagraph (3) for subparagraph (a)(3) and substitute the following paragraph (b) for paragraph (b) of the basic clause:

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 9905 or a CAS rule or regulation in 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

9. Section 9903.201–4 is proposed to be amended by revising subparagraph (c)(2), by adding a new subparagraph (c)(3), revising the contract clause date, and adding a new Alternate I at end of the basic clause to read as follows:

(c) Disclosure and Consistency of Cost Accounting Practices.

* * * * *

(1) * * *

(2) The clause below requires the contractor to comply with CAS 9904.401 and 9901.402 (basic clause), or, if the contractor is an educational institution, CAS 9905.501 and 9905.502 (Alternate I), to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

(3) For contracts with educational institutions other than those to be performed by Federally Funded Research and Development Centers (FFRDC's) operated by such institutions, the contracting officer shall use the basic clause with its Alternate I.

Disclosure and Consistency of Cost Accounting Practices (April 1992)

* * * * *

(End of clause)

Alternate I (APRIL 1992) For contracts with educational institutions other than those to be performed by FFRDC's operated by such institutions, substitute the following subparagraph (1) for subparagraph (a)(1) and substitute the following paragraph (b) for paragraph (b) of the basic clause:

(1) Comply with the requirements of 9905.501, Consistency in Estimating, Accumulating, and Reporting Costs, and 9905.502, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract, as indicated in Part 9905.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in 9903 and 9905 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

10. Section 9903.202–5 is proposed to be amended by revising the first sentence of paragraph (a) to read as follows:

9903.202–5 Filing disclosure statements.

(a) Disclosure must be on Form Number CASB–DS–1 or CASB–DS–2, as applicable. * * *

* * * * *

11. Section 9903.202–10 is proposed to be added to read as follows:

9903.202–10 Illustration of Disclosure Statement Form, CASB–DS–2.

The data which are required to be disclosed by educational institutions are set forth in detail in the Disclosure Statement Form, CASB–DS–2, which is illustrated below:

Note: To facilitate review of the proposed Disclosure Statement Form, CASB–DS–2, to be illustrated under this Subsection, full page reproductions of the Form, as it would actually appear when promulgated for use as a final Form, have been printed and bound for dissemination to all interested parties. The proposed Disclosure Statement Form, CASB–DS–2, may be obtained as previously described under "**DATES**" and "**ADDRESSES**" at the beginning of this ANPRM.

12. Section 9903.301 is proposed to be amended by adding a new term to read as follows:

9903.301 Definitions.

* * * * *

Educational Institution. (See 9903.201–2(c)(2)(A).)

* * * * *

9903.30 [Amended]

13. Section 9903.301 is proposed to be amended by adding an additional reference reading for the terms "business unit" and "segment;" "but for educational institutions, see 9903.201–2(c)(2)(B)." after the reference "9904.414–30" for the term "business unit" and after the reference "9904.420–30" for the term "segment."

14. Section 9903.304 is proposed to be amended by revising the fourth sentence to read as follows:

9903.304 Concurrent full and modified coverage.

* * * * *

Any resulting differences in practices between contracts subject to full coverage and those subject to modified coverage shall not constitute a violation of 9904.401 and 9904.402 or 9905.501 and 9905.502. * * *

* * * * *

15. A new part 9905 is proposed to be added to read as follows:

PART 9905—COST ACCOUNTING STANDARDS FOR EDUCATIONAL INSTITUTIONS

9905.501 Cost accounting standard—consistency in estimating, accumulating and reporting costs by educational institutions.
9905.501–10 [Reserved]
9905.501–20 Purpose.
9905.501–30 Definitions.
9905.501–40 Fundamental requirement.
9905.501–50 Techniques for application.
9905.501–60 [Reserved]
9905.501–61 Exemptions.
9905.501–62 Effective date.
9905.502 Cost accounting standard—consistency in allocating costs incurred for the same purpose by educational institutions.
9905.502–10 [Reserved]
9905.502–20 Purpose.
9905.502–30 Definitions.
9905.502–40 Fundamental requirement.
9905.502–50 Techniques for application.
9905.502–60 Illustrations.
9905.502–61 Interpretation.
9905.502–62 Exemption.
9905.502–63 Effective date.
9905.505 Accounting for unallowable costs—Educational Institutions.
9905.505–10 [Reserved]
9905.505–20 Purpose.
9905.505–30 Definitions.
9905.505–40 Fundamental requirement.
9905.505–50 Techniques for application.
9905.505–60 Illustrations.
9905.505–61 Interpretation. [Reserved]
9905.505–62 Exemptions.
9905.505–63 Effective date.
9905.506 Cost accounting period—Educational Institutions.
9905.506–10 [Reserved]
9905.506–20 Purpose.
9905.506–30 Definitions.
9905.506–40 Fundamental requirement.
9905.506–50 Techniques for application.
9905.505–60 Illustrations.
9905.505–61 Interpretation. [Reserved]
9905.505–62 Exemption.
9905.506–63 Effective date.

Authority: Public Law 100–679, 102 Stat. 4056, 41 U.S.C. 422.

9905.501 Cost accounting standard—consistency in estimating, accumulating and reporting costs by educational institutions.

9905.501-10 Reserved.

9905.501-20 Purpose.

The purpose of this Cost Accounting Standard is to ensure that each educational institution's practices used in estimating costs for a proposal are consistent with cost accounting practices used by the institution in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual contracts, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance of the resulting contract. Such comparisons provide one important basis for financial control over costs during contract performance and aid in establishing accountability for costs in the manner agreed to by both parties at the time of contracting. The comparisons also provide an improved basis for evaluating estimating capabilities.

9905.501-30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b), of this subsection, requires otherwise.

(1) *Accumulating costs* means the collecting of cost data in an organized manner, such as through a system of accounts.

(2) *Actual cost* means an amount determined on the basis of cost incurred as distinguished from forecasted cost, including standard cost properly adjusted for applicable variance.

(3) *Estimating costs* means the process of forecasting a future result in terms of cost, based upon information available at the time.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

(5) *Pricing* means the process of establishing the amount or amounts to be paid in return for goods or services.

(6) *Proposal* means any offer or other submission used as a basis for pricing a contract, contract modification or termination settlement or for securing payments thereunder.

(7) *Reporting costs* means the providing of cost information to others.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9905.501-40 Fundamental requirement.

(a) An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the institution's cost accounting practices used in accumulating and reporting costs.

(b) An educational institution's cost accounting practices used in accumulating and reporting actual costs for a contract shall be consistent with the institution's practices used in estimating costs in pricing the related proposal.

(c) The grouping of homogeneous costs in estimates prepared for proposal purposes shall not per se be deemed an inconsistent application of cost accounting practices under paragraphs (a) and (b) of this section when such costs are accumulated and reported in greater detail on an actual cost basis during contract performance.

9905.501-50 Techniques for application.

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate contract costs by individual cost element or function. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event, the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to:

(1) The classification of elements or functions of cost as direct or indirect; (2) the indirect cost pools to which each element or function of cost is charged or proposed to be charged; and (3) the methods of allocating indirect costs to the contract.

(b) Adherence to the requirement of 9905.501-40(a) of this standard shall be determined as of the date of award of the contract, unless the contractor has submitted cost or pricing data pursuant to 10 U.S.C. 2306(a) or 41 U.S.C. 254(d) (Pub. L. 87-653), in which case adherence to the requirement of 9905.501-40(a) shall be determined as of the date of final agreement on price, as shown on the signed certificate of current cost or pricing data. Notwithstanding 9905.501-40(b), changes in established cost accounting practices during contract performance may be made in accodance with part 9903 (48 CFR 9903).

9905.501-60 Reserved.

9905.501-61 Exemptions.

None for this Standard.

9905.501-62 Effective date.

This Standard is effective as of date of publication in the **Federal Register** as a final rule.

9905.502 Cost accounting standard—consistency in allocating costs incurred for the same purpose by educational institutions.

9905.502-10 Reserved.

9905.502-20 Purpose.

The purpose of this Standard is to require that each type of cost is allocated only once and on only one basis to any contract or other cost objective. The criteria for determining the allocation of costs to a contract or other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

9905.502-30 Definitions.

(a) The following are definitions of terms which are prominent in this standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b), of this subsection, requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost to processes, products, jobs, capitalized projects, etc.

(3) *Direct Cost* means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final

cost objectives of the educational institution are direct costs of those cost objectives.

(4) *Final cost objective* means a cost objective which has allocated to it both direct and indirect costs, and in the educational institution's accumulation system, is one of the final accumulation points.

(5) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(6) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified with any final cost obective.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.502-40 Fundamental requirement.

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

9905.502-50 Techniques for application.

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in contract proposals.

(b) The Disclosure Statement to be submitted by the educational institution will require that the institution set forth its cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the educationl institution will set forth in its Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the educational institution, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement required to be submitted by educational institutions as a condition of contracting as set forth in Subpart 9903.2.

(c) In the event that an educational institution has not submitted a Disclosure Statement, the determination of whether specific costs are directly allocable to contracts shall be based upon the educational institution's cost accounting practices used at the time of contract proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the educational institution's disclosed accounting practices, the educational institution may either (1) use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or (2) directly assign all such costs to final cost objectives with which they are specifically identified. In the event the educational institution decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such cost had been treated as a direct cost.

9905.502-60 Illustrations.

(a) Illustrations of costs which are incurred for the same purpose:

(1) An educational institution normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, the educational institution intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the contract. Since travel costs of personnel whose time is accounted for as direct labor working on other contracts are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government contract. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) An educational institution normally allocates planning costs indirectly and allocates this cost to all contracts on the basis of direct labor. A proposal for a new contract requires a disproportionate amount of planning costs. The educational institution prefers to continue to allocate planning costs indirectly. In order to equitably allocate the total planning costs, the educational institution may use a method for allocating all such costs which would provide an equitable distribution to all final cost objectives. For example, the institution may use the number of planning documents processed rather than its former allocation base of direct labor. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) An educational institution normally allocates special test equipment costs directly to contracts. The costs of general purpose test equipment are normally included in the indirect cost pool which is allocated to contracts. Both of these accounting practices were previously disclosed to the Government. Since both types of costs involved were not incurred for the same purpose in accordance with the criteria set forth in the educational institution's Disclosure Statement, the allocation of general purpose test equipment costs from the indirect cost pool to the contract, in addition to the directly allocated special test equipment costs, is not considered a violation of the standard.

(2) An educational institution proposes to perform a contract which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the contract. The educational institution presently has a firefighting force of 10 employees for general protection of its facilities. The educational institution's costs for these latter firemen are treated as indirect costs and allocated to all contracts; however, it wants to allocate the three fixed-post firemen directly to the particular contract requiring them and also allocate a portion of the cost of the general firefighting force to the same contract. The institution may do so but only on condition that its disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is the institution's practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

9905.502-61 Interpretation.

(a) 9905.502, Cost Accounting Standard—Consistency in Allocating

Costs Incurred for the Same Purpose, provides, in 9905.502–40, that "* * * no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective."

(b) This interpretation deals with the way 9905.502 applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the Standard, all such costs are incurred for the same purpose, in like circumstances.

(c) Under 9905.502, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing contract are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing contract relate only to that contract while other proposal costs relate to all work of the educational institution.

(d) This interpretation does does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the educational institution, however, must be followed consistently and the method used to reallocate such costs, of course, must provide an equitable distribution to all final cost objectives.

9905.502–62 Exemption.

None for this Standard.

9905.502–63 Effective date.

This Standard is effective as of date of publication in the **Federal Register** as a final rule.

9905.505 Accounting for unallowable costs—Educational Institutions.

9905.505–10 Reserved.

9905.505–20 Purpose.

(a) The purpose of this Cost Accounting Standard is to facilitate the negotiation, audit, administration and settlement of contracts by establishing guidelines covering (1) identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable, and (2) the cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs. The Standard is predicated on the proposition that costs incurred in carrying on the activities of an educational institution—regardless of the allowability of such costs under Government contracts—are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This Standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

9905.505–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b), of this subsection, requires otherwise.

(1) *Directly associated cost* means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

(2) *Expressly unallowable cost* means a particular item or type of cost which, under the express provisions of an applicable law, reulgation, or contract, is specifically named and stated to be unallowable.

(3) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) *Unallowable cost* means any cost which, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost reimbursements, or settlements under a Government contract to which it is allocable.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.505–40 Fundamental requirement.

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a contracting officer pursuant to contract disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c) Costs which, in a contracting officer's written decision furnished pursuant to contract disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph (b) of this subsection.

(d) The costs of any work project not contractually authorized, whether or not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a contract, full direct and indirect cost allocation shall be made to the contract cost objective, in accordance with established cost acounting practices and Standards which regularly govern a given entity's allocations to Government contract cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

9905.505.50 Techniques for application.

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their acounting status in terms of their allocability to contract cost objectives, and the cost accounting treatment which has been accorded

such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of contract cost determination and verification. The Standard does not require such cost identification for purposes which are not relevant to the determination of Government contract cost. Thus, to provide visibility for incurred costs, acceptable alternative practices would include (1) the segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account, (2) the development and maintenance of separate accounting records or workpapers, or (3) the use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs. Educational institutions may satisfy the visibility requirements for estimated costs either (1) by designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates, or (2) by description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable costs is not required in circumstances where, based upon considerations of materiality, the Government and the educational institution reach agreement on an alternate method that satisfies the purpose of the Standard.

9905.505-60 Illustrations.

(a) An auditor recommends disallowance of certain direct labor and direct material costs, for which a billing has been submitted under a contract, on the basis that these particular costs were not required for performance and were not authorized by the contract. The contracting officer issues a written decision which supports the auditor's position that the questioned costs are unallowable. Following receipt of the contracting officer's decision, the educational institution must clearly identify the disallowed direct labor and direct material costs in the institution's accounting records and reports covering any subsequent submission which includes such costs. Also, if the educational institution's base for allocation of any indirect cost pool relevant to the subject contract consists of direct labor, direct material, total prime cost, total cost input, etc., the institution must include the disallowed direct labor and material costs in its allocation base for such pool. Had the contracting officer's decision been against the auditor, the educational institution would not, of course, have been required to account separately for the costs questioned by the auditor.

(b) An educational institution incurs, and separately identifies, as a part of an indirect cost pool, certain costs which are expressly unallowable under the existing and currently effective regulations. If the indirect cost pool is regularly a part of the educational institution's base for allocation of general administration and general expenses (GA&GE) or other indirect expenses, the educational institution must allocate the GA&GE or other indirect expenses to contracts and other final cost objectives by means of a base which includes the identified unallowable indirect costs.

(c) An auditor recommends disallowance of certain indirect costs. The educational institution claims that the costs in question are allowable under the provisions of Office of Management and Budget Circular A-21, Cost Principles For Educational Institutions; the auditor disagrees. The issue is referred to the contracting officer for resolution pursuant to the contract disputes clause. The contracting officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under the Circular. Following receipt of the contracting officer's decision, the educational institution must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government contracts, in which such costs are included. If the contracting officer's decision had supported the educational institution's contention, the costs questioned by the auditor would have been allowable and the educational institution would not have been required to provide special identification.

(d) An educational institution incurred certain unallowable costs that were charged indirectly as general administration and general expenses (GA&GE). In the educational institution's proposals for final indirect cost rates to be applied in determining allowable contract costs, the educational institution identified and excluded the expressly unallowable costs. In addition, during the course of negotiation of interim bidding and billing rates, the educational institution agreed to classify as unallowable cost, various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the educational institution and the contracting officer's authorized representatives, interim rates were established, based on the net balance of allowable GA&GE. Application of the rates negotiated to proposals, and on an interim basis to billings, for covered contracts constitutes compliance with the Standard.

(e) An employee, whose salary, travel, and subsistence expenses are charged regularly to the general administration and general expenses (GA&GE) pool, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense prohibited by OMB Circular A-21, and is separately identified by the educational institution. The educational institution does not regularly include its GA&GE in any indirect-expense allocation base. In these circumstances, the employee's travel and subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the employee's regular duties and responsibilities on which his salary was based, no part of the employee's salary would be required to be identified as a directly associated cost of the unallowable entertainment expense.

9905.505.61 Interpretation. [Reserved]

9905.505.62 Exemptions.

None for this Standard.

9905.505.63 Effective date.

This Standard is effective as of date of publication in the **Federal Register** as a final rule.

9905.506 Cost accounting period—Educational Institutions.

9905.506-10 Reserved.

9905.506-20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for contract cost estimating, accumulating, and reporting. This Standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in contract cost measurements.

9905.506-30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b), of this subsection, requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost Objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) *Fiscal year* means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9905.506-40 Fundamental requirement.

(a) Educational Institutions shall use their fiscal year as their cost accounting period, except that:

(1) Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period as provided in 9905.506-50(a).

(2) An annual period other than the fiscal year may, as provided in 9905.506-50(d), be used as the cost accounting period if its use is an established practice of the institution.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

(b) An institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

(c) The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a different period for establishing an allocation base as provided in 9905.506-50(e).

9905.506-50 Techniques for application.

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is (1) material in amount, (2) accumulated in a separate indirect cost pool, and (3) allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practice required by 9905.506-40(b) of this Standard shall include appropriate practices for deferrals, accruals, and other adjustments to be used in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as insurance or employee leave, is identified with a fixed, recurring, annual period which is different from the institution's cost accounting period, the Standard permits continued use of that different period. Such expenses shall be distributed to cost accouning periods in accordance with the institution's established practices for accruals, deferrals, and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of contracts which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) An institution may, upon mutual agreement with the Government, use as its cost accounting period a fixed annual period other than its fiscal year, if the use of such a period is an established practice of the institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments was made with respect to such annual periods.

(e) The contracting parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: Provided,

(1) The practice is necessary to obtain significant administrative convenience, (2) the practice is consistently followed by the institution, (3) the annual period used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and (4) the practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

(f) When a transitional cost accounting period is required under the provisions of 9905.506-40(a)(3), the institution may select any one of the following: (1) The period, less than a year in length, extending from the end of its previous cost accounting period to the beginning of its next regular cost accounting period, (2) a period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the previous cost accounting period, or (3) a period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the next regular cost accounting period. A change in the institution's cost accounting period is a change in accounting practices for which an adjustment in the contract price may be required in accordance with subdivision (a)(4) (ii) or (iii) of the contract clause set out at 9903.201-4(a).

9905.506-60 Illustrations.

(a) An institution allocates departmental administration expenses on the basis of a modified total cost base. In a proposal for a covered contract, it estimates the allocable expenses based solely on the estimated amount of the departmental administration expense pool and the amount of the modified total cost base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this Standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the contractor's cost accounting period.

(b) An institution whose cost accounting period is the calendar year, installs a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in a separate indirect cost pool, and will be allocated to the benefiting cost objectives on the basis of measured usage. The total operating expenses of the computer service center for the 8-month part of the cost accounting period may be allocated to the benefiting cost objectives of that same 8-month period.

(c) An institution changes its fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, it has a 5-month transitional "fiscal year." The same 5-month period must be used as the transitional cost accounting period; it may not be combined as provided in 9905.506–50(f), because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as its regular cost accounting period. The change in its cost accounting period is a change in accounting practices; adjustments of the contract prices may thereafter be required in accordance with subdivision (a)(4) (ii) or (iii) of the contract clause at 9903.301–4(a).

(d) Financial reports are prepared on a calendar year basis on a university-wide basis. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a twelve month period ended June 30. The contracting parties agree to use the period ended June 30 and they agree to overhead rates on the June 30 basis. They also agree on a technique for prorating fiscal year assignment of the university's central system office expenses between such June 30 periods. This practice is permitted by the Standard.

(e) Most financial accounts and contract cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a "vacation year" which ends September 30 each year. Vacation expenses are estimated uniformly during each "vacation year." Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted under 9905.506–50(b).

9905.506–61 Interpretation. [Reserved]

9905.506–62 Exemption.

None for this Standard.

9905.506–63 Effective date.

This Standard is effective as of date of publication in the **Federal Register** as a final rule. For institutions with no previous CAS-covered contracts, this Standard shall be applied as of the start of its next fiscal year beginning after receipt of a contract to which this Standard is applicable.

[FR Doc. 92–12494 Filed 6–1–92; 8:45 am]
BILLING CODE 3110–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

Red Drum Fishery of the Gulf of Mexico

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 3 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce (Secretary). Written comments on Amendment 3, which includes a regulatory impact review (RIR) and environmental assessment (EA), are requested from the public.

DATES: Written comments must be received on or before July 24, 1992.

ADDRESSES: Copies of Amendment 3 may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609. Comments should be sent to Robert A. Sadler, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comment in determining approvability of the document.

The FMP procedure for setting the red drum acceptable biological catch and total allowable catch currently specifies that it be undertaken "prior to October 1 each year." Amendment 3 proposes that it be undertaken "prior to October 1 every other year or at such time as agreed upon by the Council and Regional Director."

Proposed regulations to implement Amendment 3 are scheduled for publication within 15 days.

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

Dated: May 27, 1992.

David S. Crestin,

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

[FR Doc. 92–12788 Filed 5–28–92; 12:30 pm]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 106
Tuesday, June 2, 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

Forest Service

Timber Management and Road Construction in the Le Perron Compartment (Jake T.S.), Humboldt County

AGENCY: Department of Agriculture, Forest Service.

ACTION: Notice of revised availability dates for draft and final Environmental Impact Statements.

SUMMARY: The Six Rivers National Forest is revising the projected availability dates of the draft and final Environmental Impact Statement (EIS) for the Jake Timber Sale.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to John Larson, District Ranger, Orleans Ranger District, Six Rivers National Forest, Drawer B, Orleans, California, 95556, (916) 627–3291.

SUPPLEMENTARY INFORMATION: On December 14, 1990, a Notice of Intent (NOI) to prepare a draft and final EIS was published in the **Federal Register** 55 FR 51458. The NOI indicated the draft EIS was scheduled to be filed with the EPA and available for public review by May 31, 1991. Due to the need for additional time to complete the analysis, it is now expected to be available by June 15, 1992. The final EIS was scheduled to be completed by September 1991. It is now expected to be completed by August 17, 1992.

Dated: May 27, 1992.

Martha Ketelle,

Deputy Forest Supervisor.

[FR Doc. 92–12819 Filed 6–1–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Advanced Composites.

Form Number: Ref. #83; Section 705 of the Defense Production Act.

OMB Approval Number: N/A.

Type of Request: New Collection.

Burden: 5,250 hours.

Number of Respondents: 500.

Avg. Hours Per Response: Ranges between 6 to 15 hours.

Needs and Uses: Information will be collected from 500 companies (material suppliers, fabricators and prime contractors) of advanced composites. The purpose is to comply with section 825 of the FY 91 Defense Authorization Act, which calls for assessments of defense critical technologies.

Affected Public: Businesses or other for–profit institutions; small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 27, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–12840 Filed 6–1–92; 8:45 am]

BILLING CODE 3510–CW–F

Bureau of Export Administration

Acting Affecting Export Privileges; Nan-Wei Deng, Energy and Materials of America, Inc.; Renewal of Order Temporarily Denying Export Privileges

In the matter of: Nan-Wei Deng, also known as Charles Deng individually with addresses at 1465 67th Street Brooklyn, New York 11219 and 32 Alicewood Drive Markham, Ontario L3S 3C9 Canada and doing business as Energy and Materials of America, Inc. 54 Walker Street New York, New York 10013, Respondents.

On November 27, 1991, I issued an order which temporarily denied the export privileges of Nan-Wei Deng, also known as Charles Deng, individually and doing business as Energy and Materials of America, Inc (hereafter, Deng).[1] The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (the Department), has asked me to renew the order pursuant to the provisions of § 788.19 of the Export Administration Regulations (currently codified at 15 CFR parts 768–99 (1991)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–20 (1991)) (Act).[2]

The Department notified Deng of its desire to renew the order. Deng has not responded.

In its request, the Department states that, as a result of its investigation, the Department has reason believe that, during the period May 2, 1989 to February 1, 1991, Deng has engaged in a number of export transactions that violated the Act and the Regulations. The Department believes that Deng has obtained the license numbers of validated export licenses issued to other U.S. exporters. He then exported U.S.-origin commodities that required a validated export license, stating on the Shipper's Export Declarations

[1] 56 FR 63496 (December 4, 1991).

[2] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–06 (1991)).

accompanying the shipments that the exports were being made under authorization of an export license issued to another exporter when, in fact, no such authorization was provided either by the license or the license-holder. In addition, the Department believes that, on several occasions, Deng exported U.S.-origin commodities without the required validated export licenses. The Department also believes that Deng made false statements to the U.S Government of documents accompanying exports from the United States in order to conceal what commodities were actually being exported.

The Department also stated that the investigation has given the Department reason to believe that Deng continues to seek to obtain U.S-origin commodities both in the United States and Canada, and that, if he is successful, he may dispose of them unlawfully.

Accordingly, based on the showing made by the Department initially and in its request to renew the temporary denial order, I find that an order temporarily denying the export privileges of Nan-Wei Deng, also known as Charles Deng, individually and doing business as Energy and Materials of America, Inc., is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with them in goods and technical data subject to the Act and the Regulations, in order to reduce the substantial likelihood that they will continue to engage in activities that are in violation of the Act and the Regulations. This order is issued after notice to the parties named herein.

Accordingly, it is hereby ordered: I. All outstanding individual validated licenses in which Nan-Wei Deng, also known as Charles Deng, individually or doing business as Energy and Materials of America, Inc. (EMAI), appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Deng's or EMAI's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. For a period of 180 days starting on May 26, 1992, Nan-Wei Deng, also known as Charles Deng, individually with addresses at 1465 67th Street, Brooklyn, New York 11219, and 32 Alicewood Drive, Markham, Ontario L3S 3C9, Canada; and doing business as Energy and Materials of America, Inc., with an address at 54 Walker Street, New York, New York 10013, and all their successors, assignees, officers, partners, representatives, agents, and employees, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 788.3(c) of the Regulations, any person, firm, corporation, or business organization relates to Deng or EMAI by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this order.[3]

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. In accordance with the provisions of § 788.19(e) of the Regulations, any respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judge, U.S. Department of Commerce, room H–6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full, written statement in support of the appeal. That section also provides that a related person may appeal a finding that he is related to a respondent, but may not appeal the underlying temporary denial order.

VI. This order is effective on May 26, 1992 and shall remain in effect for 180 days from that date.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date.

A copy of this order shall be served on the respondents and this order shall be published in the **Federal Register**.

Dated: May 22, 1992.

Douglas E. Lavin,

Acting Assistant Secretary of Export Enforcement.

[FR Doc. 92–12801 Filed 6–1–92; 8:45 am]

BILLING CODE 3510–DT–M

[3] In the original order, Onyx Computers, 30 Mural Street, Richmond Hill, Ontario, Canada was named as a related person and, consequently, was subject to that order's provisions. On December 20, 1991, I issued an order which deleted Onyx Computers as a related person. 56 FR 67274 (December 30, 1991). Onyx is not named as a related person in this renewal of the order.

International Trade Administration

[A-412-602]

Certain Forged Steel Crankshafts From the United Kingdom; Final Results of Changed Circumstances Antidumping Duty Administrative Review, Determination Not to Revoke Antidumping Duty Order, and Continuation of Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of changed circumstances administrative review, determination not to revoke antidumping duty order, and continuation of administrative review.

SUMMARY: We determine that, because an interested party is interested in the antidumping duty order, there is not a reasonable basis to believe that changed circumstances sufficient to warrant revocation exist. Therefore, we determine not to revoke the order and to continue the section 751 administrative review.

EFFECTIVE DATE: June 2, 1992.

FOR FURTHER INFORMATION CONTACT: John R. Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3601.

SUPPLEMENTARY INFORMATION: .

Background

On October 26, 1990, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom (52 FR 35467, September 21, 1987).

The review covers one respondent, United Engineering & Forging (UEF), and the period September 1, 1989 through August 31, 1990. On October 1, 1991, the Wyman-Gordon Company, the petitioner, informed the Department that, because it has sold its domestic crankshaft manufacturing facilities to a German crankshaft producer, it is no longer a domestic manufacturer of crankshafts, and, therefore, it is no longer interested in the proceeding.

On October 18, 1991, UEF requested revocation of the order on crankshafts from the United Kingdom based on changed circumstances. UEF asserts the changed circumstances consist of the fact that Wyman-Gordon, the sole petitioner in this proceeding, is no longer an interested party.

On January 16, 1992, we published in the **Federal Register** (57 FR 1898) a notice of "Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, Consideration of Revocation, Intent to Revoke Antidumping Duty Order, and Preliminary Termination of Administrative Review", and offered interested parties the opportunity to comment.

We received comments from Louisville Forge and Gear Works Inc. (Louisville Forge), a domestic producer of a like product and thus an interested party, objecting to revocation of this order, and from an importer, Dresser-Rand Co. (Dresser-Rand), supporting revocation. Requests for a hearing were withdrawn, and we received rebuttal comments from Louisville Forge, UEF, and Dresser-Rand. We also received a statement from Krupp Gerlach Crankshaft Co. (KG), the German manufacturer which purchased Wyman-Gordon's crankshaft manufacturing plant.

Scope of the Review

Imports covered by this review are shipments of certain forged steel crankshafts. The term "crankshafts", as used in this review, includes forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined.

These products are currently classifiable under items 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule (HTS). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this review. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This "changed circumstances" administrative review covers all producers/exporters of the subject merchandise produced in the United Kingdom and all shipments of this merchandise to the United States entered, or withdrawn from warehouse, for consumption on or after September 1, 1989.

Comment: Louisville Forge, a domestic producer of a like product, and thus an interested party as defined in 19 CFR 353.2(k)(3), states that it is "keenly interested" in the order and objects to revocation. Louisville Forge cites numerous prior cases where the Department determined not to revoke orders based on objections from one or several interested parties. Louisville Forge also argues that the fact that the original petitioner, Wyman-Gordon Co., is no longer interested in the order is irrelevant because that firm is no longer part of the domestic industry, and thus no longer an interested party. Therefore, the predicate for the preliminary revocation, that no interest by an interested party constitutes sufficient changed circumstances to warrant revocation, does not exist.

UEF argues that, since Louisville Forge is only a niche producer of small crankshafts, the largest producer of crankshafts in the United States is KG, the successor in interest to the original petitioner, Wyman-Gordon. UEF claims that, since KG does not oppose revocation, the changed circumstance which prompted the Department's preliminary determination, lack of support by the domestic industry, supports a final revocation. UEF notes that, in *Oregon Steel Mills, Inc.* v. *United States*, 862 F.2d 1541, 1546 (Fed. Cir. 1988) (*Oregon Steel Mills*), the court stated that "lack of interest by the industry is an independent basis for revocation of an outstanding order."

UEF notes various revocations based on lack of domestic industry support; it also notes that, of the 22 determinations cited by Louisville Forge as examples of determinations not to revoke based on objections by one or several interested parties, 21 are inapposite since they are not based on supposed changed circumstances. UEF argues that the last such cited determination (Bicycle Speedometers from Japan; Determination Not to Revoke the Finding and Termination of Administrative Review (56 FR 64238, December 9, 1991) (Bicycle Speedometers)) which did involve the regulatory provision dealing with revocation based on changed circumstances (19 CFR 353.25(d)(1)(i)), sheds no light on the issue of industry support. UEF asserts that, "since the domestic producer which accounts for the overwhelming bulk of production in the United States", KG, is not interested in continuing the order, and to avoid the expense and burden of maintaining an order, the Department should exercise its discretion in favor of revocation.

Alternatively, UEF argues that the order should be revoked in part to the extent it covers crankshafts not produced by Louisville Forge; that is, the order should be limited to crankshafts weighing from 40 to 210 pounds.

Department's Position: We agree with Louisville Forge. First, as a domestic producer of a like product, Louisville Forge is an interested party as defined in 19 CFR 353.2(k)(3). Second, its objection to revocation of this order constitutes interest by an interested party; thus, the basis for the preliminary revocation, no interest by an interested party, does not exist. See Bicycle

Speedometers. Finally, we agree that Wyman-Gordon's lack of interest is irrelevant because that firm is no longer an interested party in this proceeding.

Pursuant to 19 CFR 353.25(d)(1)(i), the Department will not revoke an order if an interested party, as defined in paragraphs (k)(3), (k)(4), (k)(5), and (k)(6) of § 353.2, objects to revocation of the order. Therefore, whether Louisville Forge or KG is the dominant domestic producer is immaterial. Also, we note that, despite UEF's repeated assertions, there is no evidence in the record of this review that KG either supports or opposes revocation of this order. In fact, KG "decided not to express a position" on this matter. Therefore, KG neither supports nor opposes revocation of this order. Thus, the record indicates opposition to revocation from a member of the domestic industry, silence from the rest of the domestic industry, and support for revocation from a British manufacturer and an importer. Regarding UEF's assertion that Oregon Steel Mills supports revocation on the facts on the record, that case is distinguishable because in that instance there was clear support for revocation by a majority of the domestic industry. In a changed-circumstances review such as this, it suffices that an interested party expresses interest in the order, as Louisville Forge has done.

As for UEF's request that we exclude from the order crankshafts weighing over 210 pounds, the inclusion of specific items in, or their exclusion from, the scope of an order is not dependent on the presence or absence of manufacturing facilities in the United States for the production of specific types of merchandise. Moreover, UEF would have the Department substantially change the scope of its antidumping duty order. Though the Department is authorized to clarify the scope of an order, it is prohibited from changing or otherwise modifying the scope of an antidumping duty order. *See Royal Business Machines* v. *United States*, 507 F. Supp. 1007 (CIT 1980). Finally, UEF's request actually addresses the question of whether domestic producers of a like product are being materially injured. Accordingly, the International Trade Commission, not the Department, is the proper forum for addressing this issue. (See Comment 17, Roller Chain, Other than Bicycle, from Japan; Final Results of Administrative Review of Antidumping Finding, 46 FR 44488, September 4, 1981.)

Final Results of Changed Circumstances Review, Determination Not to Revoke Antidumping Duty Order, and Continuation of Administrative Review

Pursuant to sections 751 (b) and (c) of the Tariff Act of 1930 (the Tariff Act) and §§ 353.22(f) and 353.25(d) of the Department's regulations, the Department may revoke an antidumping duty order if it concludes that "changed circumstances" have arisen such that the order is no longer of interest to interested parties.

We determine that the affirmative statement of interest in this antidumping duty order by Louisville Forge, an interested party, provides the Department with a reasonable basis to believe that changed circumstances sufficient to warrant revocation of this order do not exist. Therefore, we will not revoke the order covering certain forged steel crankshafts from the United Kingdom. We also determine to recommence the section 751(b) administrative review covering UEF and the period September 1, 1989 through August 31, 1990, which was preliminarily terminated upon initiation of this changed circumstances review.

This review, determination not to revoke, continuation of administrative review, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 353.22(f) and 353.25(d) (1991).

Dated: May 22, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-12851 Filed 6-1-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-614-801]

Antidumping Duty Order: Fresh Kiwifruit From New Zealand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 2, 1992.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377-8922.

Order

Scope of Order

The product covered by this order is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit, are not covered under the scope of this investigation. The subject merchandise is currently classifiable under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). Although the HTS number is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended, (the Act), on April 10, 1992, the Department of Commerce (the Department) made its final determination that fresh kiwifruit from New Zealand is being sold at less than fair value (57 FR 13965, April 17, 1992). On May 26, 1992, in accordance with section 735(d) of the Act, the International Trade Commission notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market vlaue of the merchandise exceeds the United States price for all entries of fresh kiwifruit from New Zealand. These antidumping duties will be assessed on all entries of fresh kiwifruit from New Zealand entered, or withdrawn from warehouse, for consumption on or after November 27, 1991, the date of publication of our preliminary determination in the **Federal Register.** Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margins as follows:

Producer/manufacturer/exporter	Margin percentage
New Zealand Kiwifruit Marketing Board	98.60
All Others	98.60

This notice constitutes the antidumping duty order with respect to fresh kiwifruit from New Zealand, pursuant to section 736(a) of the Act. Interested parties may contact the Central Record Unit, room B-099 of the Main Commerce Building, for copies of an update list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: May 28, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-12850 Filed 6-1-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-032]

Large Power Transformers from Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on large power transformers from Japan. The review covers exports of one manufacturer of this merchandise to the United States for the period from June 1, 1990, through May 31, 1991. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 2, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Laurel LaCivita, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1991, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (56 FR 25663). The petitioner requested this administrative review on June 18, 1991. We initiated the review on July 19, 1991 (56 FR 33251), covering the period June 1, 1990, through May 31, 1991. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review in this case were published in the **Federal Register** on September 17, 1991 (56 FR 47066).

Scope of the Review

Imports covered by the review are shipments of large power transformers (LPTs); that is, all types of transformers rated 10,000 kVA (kilovolt/amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8054.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of transformers, Fuji Electric Co., Ltd. (Fuji), during the period June 1, 1990, through May 31, 1991.

United States Price

Because the sale of LPTs was made by Fuji to an unrelated party prior to importation, we based the United States price on purchase price in accordance with section 772(b) of the Tariff Act. We calculated purchase price based on the packed, F.O.B., Japan port prices. We based the gross unit price on the line-item contract price. Only if line-item contract prices do not exist, or if the Department has no confidence in those that do, does it accept alternative pricing methodologies. We made adjustments to U.S. price for foreign inland freight and foreign inland insurance.

Foreign Market Value

For the purposes of the preliminary review, we determined that, due to the highly customized nature of the products under review, none of the LPTs sold in the United States could reasonably be compared to an LPT sold in the home market. Therefore, in accordance with section 773(a)(2) of the Tariff Act, we calculated foreign market value based on constructed value of the model sold in the United States.

In accordance with section 773(e) of the Tariff Act, the constructed value of the models sold in the U.S. included materials, fabrication, general expenses, profit, and packing. Home market selling expenses were used pursuant to section 773(e)(1)(B) of the Tariff Act, which provides that constructed value provide an amount for general expenses equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the home market.

We made circumstance of sale adjustments for differences in credit terms and warranty expenses. The statutory eight percent profit was applied to the cost of production since the profit in the home market was less than the statutory minimum.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that a weighted-average margin of 6.10 percent exists for sales of LPTs made to the United States by Fuji during the period June 1, 1990 through May 31, 1991.

Parties to this proceeding may request disclosure within 5 days of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. Service of all briefs and written comments shall be in accordance with 19 CFR 353.38(e). The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearings.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Fuji will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed

above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-then-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm with shipments in this administrative review, other than a rate based entirely on the best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: May 26, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-12841 Filed 6-1-92; 8:45 am]

BILLING CODE 3510-DS-M

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on June 18, 1992. The meeting will be from 2 p.m. to 4 p.m. in the 15th Floor Conference Center at the office of KPMG Peat Marwick, 599 Lexington Avenue, New York, NY 10022.

The Committee advises Department of Commerce officials on textile and apparel export issues.

Agenda: Conditions in the export market, Office of Textiles and Apparel export expansion activities, North American Free Trade Agreement (NAFTA) negotiations and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377-5155).

Dated: May 27, 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-12849 Filed 6-1-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT), will hold a public meeting beginning at 1 p.m. on June 16, 1992, and ending at 4:30 p.m. on June 18, 1992. The meeting will be held at the National Marine Fisheries Service, Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, room 2079, Seattle, WA.

The GMT will review preliminary stock assessment reports for several important groundfish species. The review may result in significant changes to commercial fishing regulations in 1993. The GMT will also discuss potential regulations to limit by-catch of salmon in the groundfish fisheries, changes to the 1993 non-trawl sablefish regulations, the allocation of the Pacific whiting resource among shore-based and at-sea fish processors, and other issues of importance to the West Coast groundfish industry. The GMT will prepare its recommendations on these issues for presentation to the Council at its upcoming July 8-10 meeting in Portland, Oregon.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW., First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: May 27, 1992.

David S. Crestin,

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

[FR Doc. 92-12786 Filed 6-1-92; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0017]

OMB Clearance Request for Jewel Bearings and Related Items Certificate Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0017).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning OMB Control No. 9000-0017, Jewel Bearings and Related Items Certificate Requirements.

DATES: Comments may be submitted on or before July 2, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

This request covers recordkeeping and information collection requirements regarding the need for and use of jewel bearings and related items. The requirements are necessary to ensure contractor compliance with contract clauses regarding required usage of Government-owned sources of supplies for such items.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 13,500; *responses per respondent,* 20; *total annual responses,* 270,000; *preparation hours per response,* 1.125; and *total response burden hours,* 30,375.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202)

501–4755. Please cite OMB Control No. 9000–0017, Jewel Bearings and Related Items Certificate Requirements, in all correspondence.

Dated: May 19, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–12803 Filed 6–1–92; 8:45 am]

BILLING CODE 6820–JC–M

Office of the Secretary

National Communications System, Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held on Wednesday, June 17, 1992, from 9 a.m. to 3:30 p.m. The meeting will be held at the Mitre-Hayes Building, 7525 Colshire Dr., McLean VA 27006. The agenda is as follows:

A. Administrative Remarks/NSTAC XIV Update.

B. Plans Working Group.

C. Network Security Task Force.

D. Energy.

E. California Office of Emergency Services (OES)/Utility Policy Committee (UPC).

F. TSP Program Office.

G. Foreign Ownership of Telecommunications Networks.

H. Global Surveillance and Communications.

I. New Business.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (703) 692–9274 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22202–2199.

Dated: 28 May 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–12808 Filed 6–1–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research

[CFDA No.: 84.133A

ACTION: Correction notice.

On April 17, 1992 a notice inviting applications for new awards under certain programs for fiscal year 1992 was published at 56 FR 13718. This notice corrects the project period for one competition as published in that notice.

On page 13719, the project period for the awards for "Demonstration of Comprehensive Rehabilitation Service Programs for Individuals with Traumatic Brain Injury (TBI)" is corrected to read "60" months.

FOR FURTHER INFORMATION CONTACT: Yvonne Fleming, National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2572. Telephone: (202) 732–1141). Deaf or hearing-impaired individuals may call (202) 732–5079 for TDD services.

Program Authority: 29 U.S.C. 760–762.

Dated: May 27, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–12780 Filed 6–1–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.180]

ACTION: Correction notice.

On May 13, 1992 a notice inviting applications for new awards under the Technology, Educational Media, and Materials for Individuals with Disabilities Program for fiscal year 1992 was published at 57 FR 20623. This notice corrects the deadline of June 11, 1992 for transmittal of applications.

On page 20623, the deadline for transmittal of applications is corrected to read "June 26, 1992" (three places), and the deadline for intergovernmental review is also corrected to read "August 26, 1992" (three places).

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–20640. Telephone: (202) 732–1099). Deaf or hard of hearing individuals may call (202) 732–6153 for TDD services.

Program Authority: 20 U.S.C. 1461.

Dated: May 27, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–12779 Filed 6–1–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Coordinated National Research and Communication Program on Potential Health Effects of Exposure to Electric and Magnetic Fields (EMF); Meetings

AGENCY: U.S. Department of Energy.

ACTION: Announcement of two public meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of two public meetings on Federal EMF activitives, to be held in June and July in Denver, Colorado, and Philadelphia, Pennsylvania, respectively. The Department of Energy (DOE) has issued this notice pursuant to the Conference Committee Report (Rep. 102–177) of the 1992 Energy and Water Development Appropriations Act (Pub. L. 102–104), which stated the conferees' intent that DOE serve as the lead agency for coordination of research on the potential health effects of exposure to electric and magnetic fields. Comments on the *draft Strategic Overview for a National EMF Research and Communication Program*, and on public concerns about EMF-related issues are invited from interested persons, organizations, and agencies.

DATES: Public Meetings will be held at:

Denver Embassy Suites, Stapleton Airport, 4444 N. Havana Street, Denver, Colorado, on June 29, 1992, from 1 p.m. to 5 p.m. and 6 p.m. to 10 p.m.

Radison Hotel Philadelphia Airport, 500 Stevens Drive and Interstate 291, Philadelphia, Pennsylvania, on July 9, 1992, from 1 p.m. to 5 p.m. and 6 p.m. to 10 p.m.

Written comments should be postmarked no later than August 7, 1992, to ensure their consideration in preparing the draft plan for the National EMF Research and Communication Program. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Interested parties are invited to provide comments on the content of the *draft Strategic Overview* for a *National EMF Research and Communication Program* to Office of Epidemiology and Health Surveillance, Health Communication and Coordination Division, EH–422 GTN U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Marvin Gunn, Director, Advanced Industrial Concepts Division, CE–232, 5F–043, U.S. Department of Energy, 1000 Independence Avenue, SW.,

Washington, DC 20585, telephone (202) 586–5377.

SUPPLEMENTARY INFORMATION:

I. Background

At a workshop of key stakeholders held November 20–21, 1991, in Washington, DC, to develop a unified strategy for EMF research and communication among Federal, state, and private sector participants, it was recommended that DOE sponsor several public meetings. The purpose is to receive public input on EMF research and communication needs. This input will be used to help prepare a strategic implementation plan for a coordinated national program.

II. Comment Procedures

A. Public Meeting

1. Participation Procedures

The public is invited to provide comments in person at the scheduled public meetings on the content and format of the *National EMF Research Communication Program*, and on other public issues concerning EMF.

Advance registration for presentation of oral comments will be accepted by DOE until one week prior to the date of the meeting. To register in advance, please contact Marvin Gunn, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–5377. Advance registrants are to register only themselves, must check in at the registration desk on the day of the meeting, and must limit their oral comments to 10 minutes. Additional registrations for oral comments will be accepted on the day of the meeting, as time permits, but persons who have not registered in advance will be limited to 5 minutes. All registrants are requested to provide DOE with a written copy of their comments by August 7, 1992.

2. Conduct of Meeting

Procedures for the orderly conduct of the meeting will be announced by the presiding officer at the start of the meeting. Clarifying questions regarding statements made at the meeting may be asked only by DOE personnel conducting the meeting. There will be no cross-examination of persons presenting statements. A transcript of the meeting will be prepared, and the entire record of the meeting, including the transcript, will be retained for inspection at the DOE Freedom of Information Reading Room at the Forrestal Building, 1000 Independence Ave. SW, Washington, DC, hours 9 a.m.–4 p.m., Monday through Friday, except Federal holidays (202) 586–6020.

III. A copy of the Draft Overview for a National EMF Research and Communication Program is presented below

This document was developed by the U.S. Department of Energy for individuals, local citizen groups, and advocacy groups. No technical background is necessary, but some familiarity with the electric and magnetic field (EMF) issue is assumed.

The Purpose of This Strategic Overview

This document contains preliminary goals, objectives, and strategies for a coordinated National EMF Research and Communication Program. It is intended to serve as a starting point in a communication exchange among citizens, government, and business concerning development of this program. These preliminary goals are based substantially on the results of a November 20–21, 1991, Department of Energy (DOE) sponsored workshop, during which approximately 65 participants from the research community, Federal agencies, states, utilities, and trade and professional organizations shared information on the overall scope of a coordinated national EMP program. The Department of Energy intends to revise this document based on comments from concerned citizens and expert reviewers, and responses from future workshops and public meetings. This process will lead to a strategic implementation plan (see Figure 1) that will describe a course of action and time frames for coordinated national program activities.

Background and Introduction

The generation, distribution, and use of electrical power have made possible many of the 20th century's advancements in industrialization, productivity, and standard of living. As we move toward the 21st century, our Nation is expected to rely more heavily on electrical power, with electricity demand projected in double over the next 40 years.

In 1979, an epidemiologic study conducted by Nancy Wertheimer and Ed Leeper reported a potential increased risk of childhood cancer associated with children living in houses located close to specific electric distribution lines and equipment. Since that time, citizen groups, government, scientists, and businesses have wrestled with the question, "Are exposures to electric and magnetic fields (EMF) a risk to health?" The debate over the inconclusive scientific evidence has reached a point where a large, coordinated national research and communication effort is needed. Such a program must be managed in a credible and trustworthy manner and must address the concerns expressed by the public.

Epidemiologic studies and biological effects studies are complementary parts of a scientific process to determine causal relationships between exposures and health effects. Epidemiologic studies seek to identify and understand causes of a disease by observing its pattern of occurrence in populations that differ by their amount of exposure. Biological effects research, which is performed in laboratories, determines if various exposures result in changes in cells, tissues, or animals. Biological effects identified in laboratory research may or may not result in human health effects.

In August 1991, the Conference Committee Report (House Rep. 102–177, p.56) on the Energy and Water Development Appropriations Act, 1992 (Pub. L. 102–104) stated the conferees' intent that DOE serve as the lead agency for conducting and coordinating Federal EMF research. DOE has played a lead role in EMF research for the past 15 years.

To carry out this responsibility, DOE is assessing the status of EMF research and communication activities and, in a collaborative effort with other Federal agencies, various state governments, and business, is developing a National EMF Research and Communication Program.

The purpose of this national program is to (1) establish a national plan for collaborative Federal/non-Federal research and communication activities, (2) ensure efficient use of limited resources by coordinating the various activities, and (3) accelerate the process of finding answers to EMF questions.

Why a Coordinated National Program?

There are Legitimate Questions About Potential Health Effects Associated With Exposure to EMF That Must be Answered

The results of EMF research conducted thus far have been inconclusive and sometimes contradictory. Although some epidemiologic studies suggest an association between residential or occupational EMF exposure and an increased risk of cancer, the overall scientific evidence is inconclusive. While several laboratory studies have shown that certain biological effects can be caused by EMF exposure, the existence of health effects remains uncertain. The findings of these

epidemiologic studies concern many individuals and groups.

Concerns About the Potential Health Effects From EMF Exposure are Influencing a Variety of Regulatory, Policy, and Legal Issues

To date, these issues have resulted in EMF standards for transmission lines, proposed moratoriums on the construction of new lines, delays in upgrades or expansions to the power network, legal cases involving claims of cancer or other health effects, and damages claimed for reduced property values near lines. Each of these issues involves a variety of societal, economic, regulatory, and energy costs.

The Public's Perception of EMF Issues is at Times Based on a Limited Knowledge of Scientific Research

Although there are citizen groups in certain regions of the country that are knowledgeable about EMF and related research findings, much of the public currently has a relatively limited scientific basis for informed, independent judgment. Nationally coordinated communication activities would be developed to expeditiously translate research results into plain English.

EMF Research and Communication Activities Supported by Certain Private Organizations and Government Agencies are Perceived by Some as Biased

Even though these activities may be based upon the highest standards of quality and objectivity, some have questioned whether suppliers of electricity and manufacturers of electrical equipment might be biased in their interpretation and communication of EMF research findings because of their business interests. Likewise, members of the public may put more confidence in some government agencies than others. Coordinated actions by the Federal government can ensure that research activities uphold the highest standards of quality and objectivity and that clear, objective, and consistent information is provided to the public.

Research has indicated that the interactions of EMF with biological systems are complex. Understanding these complex interactions is a task that will require a collaborative effort by experts from both Federal and non-Federal organizations.

Under certain laboratory conditions, researchers have observed some biological changes in cells, tissues, and whole animals resulting from EMF exposure. Understanding the complicated interactions and the implications of laboratory findings for other areas of research and human health are tasks that will require the participation of physicists, biologists, chemists, molecular biologists, statisticians, epidemiologists, engineers, and specialists from other disciplines. No single Federal or private organization can be expected to provide the expertise that will be required to resolve the EMF issue. Combining the resources and expertise from many Federal and non-Federal organizations through a carefully coordinated national program represents the most efficient, credible means of addressing the complexities of the subject.

The need for Coordination is Compounded by the Growing Number of Federal, State, and Private Organizations Involved in EMF Research and Communication Activities

Historically, Federal appropriations for EMF research have been provided to DOE, the Department of Defense, and the Environmental Protection Agency (EPA). However, public concern has recently resulted in the involvement of other Federal agencies, including the Departments of Health and Human Services, Transportation, and Labor. Several states, including New York, Florida, California, and Maryland, were involved in early EMF research activities, and more state governments have recently initiated activities in this area. The Electric Power Research Institute (EPRI), the research arm of the electric utility industry, has been the largest private sponsor of EMF research, and publishes EMF informational materials for use by its member utilities as well as by government agencies and private organizations. Individual utilities, such as Southern California Edison, are also conducting EMF research. Coupled with environmental groups, unions, and other entities, the number of interested parties is large and growing. Coordination of the activities undertaken by the increasing number of interested parties could help avoid unnecessary duplication of work and ensure that resources are directed in the most cost-effective and efficient manner possible.

Regulators, Utilities, Product Manufacturers, and Other Face Considerable Difficulties in Making Informed Public Policy Decisions Because of the Limited Scientific Knowledge on the Subject and the Uncertain Implications of Some Policy Choices

Due to growing public pressure, policy makers are often urged to make immediate decisions without waiting for additional scientific results. However, public concern may result in policies that are not effective because of insufficient scientific understanding. For example, higher electric field strengths alone may not be an important factor in EMF interactions with biological systems; thus, policies that solely reduce electric field strengths may not be effective in reducing biological effects. Insufficient effort has been dedicated to developing and anlyzing policy options under a range of potential health-risk scenarios. A coordinated national program would include activities to meet the needs of public and private policy makers.

Summary of DOE's Proposals

The preliminary goals of the National EMF Research and Communication Program are to determine if electric and magnetic fields adversely affect human health and to communicate that knowledge promptly and fully to the public, government, and the scientific and business communities. Individuals need credible and unbiased information both for making personal decisions and for participating in public decision-making processes.

- There is a clear need for further research to determine whether exposures to EMF are a risk to health. There is also a need to fully communicate with the public concerning EMF issues.
- Additional research is needed on exposure management strategies designed to reduce risks if health effects are determined.
- The program should be broad in scope, encompassing four major components:

1. Scientific Research (Epidemiology and Biological Effects)
2. Engineering Research
3. Communication
4. Policy Analysis

- No single government or private organization can provide the expertise or resources required to fully address EMF research, communication, and policy issues. Thus, the program emphasizes a collaborative approach to program activities, based on a partnership among Federal, state, and private organizations.

The National EMF Research and Communication Program Key Questions

There are several fundamental questions that continue to be raised in scientific debates, policy statements of decisionmakers, and public discussions. These questions include the following:

1. Does normal, everyday exposure to electric and magnetic fields result in any adverse health effects to humans?

2. What can be done to limit or manage EMF exposures, if scientific research determines that adverse health effects exist?

3. Where can balanced and credible information on the potential health effects from EMF exposure be obtained?

4. What policy (regulatory, legislative, or other) options are available for addressing potential health risks from EMF exposure?

The central goal of the National EMF Research and Communication Program is to answer these fundamental questions. The program will consist of activities in four closely related areas, which correspond, in order, to the questions just posed.

Key Activities

1. *EMF scientific research* will seek to determine whether or not human health effects result from exposure to electric and magnetic fields produced during electricity generation, delivery, and use. Research activities will include epidemiologic, cellular, molecular, and large-scale animal studies, in order to provide the knowledge required for science-based judgments on health risk and appropriate protective actions, if needed.

2. *Engineering research* will characterize the EMF exposure of various residential and worker groups and proactively develop a range of options for managing EMF exposure.

3. *Communication* activities will seek to improve understanding of EMF issues by providing the public with balanced and credible information on which to base public policy decisions and individual judgments.

4. *Policy support* activities will include research and analyses to understand the societal, ethical, economic, and legal implications of the EMF issue and provide government and business decisionmakers with wide a range of policy options.

Program Goals

The principal goals of the National EMF Research and Communication Program are to:

- Determine if there are adverse effects on human health from exposure to electric and magnetic fields created by electricity generation, delivery, and use.
- Assess human exposures to various types of electric and magnetic fields.
- Calculate the associated risk, if it is determined that EMF exposures result in human health effects.
- Develop and evaluate the cost and effectiveness of actions to reduce exposures to various types of electric and magnetic fields (for example, from transmission lines, distribution lines, building wiring, and appliances).
- Provide the public and government and business decisionmakers with the balanced, credible information they need to make informed and independent judgments on the potential health risks of EMF exposure.
- Provide policy and regulatory options that appropriately address the public health, societal, economic implications of the EMF issue.

Reaching these goals will require the coordination of qualified researchers, decisionmakers, communication specialists, and policy experts involved in EMF activities. The DOE role is to coordiante the activities of various Federal agencies and to work closely with the states and private organizations to collectively develop and implement a national plan.

Program Objectives

EMF Scientific Research. The objectives of the EMF scientific research program component are to:

- Determine the biological effects of electric and magnetic fields on humans, animals, tissues, and cells.
- Determine the underlying causes of biological effects resulting from EMF exposures.
- Determine, using well-designed epidemiologic studies, whether an association exists between exposure to EMF and human health effects, specifically abnormal cell growth (cancer) or reproductive, neurological, and immune-system effects.
- Establish quantitative dose-response relationships specifying the range of EMF does (exposures) over which various effects are observed.
- Conduct replication studies designed to duplicate previous research methods in an attempt to resolve conflicting research results and confirm key research findings.

EMF Engineering Research. The objectives of the EMF engineering research program component are to:

- Develop (and evaluate) instrumentation and techniques for measuring various types of electric and magnetic fields and assessing personal exposure.
- Assess the exposures of various residential and worker groups in terms of the various types of electric and magnetic fields.
- Develop and evaluate the costs, benefits, and effectiveness of options for managing EMF exposures from a variety of sources (for example, transmission and distribution lines, electric wiring in buildings, appliances, commerical and industrial equipment, and transportation systems).
- Develop equations and methods (computer simulations) for estimating electric and magnetic field strengths and EMF exposures in situations where direct measurements are not feasible.
- Develop standardized procedures for EMF exposure measurements to facilitate comparisons between research findings.
- Develop equations and methods (computer simulations) that relate external (outside the body) measurements of EMF exposures to internal (inside the body) EMF does experienced by the biologic system.

EMF Communication. The objectives of the communication program component are to:

- Educate the public, workers, government officials, policy makers, and other interested parties by establishing appropriate channels of communication and providing materials and services that respond to their communication and information needs.
- Improve coordination and communication within the national and international EMF scientific communities. Provide referral services for the public, government, scientists, and businesses to make research findings more widely and readily available.
- Support communication research to improve understanding of how various groups, such as the public, perceive the EMF issue, to evaluate their needs and utilization of information, and to determine more effective methods of communication.
- Encourage communication from the public and decisionmakers to those who plan scientific studies. This information could help identify areas of conflicting findings that require further research.

Policy Support. The policy support program will provide policymakers and interested parties with reliable information and analyses to assist them in developing effective public polices, based on scientific and engineering findings and legal, economic, sociologic, and other studies. The objectives of the policy support program component are to:

- Improve understanding of the possible health risks, economic effects, and value judgments that must be considered when formulating EMF policy or regulation.
- Improve understanding of how economic costs related to EMF concerns are affecting citizens, utilities,

manufacturers, and other interested parties.

- Analyze the potential effects of EMF concerns on the safety, availability, reliability, and costs of electric power and electrical equipment.
- Develop and evaluate various regulatory and policy instruments that could be implemented. These instruments may differ depending on the EMF sources, exposures, and potential health impacts.
- Involve the various interested parties in activities related to EMF policy analysis so that individuals or groups can gain an appreciation of trade-offs inherent in various decisions and policies. Comments from interested parties will also assist policy makers in identifying, evaluating, and formulating policy choices.
- Develop potential frameworks, including guidelines, criteria, and computer simulations, to assist regulatory bodies in making logical, responsible decisions.
- Ensure that policy research and analysis encompasses a broad range of options to account for regulatory and related policy decisions that are made at various levels.

Coordination Mechanisms

An assessment of existing national and international EMF coordinating and facilitating mechanisms is necessary, to determine the best methods for improving the coordination of EMF research and communication activities. Coordination will enable organizations to better plan their efforts and to be fully informed about relevant EMF activities. It will also provide a means for analyzing and reporting on progress toward resolving EMF issues and to reduce unnecessary duplication of activities. The development and implementation of a comprehensive EMF research and communication program will require collaboration and coordination among many entities, including the following broad groups:

- National and international scientific community.
- Federal agencies.
- State, local, and private organizations.

National and International Scientific Community

There already exist both formal and informal means for coordination among members of the EMF scientific research community. For example, DOE has been instrumental in establishing and maintaining an international database that porvides information on recent and ongoing EMF research. Researchers from the Electric Power Research Institute (EPRI), the Environmental Protection Agency (EPA), Canada, Japan, Australia, and five European countries make use of this database. DOE cosponsors an annual review of research on the biological effects of electric and magnetic fields. The Bioelectromagnetics Society, EPRI, and others also sponsor periodic scientific meetings, seminars, and conferences. These existing avenues for coordination could be strengthened and expanded under a more coordinated national EMF program. This program would include sponsorship by a larger number of national and international research organizations.

Federal Agencies

A number of Federal agencies have EMF-related regulatory responsibilities and missions. The various Federal agencies also have communication linkages with the states, local governments, the public, and interested private organizations. No single Federal agency encompasses the breadth and depth of experience required to fully analyze the potential effect of EMF exposure on human health, nor to evaluate the implications of potential health risks on society, the economy, and the Nation's power supply. As such, multiple Federal agencies are expected to take an increasingly active role in future EMF research and communication activities. Federal health agencies, in particular, have a growing part to play in performing research and communicating with the public on this subject. It will be DOE's role to coordinate these various activities, but not to direct specific activities of individual agencies.

One vehicle for interagency coordination already exists through the Committee on Interagency Radiation Research and Policy Coordination of the Office of Science and Technology Policy. DOE plans to solicit the involvement and recommendations of other Federal agencies to improve interagency coordination.

State, Local, and Private Sector Organizations

DOE recognizes that individuals at the state and local levels are often at the forefront of the EMF health effects issue because of their close contact with local communities, their awareness of citizens concerns, and the decision-making role of state and local governments. As a result of growing public concern combined with a lack of scientific evidence on which to base public policy on EMF issues, a number of state and private decisionmakers formed a steering committee to establish a jointly funded public/private National EMF Research Program (NERP). NERP's steering committee is currently seeking funding and overseeing the development of its program. DOE, in its Federal coordination role, is eager to exchange information and carry on a dialogue with NERP and with other state, local, and private organizations including, but not limited to, the following:

- Electric Power Research Institute.
- State health offices.
- National Association of Regulatory Utility Commissioners.
- National Electric Manufacturers Association.
- National Rural Electric Cooperative Association.
- Large Public Power Council.
- Edison Electric Institute.
- American Public Power Administration.
- International Brotherhood of Electrical Workers.

To gain additional information and feedback in developing a coordinated national program plan, DOE will hold meetings over the next few months with these and other interested parties. Possible roles for each organization under a national program will be examined, and the best avenues for coordination will be identified.

The Coordination Challenge

A National Research and Communication Program will require the wise use of resources and cooperation between government agencies and private institutions. The program's challenge is to complement established EMF programs, build on the expertise already in place, fill in any recognized gaps, and facilitate coordinated planning and information-sharing. Building on these efforts, DOE will emphasize cooperation and collaboration among all the parties interested in EMF.

Strategic Priorities

When developing and implementing the national program, DOE will place a high priority on certain strategies and program characteristics. The strategic priorities and their relationship to program components are shown in Figure 2. These strategies and DOE's next steps are described below.

Using a process to obtain information from the public and interested parties, develop a general consensus among representatives of other Federal agencies and key organizations on the most effective and appropriate approach for performing EMF research and communicating with the public.

• This consensus will define who will perform specific activities, determine how coordination will be achieved, and specify how funding and the direction of activities will be managed.

• DOE will convene workshops of small groups of scientists, engineers, communication specialists, and policymakers. These workshops will focus on the initial identification of activities and priorities for the development of the draft national plan (see Figure 1).

• DOE will hold public meetings to solicit comments and views from citizens and advocacy groups.

• DOE will sponsor an effort by the National Academy of Sciences (NAS) to (1) review the results of completed and ongoing EMF scientific reviews, research plans, and agendas; (2) conduct workshops to identify which additional information is needed; and (3) develop a strategy for obtaining that information. Because a number of other interested parties (such as the Environmental Protection Agency, EPRI, and the National Institute for Occupational Safety and Health) are also constructing research agendas, the NAS will integrate information provided by those various parties with its own evaluation in formulating a research plan.

• DOE will also seek input from independent groups and existing advisory boards.

Take full advantage of opportunities for collaborative research activities with other nations, Federal agencies, states, private organizations, and other informaed parties. Encourage the participation of experts from different disciplines in the development and implementation of research activities.

• DOE will consider activities such as sponsorship of joint Federal/non-Federal research programs, and the creation of EMF research and communication centers under multiple government/private sponsorship as a means of establishing new partnerships with states and private organizations.

• A number of Federal agencies sponsor scientific and engineering research programs, develop policy documents, and carry out educational programs to promote public awareness on important issues. In order to address the four components of a National EMF Research and Communication Program, DOE will convene meetings of interested Federal agency representatives to examine how these agencies can collectively pool their expertise in scientific and engineering research, in policy support, and in communications.

• DOE also plans to meet with interested representatives from state agencies, private research organizations, advocacy groups, and trade and professional organizations to discuss their participation in a coordinated national program.

Conduct EMF research activities in a manner that will ensure all interested parties have the utmost confidence in research findings.

• The coordinated plan will include mechanisms to avoid real or perceived conflicts of interest.

• DOE will also investigate the use of advisory committees or expert panels to ensure research activities are designed, carried out, and reported with the highest quality and credibility.

Dated: May 27, 1992.

Issued in Washington, DC.

B. Reid Detchon,

Principal Deputy Assistant Sercetary, Conservation and Renewable Energy.

BILLING CODE 6450-01-M

Figure I
National EMF Research and Communication Program Planning Process

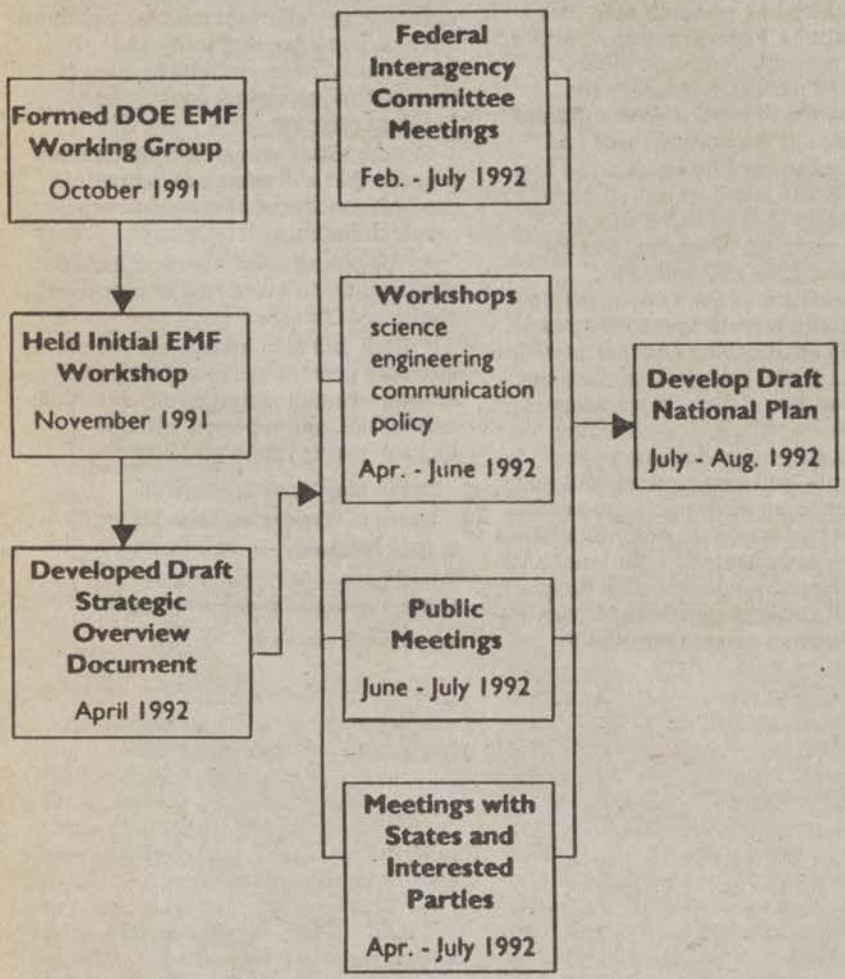
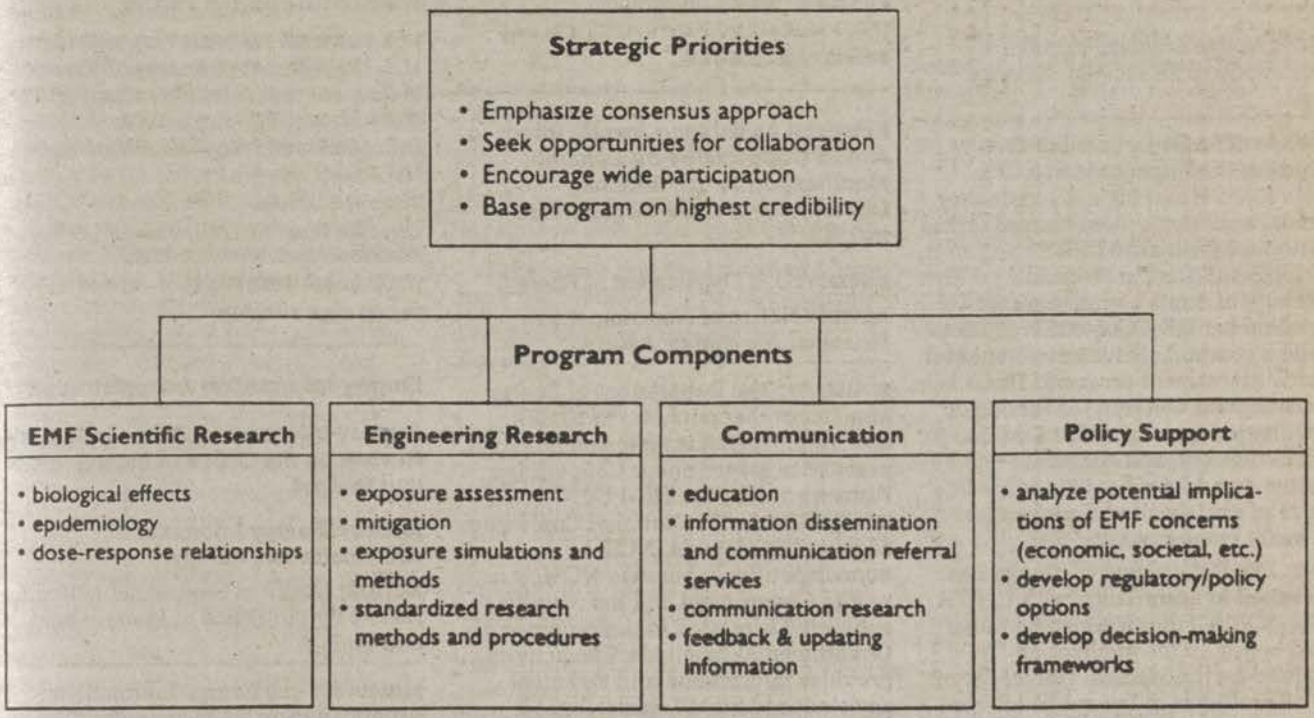


Figure 2
The National Research and Communication Program Approach



FR Doc. 92–12836 Filed 6–1–92; 8:45 am]
BILLING CODE 6450–01–C

Financial Assistance Award; Intent To Award Noncompetitive Grant to the Medical University of South Carolina

AGENCY: U.S. Department of Energy (DOE).

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

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(G) to the Medical University of South Carolina under Grant Number DE–FG01–92EW50625 to initiate a comprehensive environmental hazards assessment program. The proposed grant will provide funding in the estimated amount of $28.5 million to conduct research and education activities to address health oriented aspects of environmental restoration and waste management.

SCOPE: The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(G) that a noncompetitive award based on the application submitted by the Medical University of South Carolina is in the public interest. This program will bring together national and international resources of other colleges and universities and professional societies in a national center to increase the public awareness of the risks associated with radioactive and mixed wastes. The team of experts will conduct research, provide information, data, and human resources to analyze environmental risks in an objective manner; and identify needs and develop programs to address the critical shortage of well educated, highly skilled technical and scientific personnel in the area of energy related environmental restoration and waste management. The Department of Energy has determined it to be in the best interest of the public to award a noncompetitive grant to a medical university to work towards development of a more objective approach to issues concerning risk assessments and risk management of environmental restoration and waste management activities, and to elevate the public's awareness of the health effects associated with radioactive and mixed waste management and control. The anticipated project period of the proposed grant is 60 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: John L. Wengle, PR–322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B" Office of Placement and Administration.

[FR Doc. 92–12837 Filed 6–1–92; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award Cooperative Agreement Modification to the National Conference of State Legislatures (NCSL)

AGENCY: U.S. Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY; The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(C) it is making a financial assistance award under Cooperative Agreement Number DE–FG01–87RW00119 to The National Conference of State Legislatures (NCSL) noncompetitively because NCSL is a unit of Government and the activity supported is related to performance of Governmental functions. The activity provides information and technical assistance to State Legislatures to ensure that technical data and in-depth background information on key topics are made available to State Legislatures. NCSL will provide logistical support for upcoming meetings and will facilitate travel to and from the meetings of the State and Tribal Government Working Group (STGWG) and the Stakeholder's Forum. Funding in the amount of $300,000 is to be added for this cooperative agreement with by the Department of Energy (DOE).

The recipient, NCSL, is a national legislative organization directly funded by contributions from general tax revenue of 50 states. The organization's nonpartisan research goals include providing information to State and Tribal policymakers. The specialized qualifications and recognized nationwide reputation of the NCSL enable it to provide a neutral organizational forum that encourages free and open communication, assisting the DOE to achieve the public purpose of cooperating with State and Tribal Governments in developing and implementing the national energy policy and programs.

In accordance with 10 CFR 600.7(b)(2)(i)(C), it has been determined that the applicant is a unit of Government and the activity to be supported is related to performance of a Governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

The anticipated term of the proposed modification is one month from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR–322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 92–12838 Filed 6–1–92; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulation Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by July 2, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–412, 759, 826, 860, and 861.
3. 1905–0129.
4. Electric Power Surveys.
5. Revision—This request is made for OMB approval of a proposed revision to the sample design and estimation methodology for the Form EIA–826, "Monthly Electric Utility Sales and Revenue Report with State Distributions."
6. Monthly, Annually.
7. Mandatory.
8. State or local governments; Businesses or other for-profit; Federal agencies or employees.
9. 5,800 respondents.
10. 3.276 responses.
11. 3.83 hours per response.
12. 72,696 hours.
13. The Electric Power Surveys collect information on capacity, generation, fuel consumption, receipts and stocks, prices, electric rates, construction costs, operating income and revenue of electric utility companies. Data are published in various EIA reports. Respondents are primarily electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, May 28, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–12839 Filed 6–1–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP92–497–000, *et al.*]

Columbia Gas Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP92–497–000]

May 20, 1992.

Take notice that on May 14, 1992, Columbia Gas Transmission Corporation (columbia), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP92–497–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for sales and transportation service in Upshur County, West Virginia, to Mountaineer Gas Company (MGC), an existing wholesale customer, under the authorization issued in Docket No. CP83–76–000 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.

Columbia requests authorization to construct and operate the new delivery point as follows:

	Rate schedule	MDQ (Dth/d)	Annual volumes (Dth)
Wholesale Customer: Mountaineer Gas Company.	CDS	25	6,000
Shipper: Eastern American Energy Corporation.	ITS	100	36,500

It is stated that the additional point of delivery has been requested by MGC for the account of Eastern American Energy Corporation (EME), for service to a vehicle conversion compressed natural gas station. Columbia states that the sales service will be made under its currently effective service agreement with MGC under Rate Schedule CDS.

According to Columbia, MGC has not requested an increase in its peak day entitlements in conjunction with this request for a new delivery point. Therefore, Columbia states that there will be no impact on Columbia's existing peak day obligations to its customers as a result of this proposal.

Columbia states that the quantities of natural gas to be provided through the new delivery point are within its currently authorized level of sales service to MGC of 176,000 Dth/d authorized in Docket No. RP86–168–000, *et al.*

It is stated that the requested transportation service on behalf of EME will be provided under Columbia's blanket certificate in Docket No. CP86–240–000. The transportation service will be provided under Columbia's Rate Schedule ITS.

Columbia proposes to construct and operate the delivery point to MGC in Upshur County, West Virginia, which will involve the construction of interconnecting facilities consisting of less than 20 feet of pipeline located on Columbia's existing right-of-way.

Comment date: July 6, in accordance with Standard Paragraph G at the end of this notice.

2. Prairielands Energy Marketing, Inc.

[Docket No. CI92–44–000]

May 20, 1992.

Take notice that on May 12, 1992, Prairielands Energy Marketing, Inc. (PEMI) of 3333 East Broadway, suite 1215, Bismarck, North Dakota 58501, filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing the sale for resale in interstate commerce of all NGPA categories of natural gas subject to the Commission's NGA jurisdiction, including imported gas and liquefied natural gas, gas purchased from non-first sellers including intrastate pipelines, local distribution companies and end-users, gas purchased under any existing or subsequently approved interstate pipeline tariff, gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales for resale of surplus system supply (ISS gas), and/or gas purchased from a cogenerator, independent power producer or electric utility, which gas such entity has purchased in a NGA jurisdictional sale and which is sold by such entity as excess to its needs. PEMI's application is on file with the Commission and open for public inspection.

Comment date: June 3, 1992, in accordance with Standard Paragraph J at the end of this notice.

3. Florida Gas Transmission Company

[Docket Nos. CP91-65-000 and CP91-65-000]

May 20, 1992.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission will conduct a site visit of a proposed modification to the route certificated in the St. Petersburg/ Sarasota Connector Project. The facilities were authorized by the Commission in an order issued July 24, 1991 in the above docket. The facility route to be visited is located in Manatee and Hillsborough Counties, Florida. The site visit of the proposed facilities will take place June 2-3, 1992. Anyone planning to attend must provide their own transportation. For further information, contact Mr. Jeff Gerber at (202) 208-0282.

4. CNG Transmission Corporation

[Docket Nos. CP92-397-000, CP91-694-004, CP91-969-003, CP91-062-003]

May 20, 1992.

Take notice that on March 6, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed an application pursuant to section 7 of the Natural Gas Act, and the Commission's Rules and Regulations, for an order granting authority for restructured services that CNG states it has agreed to provide to certain Rate Schedule CD customers, as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG seeks authorization to abandon part of the Rate Schedule CD service that it currently provides to Public Service Electric and Gas Company (PSE&G), New Jersey Natural Gas Company (NJN) and Brooklyn Union Gas Company (BUG), in conjunction with customer conversions of equivalent volumes to firm transportation service, assignments of upstream pipeline capacity entitlements, and commencement of new firm storage service.

CNG also requests authority to render new Rate Schedule CD service to PSE&G, NJN, BUG and Long Island Lighting Company (LILCO). CNG seeks authority to abandon part of the seasonal sales it currently provides to PSE&G and NJN. CNG also requests authority to provide Rate Schedule GSS storage services to PSE&G, NJN and BUG.

CNG also requests amendment of any authorization that may be necessary to allow CNG to assign part of its firm sales entitlement on Tennessee Gas Pipeline Company (Tennessee) to PSE&G; to assign part of its firm sales and firm transportation capacity on Texas Eastern Transmission Corporation (TETCO) to PSE&G, NJN and BUG; and to assign part of its firm transportation capacity on Texas Gas Transmission Corporation to PSE&G and NJN. CNG also requests amendment of any authorizations as required to enable Tennessee, TETCO and Texas Gas to abandon such service to CNG and to directly serve these customers.

Comment date: June 10, 1992, in accordance with Standard Paragraph F at the end of the notice.

5. United Gas Pipe Line Company

[Docket No. CP92-501-000]

May 21, 1992.

Take notice that on May 18, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-501-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate one new delivery point 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 set forth in the request which is on file with the Commission and open to public inspection.

Specifically, United proposes to construct and operate a 2-inch tap and flow computer on its 4-inch pipeline in Morehouse Parish, Louisiana. United states that it would use the facilities to deliver gas transported by United for SIGCO Marketing, Inc. (SIGCO) to Dreher Contracting. SIGCO would reimburse United for the cost of the facilities, it is stated.

United asserts that it has sufficient capacity to provide the service without detriment or disadvantage to its other customers and that its tariff does not prohibit the proposed tap.

Comment date: July 6, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. El Paso Natural Gas Company

[Docket No. CP92-499-000]

May 21, 1992.

Take notice that on May 18, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a prior notice request with the Commission in Docket No. CP92-499-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon a meter station in Cochise County, Arizona, and the related sale for resale of natural gas to Geronimo Natural Gas Company (Geronimo), under El Paso's blanket certificate issued in Docket No. CP82-435-000, all as more fully set forth in the application which is open to the public for inspection.

El Paso proposes to abandon the Geronimo Natural Gas Company meter station, which facilitates El Paso's delivery sale of natural gas to Geronimo for resale to the farming community in the vicinity of San Simon, Cochise County. The Commission authorized El Paso to construct and operate this facility for the resale of natural gas to Geronimo in the order issued April 30, 1954, in Docket No. G-2377 (13 FPC 1009). El Paso states that it no longer needs this meter station, because Geronimo elected not to convert its firm sales entitlements to firm transportation service pursuant to the terms and conditions of El Paso's Stipulation and Agreement approved by the Commission on November 20, 1991, in Docket No. RP88-44-000, *et al.* (57 FERC ¶61,225). Upon termination of the service agreement with El Paso, Geronimo will receive natural gas service via Southwest Gas Corporation, which receives natural gas deliveries from El Paso at the San Simon meter station in Cochise County.

El Paso further states that the proposed abandonment of the meter station would not interrupt any natural gas service presently rendered to its existing customers.

Comment date: July 6, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP92-496-000]

May 21, 1992.

Take notice that on May 15, 1992, Panhandle Eastern Pipe Line Company (Panhandle), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP92-496-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon measuring and regulating facilities in Calhoun County, Michigan, under Panhandle's blanket certificate issued in Docket No. CP83-83-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Panhandle requests authorization to abandon the meter and appurtenant regulating facilities which were installed under Commission authorization in Docket No. G-1322 for deliveries of natural gas to a Corning Glass Works (Corning) plant, located near Albion, Michigan. It is stated that Corning was a direct sale customer of Panhandle. It is

stated that Corning shut the plant in 1975 and sold it to Guardian Fiberglass Inc. (Guardian), to which Corning's contract with Panhandle was reassigned. It is explained that during the period between Corning's shutdown and Guardian's taking over the plant, the line connecting the plant to Panhandle's facilities was sold by Corning to Southeastern Michigan Gas Company (SEMCO). It is further explained that SEMCO provides service to the plant through its distribution system and does not require Panhandle's meter and regulating facilities. It is asserted that the facilities proposed herein for abandonment have not been used since 1975.

Comment date: July 6, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP92-498-000]

May 22, 1992.

Take notice that on May 15, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-498-000 a petition under rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order: (1) Finding that certain of Trunkline's facilities which have been certificated as jurisdictional transmission facilities but which are now functionalized as gathering facilities on Trunkline's accounting books and records in fact perform a transmission function and should be refunctionalized as transmission facilities for rate and accounting purposes; (2) authorizing Trunkline to record these facilities and related costs on its accounting books and records as transmission facilities; and (3) confirming that these facilities are jurisdictional facilities.

In the event that the Commission concludes that some or all of these facilities perform a gathering function rather than a transmission function and should therefore remain functionalized as gathering, Trunkline requests that the Commission find that the facilities are nonjurisdictional and vacate the certificate that authorized Trunkline to construct and operate the facility as unnecessary for such a nonjurisdictional facility.

Trunkline requests that 197 facilities be refunctionalized from gathering to transmission for accounting and rate purposes. According to Trunkline, this refunctionalization is reflected in its rate case filed May 1, 1992, in Docket No. RP92-165-000.

Although there are a large number of facilities proposed to be refunctionalized with varying physical and operating characteristics, Trunkline states that the detailed descriptions and maps included in its petition show that the facilities have three basic configurations and functions. First, Trunkline states that a number of the facilities are interconnected between its mainline transmission system and the mainline transmission systems of other pipeline companies, such as Transcontinental Gas Pipe Line Corporation, Tennessee Gas Pipeline Company, Natural Gas Pipeline Company, Stingray Pipeline Company, High Island Offshore System, United Gas Pipe Line Company and others.

Second, it is stated that several facilities are extensions of Trunkline's mainlines to additional Trunkline-owned lines that receive gas from numerous sources of supply further upstream of the facilities Trunkline proposes to refunctionalize.

Trunkline states that the third, and by far the largest group, consists of extensions from Trunkline's mainlines to points of receipt at the downstream side of producer-owned facilities which gather gas from the wellheads, producer-owned processing plants where the gas is processed to meet Trunkline's quality standards, and the producer-owned compressors as required to ensure sufficient pressure to allow gas to enter Trunkline's mainline without compression by Trunkline. Trunkline states that its system begins at the outlet of these producer-owned systems after the gas already has been gathered and brought to sufficient pressure and quality to enter Trunkline's transmission system.

In addition to these facilities, Trunkline proposes to refunctionalize several rectifier units, which are used to protect Trunkline's facilities and are located on pipeline facilities proposed to be refunctionalized. Trunkline also proposes to refunctionalize the portion of its line pack that is associated with certain offshore pipeline systems.

Trunkline states that none of the facilities proposed to be refunctionalized attaches to the wellhead. It is stated that in every case, between the wellhead and the facility proposed to be refunctionalized there are additional facilities (in most instances owned by producers) that gather the gas and either process the gas to bring it to pipeline quality or compress the gas to a pressure that allows it to enter Trunkline's system without compression by Trunkline or both. As a result, Trunkline states that the facilities proposed to be refunctionalized are used to move pipeline quality gas at mainline pressures. Under the standards applicable to the functionalization of facilities and associated costs between gathering and transmission, Trunkline states that the function and configuration of the facilities at issue here require the finding that the facilities perform a transmission function.

While the Commission's Uniform System of Accounts defines the term "transmission system" that is to be used in recording the costs of facilities to the transmission function on a company's accounting books and records, it does not contain a comparable definition of a "gathering" system or facility.

Trunkline states that the Commission has relied, and continues to rely, on several factors that determine the end of the gathering function and system and the beginning of the transmission function and system. Among these are the central point in the field and the location of compressor stations and processing plants.

Since none of these facilities connect directly to the wellhead—the most basic aspect of gathering—Trunkline states that they perform a transmission, not gathering function. Trunkline states that between the wellhead and the facilities proposed to be refunctionalized, there are always facilities owned by the producer and, in some cases, additional facilities owned by Trunkline that remain functionalized as gathering. According to Trunkline, it is these upstream facilities that aggregate gas from the wellhead, treat the gas to bring it to pipeline quality and compress the gas to pipeline pressure before delivering the gas to the facilities proposed to refunctionalized. Trunkline states that its facilities proposed to be refunctionalized transport pipeline quality gas owned by Trunkline or third parties at transmission pressures to Trunkline's mainline transmission system for redelivery under certificates of public convenience and necessity.

Trunkline states that the factors the Commission has historically relied upon in determining whether facilities are gathering or transmission are now subsumed within the Commission's primary function test articulated in Farmland Industries, Inc., 23 FERC ¶ 61,063 (1983) and Amerada Hess Corporation, *et al.*, 52 FERC ¶ 61,268 (1990). Under the primary function test, Trunkline states that the Commission considers, in addition to the central point, the location of processing plants and compressors, the diameter and length of a facility, the location of wells

along all or part of the facility, the geographical configuration of the system and the operating pressure of the facility.

It is stated that no Trunkline facility proposed to be refunctionalized connects directly to a well. In every case, it is stated, the wells are upstream of these facilities and either processing or compression or both are located between the well and the facility proposed to be refunctionalized. Trunkline states that, in the vast majority of instances, no gas enters a facility downstream of the meter connecting the beginning of the line to the producer-owned gathering system. Where gas does enter the line downstream, Trunkline states that the gas is delivered by another Trunk-line owned line that connects to a producer-owned facility or another pipeline company's facilities. Trunkline believes that this is typical of transmission lines and indicates that the facilities in question are transmission rather than gathering.

Trunkline states that it has a relatively low pressure mainline system—approximately 615–975 psig. It is stated that the average operating pressure of each of the facilities herein is somewhat greater than the average operating pressure of Trunkline's mainline at the point of interconnection. Trunkline submits that this indicates that these facilities perform a transmission rather than gathering function.

According to Trunkline, there is a great deal of variety in the diameters and lengths of the lines in this proposal; some are 2-inch extensions of a few feet from Tunkline's mainline to a nearby producer-owned facility; others are 30-mile segments of pipe equal in diameter to portions of the mainline that provide access to numerous producer-owned systems. Trunkline believes that the small diameter and length of many of the lines is not necessarily indicative of a gathering function. Trunkline states that the lines have been sized as necessary to connect particular supply sources to its mainline system, and perform a transmission function.

As to the geographical configuration of the system, Trunkline states that the facilities it proposes to refunctionalize are individual facilities extending from the mainline system to points where pipeline quality gas has been aggregated and can be delivered at a pressure sufficient to enter the mainline without additional compression by Trunkline. Trunkline believes that this configuration is typical of facilities that perform a transmission function.

Trunkline states that its overall business purpose is limited to the transportation and sale of natural gas in interstate commerce, not to well development, gathering and processing. Trunkline further states that it utilizes the facilities in question to transport gas that has been gathered and compressed by others to bring the gas to pipeline quality and pressure prior to delivery to Trunkline.

Comment date: June 12, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Kern River Gas Transmission Company

[Docket No. CP89–2048–009

May 22, 1992.

Take notice that on May 18, 1992, Kern River Gas Transmission Company (Kern River), pursuant to 18 CFR 157.208(g), applied for a waiver of the 1991 automatic authorization project cost limit established by §§ 157.208 (a) and (d) of the Commission's Regulations under the Natural Gas Act. The actual cost of constructing two of the projects built by Kern River under its part 157, subpart F blanket certificate during 1991 exceeded the $6 million ceiling, although Kern River had estimated prior to their construction that the costs of each project would be below the project cost limit. The amount of excess cost in both cases is not great and both projects were subject to Commission environmental review, and received written environmental approval for the Commission to their construction. Accordingly, and as set forth more fully in the application, Kern River submits that good cause exists to warrant this one-time waiver of the project cost limit.

Comment date: June 12, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP92–505–000]

May 22, 1992.

Take notice that on May 20, 1992, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP92–505–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate facilities to establish a new sales delivery point to Entex, Inc. (Entex), under its blanket certificate issued in Docket No. CP82–430–000, pursuant to section 7(c) 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.

United proposes to construct and operate a two-inch tap on its Jackson-Magnolia 6-inch line in Pike County, Mississippi to provide Entex' sales requirements for Entex' Brookhaven, Mississippi billing area. United estimates the construction costs at $4,173, which it is indicated would be reimbursed by Entex. United estimates a maximum designed capacity of the facility of 100 Mcf per hour or 2,400 Mcf per day while the initial daily demand is expected to be 162 million Btu.

It is indicated that the proposed installation and modification of facilities would improve Entex's ability to service its Brookhaven customers, but would not have an impact on United's curtailment plan because no change in the existing service level is proposed. It is also indicated that the service provided through these facilities would remain within the current certificated level of 20,501 million Btu per day for the Brookhaven billing area. United also states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers and that its tariff does not prohibit the proposed modification of facilities.

Comment date: July 6, 1992, in accordance with Standard Paragraph G at the end of this notice.

II. Texas Gas Transmission Corporation

[Docket No. CP90–688–004]

May 22, 1992.

Take notice that on May 15, 1992, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed pursuant to section 7 of the Natural Gas Act (NGA) and part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission) an amendment to the certificate of public convenience and necessity (certificate) that was issued to Texas Gas on June 11, 1991 (55 FERC 61,415), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that on June 11, 1991, the Commission issued a certificate to Texas Gas authorizing the firm transportation service of up to 263,625 MMBtu per day of natural gas on behalf of Transcontinental Gas Pipe Line Corporation (Transco) and the construction and operation of the facilities necessary to render such service. Texas Gas further states that because the firm transportation service was to be rendered pursuant to section 7

of the NGA, the Commission limited the receipt points available to Transco's shippers to the points and associated volumes identified by Texas Gas in its response to a data request issued by the Commission staff.

Texas Gas proposes to amend the certificate to receive gas for Transco's shippers at the following revised receipt point volumes:

(1) Champlin Plant—tailgate of Champlin Petroleum (East) Plant Carthage Field, Panola County, TX—38,398 MMBtu/day
(2) Cornerstone-Ada—S11, T18N, R9W Webster Parish, LA—32,829 MMBtu/day
(3) Henry Hub—tailgate of Texaco's Henry Plant, S21, T13S, R4E Vermilion Parish, LA—111,241 MMBtu/day
(4) Mamou—S6, T6S, R1W Evangeline Parish, LA—81,157 MMBtu/day

Texas Gas states that these receipt point changes do not require the construction of any additional facilities. Texas Gas requests that these new receipt point allocations be effective November 1, 1992.

Comment date: June 22, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. Colorado Interstate Gas Company

[Docket No. CP92-494-000]

May 26, 1992.

Take notice that on May 15, 1992, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP92-494-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a new meter station under CIG's blanket certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it proposes to construct and operate the Coldwater Creek meter station located in Sherman County, Texas. CIG further states that the meter station would be constructed pursuant to a facilities agreement between CIG and Amarillo Natural Gas, Inc., which provides for CIG designing the metering facility for up to 250 Mcf per day. CIG says that it has been advised that gas transported to the Coldwater Creek meter station would be used for a cattle feedlot operation.

Comment date: July 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP92-462-000]

May 26, 1992.

Take notice that on April 22, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP92-462-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to sell volumes of natural gas required for the first season of storage withdrawals associated with a blanket contract storage program[1] all as more full set forth in the application which is on file with the Commission and open to public inspection.

It is stated that since the storage service would commence at the beginning of the winter period, Panhandle would provide the initial 10,000,000 dt equivalent of natural gas of stored volumes needed to effectuate storage withdrawals during the initial winter period commencing November 1, 1992. Panhandle indicates that shippers would reimburse Panhandle for such withdrawals by purchasing the stored volumes as they are withdrawn at the system storage weighted average cost of gas as of November 1, 1992.

Comment date: June 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

14. Florida Gas Transmission Company

[Docket No. CP92-506-000]

May 26, 1992.

Take notice that on May 20, 1992, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP92-506-000 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 meter station to accommodate deliveries of natural gas to West Florida Natural Gas Company (West Florida), under FGT's blanket certificate issued in Docket No. CP82-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sepcifically, FGT proposes to construct and operate the meter station in Bay County, Florida, to serve as a delivery point for West Florida, in response to a request from West Florida. FGT states that the proposed delivery point would be known as the Panama City North delivery point. It is stated that FGT makes sales for resale to West Florida under 2 agreements, on file with the Commission as FGT's Rate Schedule G for firm service and Rate Schedule I for preferred service. The cost of the proposed facilities is estimated at $303,140. It is asserted that FGT would be reimbursed by West Florida for the construction cost.

FGT asserts that the end uses of the gas would be residential, commercial and industrial. It is stated that the proposal would not result in any increase in West Florida's maximum daily contract quantity from FGT, and that FGT can accomodate the deliveries without detriment or disadvantage to its other customers.

Comment date: July 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

15. Chevron U.S.A. Inc.

[Docket No. CI64-1477-000, *et al.*] [2]

May 26, 1992.

Chevron U.S.A. Inc. filed applications under section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully describe in the respective applications which are on file with the Commission and open for public inspection.

Comment date: June 9, 1992, in accordance with Standard Paragraph J at the end of this notice.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI64-1477-000, D, 5-11-92	Chevron U.S.A., Inc. P.O. Box 3725, Houston, TX 77253-3725.	Sunterra Gas Gathering Company, Basin Field, San Juna County, New Mexico.	Assigned 11-7-89 to Meridian Oil Production Inc.

[1] Panhandle's application includes a proposal for a blanket contract storage service commencing November 1, 1992, as well as the proposal to sell the injection gas to customers desiring this service during the first withdrawal season. The Commission's order issued May 20, 1992, dismissed the portion of the application requesting a blanket storage certificate as redundant of the unbundled storage service mandated by Order No. 636. The Commission's order also advises, however, that Panhandle can file tariff sheets implementing open-access storage service in full compliance with Order No. 636 in advance of its required Order No. 636 tariff filing.

[2] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI92-45-000 (CI79-111), D, 5-11-92.	Chevron U.S.A. Inc	Kansas Gas Supply Corporation, Medicine Lodge Field, Barber County, Kansas.	Assigned 2-27-92 to Herman L. Loeb.
CI92-46-000 (CI77-122), D, 5-11-92.	Chevron U.S.A. Inc	Tennessee Gas Pipeline Company, South Marsh Island Block 249, Offshore, Louisiana.	Assigned 2-25-92 to The Stone Petroleum Corporation.
CI92-55-000 (CI64-1477), D, 5-11-92.	Chevron U.S.A. Inc	Sunterra Gas Gathering Company, Basin Field, San Juan County, New Mexico.	Assigned 10-31-89 to Dugan Production Corporation.

Filing code: A—Initial Service; B—Abandonment, C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

16. Tennessee Gas Pipeline Company

[Docket No. CP92-503-000]

May 26, 1992.

Take notice that on May 19, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas, 77252, filed in Docket No. CP92-503-000, a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act, to abandon *inter alia*, approximately 2.28 miles of its 4.5-inch pipeline to the City of Holyoke (Holyoke), Massachusetts, under its blanket certificate authorization issued in Docket No. CP82-413-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Tennessee states that it proposes to abandon that portion of its pipeline from Value 260A-301 to Value 260A-302. The property, fully depreciated would be abandoned in place, Tennessee explains. Tennessee also states that Holyoke, the only customer served on this line has agreed to the proposed abandonment.

Tennessee avers that it presently has the ability to provide back-up gas service if needed, to Holyoke through Tennessee's Meter Station #2-0105-1,2, which is located in Holyoke, but currently in the inactive status.

Comment date: July 10, 1992, in accordance with Standard Paragarph 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, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirments of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 Rule (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.204 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.

Standard Paragraph

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 Capitol Street, NE., 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 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. 92-12767 Filed 6-1-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-182-001; CP92-415-000]

Florida Gas Transmission Company, Transcontinental Gas Pipe Line Corporation and Florida Gas Transmission Co.; Intent to Prepare a Draft Environmental Impact Statement for the FGT Phase III Expansion Project and Request for Comments on Environmental Issues

May 22, 1992.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) on the facilities proposed in the above-referenced dockets for the FGT Phase III Expansion Project.

Pursuant to section 7(c) of the Natural Gas Act and 18 CFR 157.7(a) of the Commission's regulations, Florida Gas Transmission Company (FGT) and Transcontinental Gas Pipe Line Corporation (Transco) are seeking certificates of public convenience and necessity for authorization to construct and operate approximately 799.8 miles of loop, replacement, and new pipeline; 99,266 horsepower (HP) of compression

at 4 new and 7 existing compressor stations; 1 odorization plant; 7 new and 7 upgraded meter stations; 15 new regulators; 2 new meter stations and taps; and 1 new regulator and tap. Additionally, FGT proposes to transfer 1,070 HP of compression from one compressor station to another and to abandon two compressor stations and 66.8 miles of 24-inch-diameter pipeline.

The purpose of the proposed project is to provide customers in Alabama and the central, western, and southeastern portions of Florida with firm transportation service of natural gas totaling 541,117 million British thermal units/day (MMBtu/day) in the winter season and 522,573 MMBtu/day in the summer season.

FGT and Transco intend to complete construction and place the proposed facilities in service by late 1994. The total estimated cost of the proposed facilities is approximately $873,825,000. FGT states that $14,300,000 of these costs would be reimbursed by customers for customer-specific lateral line facilities and meter stations constructed for the delivery of natural gas volumes pursuant to the terms and conditions of their respective FTS–2 Service Agreements.

By this notice, the FERC staff is requesting written comments on the scope of the analysis that should be conducted for this draft EIS (DEIS). All comments will be reviewed prior to the preparation of the DEIS and significant environmental issues will be addressed. Comments should focus on potential environmental effects, alternatives to the proposal (including alternate routes), and measures to mitigate adverse impact. Written comments must be submitted by June 30, 1992 in accordance with the scoping and comment procedures provided at the end of this notice.

Proposed Facilities

Table 1 lists the facilities proposed in Docket Nos. CP92–182–001 and CP92–415–000. The general location of these facilities is shown on figures 1 and 2.[1]

FGT's proposal in Docket No. CP92–182–001 includes:

- Mainline system expansion—587.9 miles of 26-, 30-, and 36-inch-diameter pipeline looping in 22 segments extending from Jefferson Davis Parish, Louisiana to Palm Beach County, Florida;
- Mainline replacement—as part of the mainline expansion, FGT proposes to abandon and remove 66.8 miles of 24-inch-diameter pipeline and replace it with 36-inch-diameter pipeline (included in the 587.9 miles above);
- West leg extension—166.1 miles of new 30-inch-diameter pipeline extending from Suwannee County to Hillsborough County, Florida;
- Lateral expansion—the St. Petersburg and Sarasota Laterals in Polk and Hillsborough Counties, Florida with 15.3 miles of 22-inch-diameter and 10.6 miles of 16-inch-diameter pipeline looping, respectively;
- New lateral construction—19.9 miles of 4- to 20-inch-diameter lateral and looping pipeline to serve customer specific facilities in Alabama and Florida;
- Compressor station expansion—66,500 HP of compression at seven existing compressor stations, Compressor Stations (CS) 8, 9, 10, 11, 15, 19, and 20 in Louisiana, Mississippi, Alabama, and Florida;
- Three new compressor stations—22,000 HP of compression, 6,500-HP at the junction of the East White Lake Lateral in St. Landry Parish, Louisiana, 5,500-HP along the West Leg Extension in Citrus County, Florida, and 10,000-HP in Palm Beach County, Florida; and
- Relocation of lateral compression—from CS 32 on the Sarasota Lateral to CS 30 on its St. Petersburg Lateral, totalling 1,070 HP.

Further, FGT proposes to abandon Compressor Stations 5 and 32. Compressor Station 5, located on the mainline system in Chambers County, Texas, was retired from service in 1984. As part of the expansion, FGT proposes to construct or upgrade associated pipeline facilities including an odorization plant, regulators, meter stations, and taps.

In Docket No. CP92–415–000, Transco and FGT propose to construct:

- New compressor station—10,766-HP of compression in southern Mobile County, Alabama; and
- New regulator and tap—at the interconnection point of the Transco and FGT pipelines in northern Mobile County, Alabama.

Construction Procedures

The majority of the proposed pipeline would be constructed within a 75-foot-wide construction right-of-way using typical standard overland pipeline construction techniques.

Following surveying and staking, the right-of-way would be cleared of vegetation. Any fences that are crossed by the right-of-way would be braced, cut, and fitted with temporary gates. Timber within the construction right-of-way would be cut off at ground level and stacked along the edge of the right-of-way. Slash and debris would be disposed of in accordance with the wishes of the landowner and local government regulations. Uneven areas of the right-of-way would be graded to create a level working space for equipment. FGT has proposed to segregate topsoil at the discretion of the landowner and according to the recommendations of the local Soil Conservation Service office.

Ditching would be conducted with a rotary wheel ditching machine, backhoe, ripper, or dragline. No blasting is anticipated. The trench would be 10 to 30 feet wide and deep enough to provide the minimum depth of cover required by U.S. Department of Transportation (DOT) regulations (normally 5 to 7 feet deep).

Pipe segments would be transported by truck from storage yards and strung along the right-of-way. The individual segments would be bent to conform to the contours of the trench, and then welded together, inspected, and lowered into the trench. On steep slopes, trench breakers would be installed around the pipeline. The trench would then be backfilled using the previously excavated materials, or, if excavated material is unsuitable, with material imported as padding.

Special construction techniques would be used for crossing major roads, railroads, rivers, streams, and wetlands.

- Major roads and railroads would typically be crossed by auger boring beneath the road and railway surfaces.
- Streams and river crossings would be trenched with a backhoe or dragline operating from the stream or river bank. In some cases, barge mounted backhoes may be used.
- For scenic and sensitive waterways, including the Mobile, Atchafalaya, Appalachicola Rivers and the Bogue Chitto, horizontally controlled directional drilling would be evaluated as a crossing alternative to minimize bank disturbance and preserve riparian vegetation.
- Long saturated wetland areas would be crossed using the "push" method. Excavation of a flotation ditch would be accomplished by wide track or balloon tire equipment, or by conventional equipment operating off of timber equipment pads or gravel covered geotextile fabric. Following trenching, long sections of pipe would be welded together in staging areas, fitted with floats, and "pushed" into the trench. When the pipeline is properly positioned, the floats would be removed

[1] Tables and figures referenced in this notice are not being printed in the Federal Register, but have been included in the mailing to all those receiving this notice. Copies are also available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426 or call (202) 208–1371.

to allow the pipeline to sink to the bottom of the trench, and the trench would be backfilled.

Following installation and backfilling, the pipeline would be hydrostatically tested in accordance with DOT regulations to ensure its integrity. Water for the hydrostatic test would be obtained either from municipal sources or from other approved water sources in the project area. Test water would not be treated during testing or before discharge. Following hydrostatic testing, the water would be discharged into an upland area or into a stream using energy and velocity dissipation devices or hay bale or silt fence containment structures to prevent erosion or scouring of the streambed.

After pipeline installation, backfilling, and hydrostatic testing are complete, the right-of-way would be final graded. Drainage ditches, terraces, and roads would be restored to their former condition. Fences and other barriers would be restored with locking gates or other approved closure devices. All surplus construction material and other debris would be removed from the right-of-way. Topsoil that was conserved would be replaced to its original horizon and erosion control and revegetation measures would be implemented. Pipeline markers would be erected at road and fence crossings to identify the location of the pipeline in accordance with DOT regulations.

Construction of the new compressor stations would typically require clearing the building site of trees, brush, and debris; grading and compacting the site to surveyed elevations; and fencing the site for construction security and safety. The building foundations and other major equipment foundations would be excavated and installed with pipe and conduit access ways. Excess soil would either be used on-site or disposed of in approved areas off-site. The compressor unit(s) and other large equipment would be mounted on their respective foundations, and the compressor building and other ancillary buildings would be erected around them. The natural gas piping, both aboveground and belowground, would be installed and pressure-tested.

Additions to existing compressor stations would follow similar procedures, except that no new land would be required. New meter stations would be constructed within a 0.5-acre site that would typically include the pipeline right-of-way. Regulators and upgraded meter stations would be installed within existing facilities.

Environmental Issues

based on preliminary analyses of the applications and environmental information provided by FGT and Transco for the proposed facilities, the FERC staff has identified the following issues that will be specifically addressed in the DEIS.

Geology and Soils
- —Erosion control
- —Geological hazards, particularly sinkholes
- —Impact on exploitable mineral resources such as sand, gravel, clay, phosphate, and oil
- —Effect on cropland
- —Right-of-way restoration, revegetation, and maintenance

Water Resources
- —Effect on potable water supplies
- —Effect on surface water quality
- —Impact on wetland hydrology
- —Impact of stream and river crossings on sediment load
- —Impact of crossing the Suwannee, Appalachicola, Atchafalaya, and Mobile Rivers, the Boque Chitto, and at least eight other significant water bodies

Biological Resources
- —Impact on wetlands
- —Impact on forestlands
- —Impact of habitat alteration
- —Short- and long-term effects of right-of-way clearing and maintenance
- —Impact on threatened and endangered species
- —Impact on fisheries

Cultural Resources
- —Effect on properties listed on or eligible for the National Register of Historic Places

Land Use
- —Impact on residences
- —Impact on DeSoto and Apalachicola National Forests
- —Impact on state natural areas, forests, scenic rivers, and other public interest areas, including Ben's Creek Wildlife Management Area (WMA), Leaf River State WMA, Blackdriver State Forest, and Joe Budd WMA
- —Impact on Black Creek (listed as a Wild and Scenic River)

Socioeconomics
- —Impact on agricultural land resources
- —Impact on timber land resources

Air Quality
- —Effect of compressor station operation on air quality

Noise
- —Effect of compressor station operation on nearby noise-sensitive receptors

Reliability and Safety
- —Risk assessment of hazards associated with natural gas pipelines

Alternatives
- —Route variations to avoid sensitive areas
- —Alternative routes

Comments are solicited on any additional topics of environmental concern from residents and others in the project area. After comments in response to this notice are received and analyzed, and the various issues investigated, the FERC staff will prepare a DEIS for the FGT Phase III Expansion Project. The subsequent final EIS will be based on the FERC staff's independent analysis of the proposed project and, together with the comments received, will constitute part of the record to be considered by the Commission in this proceeding.

Cooperating Agencies

The following agencies are requested to indicate whether they wish to be cooperating agencies in the production of the DEIS:

Advisory Council on Historic Preservation
Department of Agriculture:
- Soil Conservation Service
- Forest Service

Department of Defense:
- U.S. Army Corps of Engineers

Department of Energy
Department of the Interior:
- U.S. Fish and Wildlife Service
- U.S. Geological Survey

Environmental Protection Agency

These, or any other Federal, state, or local agencies desiring cooperating agency status should send a request describing how they would like to be involved to: Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The request should reference Docket Nos. CP92–182–001 and CP92–415–000 and should be received by June 30, 1992. An additional copy of the request should be sent to the FERC project manager identified at the end of this notice.

Cooperating agencies are encouraged to participate in the scoping process and to provide written information to the FERC. Cooperating agencies are also welcome to suggest format and content specifications to facilitate ultimate adoption of the DEIS. However, the FERC will decide what modifications will be adopted in light of production constraints.

Scoping and Comment Procedures

Public scoping meetings will be conducted in the following cities.

Date	Time	Cities
June 22, 1992.	7 p.m.	Tallahassee, FL.
June 23, 1992.	7 p.m.	Chiefland, FL.
June 24, 1992.	7 p.m.	New Port Richey, FL.

The locations for these meetings and the time and locations for any additional scoping meetings will be published in the **Federal Register** and will be sent to all parties receiving this notice. The scoping meetings are primarily intended to obtain input from state and local governments and the public. Federal agencies have formal channels for input into the Federal process (including separate meetings where appropriate) on an interagency basis. Federal agencies are expected to transmit their comments directly to the FERC and not use the scoping meetings for this purpose.

Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental impacts which they believe should be addressed in the DEIS. Anyone who would like to make an oral presentation at the meeting should contact the project manager identified at the end of this notice to have his or her name placed on the list of speakers. Priority will be given to those persons representing groups. A list will be available at the public meeting to allow for non-preregistered speakers to sign-up. A transcript will be made of the meetings and comments will be used to help determine the scope of the DEIS.

Written comments are also welcome to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues, and to identify and eliminate from detailed study the issues that are not significant. All comments on specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before June 30, 1992, reference Docket Nos. CP92–182–001 and CP92–415–000, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of these comments should also be sent to the project manager identified below.

The DEIS will be available for public comment. A 45-day comment period will be allocated for review of the DEIS.

Any person may file a motion to intervene on the basis of the staff's DEIS [18 CFR 380.10(a) and 385.214]. After these comments are reviewed, any new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will be published by the staff and distributed. The FEIS will contain the FERC staff's responses to comments received on the DEIS.

Copies of this notice have been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, and other interested individuals. Organizations and individuals receiving this Federal notice have been selected to ensure public awareness of this project and public involvement in the review process under the National Environmental Policy Act. Any subsequent information published regarding the FGT Phase III Expansion Project will be sent automatically to the appropriate Federal and state agencies. However, to reduce printing and mailing costs and related logistical problems, the DEIS and subsequent information will only be distributed to those organizations, local agencies, and individuals who return the DEIS Request Form attached as an appendix to this notice by July 31, 1992.

Additional information about the proposal is available from: Mr. Mark Jensen, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, room 7312, 825 North Capitol Street, N.E., Washington, DC 20426, Telephone (202) 208–1121.

Lois D. Cashell,

Secretary.

Appendix—DEIS Request Form

I wish to receive a copy of the draft environmental impact statement being prepared for the FGT Phase III Expansion Project.

Name/Agency _____

Address _____

City _____

State _____

Zip Code _____

[FR Doc. 92–12756 Filed 6–1–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER92–504–000, et al.]

Tucson Electric 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. Tucson Electric Power Company

[Docket No. ER92–504–000]

May 20, 1992.

Take notice that on April 29, 1992, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of Tucson Rate Schedule No. 83.

Comment date: June 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Union Electric Company

[Docket No. EC92–11–000]

May 20, 1992.

Take notice that on May 5, 1992, Union Electric Company (Union) tendered for filing an amendment to its application to sell transmission facilities to Iowa Electric Light & Power Company in this docket.

Comment date: June 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Cities and Villages of Albany and Hanover, Illinois; Alta Vista, Bellevue, Fairbank Fredericksburg, Grafton, Guttenburg, Independence, Lawler, McGregor, Readlyn, Sabula, and Strawberry Point, Iowa; and Rushford and St. Charles, Minnesota v. Interstate Power Company

[Docket No. EL92–25–000]

May 20, 1992.

Take notice that on May 4, 1992, the Cities and Villages listed above ("Cities" or "Complainants") tendered for filing a Complaint and Request for Investigation and Hearing pursuant to Commission Rule 206 (18 CFR 385.206). The Cities request that the Commission initiate an investigation and hold a hearing under sections 205 and 206 of the Federal Power Act to determine whether Interstate Power Company (IPW) has passed through its fuel adjustment clause charges which are not permitted by law or by its tariffs.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket Nos. ER92–376–000, ER92–424–000, and ER92–427–000]

May 20, 1992.

Take notice that on May 15, 1992, Florida Power Corporation (Florida Power) tendered for filing an amendment in the above-referenced dockets.

Comment date: June 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. KIAC Partners

[Docket No. QF91–54–002]

May 20, 1992.

On May 12, 1992, KIAC Partners (Applicant), c/o Airport Cogen Corp., 166 Montague Street, Brooklyn, New

York 11201, 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 topping-cycle cogeneration facility will be located at the John F. Kennedy International Airport, in Queens, New York, and will consist of two combustion turbine generators, two unfired heat recovery boilers and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used for airport and cooling requirements. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 100.3 MW. The facility is expected to be in operation between May 1, 1993 and January 31, 1994.

The certification of the facility was originally issued on March 27, 1991 (54 FERC ¶ 62,206 (1991)). The instant recertification is requested due to the leasing of the facility to the Applicant by The Port Authority of New York and New Jersey, and the O&M agreement made between the said parties. All other facility characteristics remain unchanged as described in the previous recertification.

Comment date: July 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Transmission Agency of Northern California, v. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company

[Docket No. EL92-26-000]

May 21, 1992.

Take notice that on May 8, 1992 as amended on May 20, 1992, Transmission Agency of Northern California ("TANC") tendered for filing an application for an order prescribing terms and conditions for interconnection and coordinated operation of the California-Oregon Transmission Project with what TANC describes as essential facilities of the Pacific Gas and Electric Company and the Pacific AC Intertie owned and operated principally by Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company.

Comment date: June 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Connecticut Valley Electric Company, Inc.

[Docket No. ER92-560-000]

May 21, 1992.

Take notice that on May 18, 1992, Connecticut Valley Electric Company, Inc. tendered for filing a Notice of Termination of Electric Service concerning FERC Rate Schedule No. 006.

Comment date: June 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Connecticut Valley Electric Company, Inc.

[Docket No. ER92-559-000]

May 21, 1992.

Take notice that on May 18, 1992, Connecticut Valley Electric Company, Inc., tendered for filing a Notice of Termination of Electric Service concerning FERC Rate Schedule No. 005.

Comment date: June 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Connecticut Valley Electric Company, Inc.

[Docket No. ER92-558-000]

May 21, 1992.

Take notice that on May 18, 1992, Connecticut Valley Electric Company, Inc., tendered for filing a Notice of Termination of Electric Service concerning FERC Rate Schedule No. 002.

Comment date: June 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Connecticut Valley Electric Company, Inc.

[Docket No. ER92-557-000]

May 21, 1992.

Take notice that on May 18, 1992, Connecticut Valley Electric Company, Inc., tendered for filing a Notice of Termination of Electric Service concerning Rate Schedule F.E.R.C. No. 001.

Comment date: June 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Sierra Pacific Power Company

[Docket No. ER92-556-000]

May 21, 1992.

Take notice that on May 18, 1992, Sierra Pacific Power Company (Sierra) tendered for filing as a change in rates pursuant to 18 CFR 35 *et seq.* an Amendatory Agreement between Sierra and Beowawe Geothermal Power Company (Beowawe). The Amendatory Agreement revises the October 31, 1986 agreement under which Sierra provides transmission services to Beowawe. The substantive revision reflected in the Amendatory Agreement is to increase Beowawe's Transmission Demand from 11,000 kW to 13,000 kW.

Comment date: June 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER92-555-000]

May 21, 1992.

Take notice that on May 18, 1992, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and Fort Pierce Utilities Authority. FPL requests an effective date of July 1, 1992.

Comment date: June 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER92-554-000]

May 21, 1992.

Take notice that PacifiCorp on May 18, 1992, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Transmission Service and Operating Agreements (Agreements) between PacifiCorp and Deseret Generation & Transmission Co-Operative (Deseret) and PacifiCorp and Utah Associated Municipal Power Systems (UAMPS) dated May 1, 1992 and May 7, 1992, respectively.

The Agreements provide for firm transmission services under PacifiCorp's FERC Electric Tariff, Original Volume No. 5, Service Schedule TS-1 and TS-4.

PacifiCorp requests that an effective date of July 1, 1992 be assigned to the Agreements.

Copies of this filing were supplied to Deseret, UAMPS, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: June 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Indiantown Cogeneration, L.P.

[Docket No. QF90-214-001]

May 26, 1992.

On May 19, 1992, as supplemented on May 21, 1992, Indiantown Cogeneration, L.P. of 7475 Wisconsin Avenue, Suite 1000, Bethesda, Maryland 20814-3422, submitted for filing an application for certification 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 topping-cycle cogeneration facility will be located near Indiantown, Florida. The facility will include a pulverized coal-fired boiler and an automatic extraction condensing turbine generator. Steam recovered from the facility will be used for fruit and juice processing in the adjacent Caulkins Indiantown Citrus Company. The maximum net electric power production capacity of the facility will be 360 MW. The primary energy source will be bituminous coal. Installation of the facility is expected to commence in the fourth quarter of 1992. An electric utility will have an ownership interest in the facility.

Comment date: July 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Tucson Electric Power Company

[Docket No. ER92–502–000]

May 26, 1992.

Take notice that on April 29, 1992, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 79.

Comment date: June 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Company

[Docket No. ER92–550–000]

May 26, 1992.

Take notice that New England Power Company (NEP), on May 15, 1992, tendered for filing a proposed addition of Hudson (Mass.) Light & Power Department (HLPD) to NEP's FERC Electric Tariff, Original Volume No. 4. In addition, NEP tendered for filing a proposed change in its service to HLPD under NEP's FERC Electric Tariff, Original Volume No. 3.

The proposed addition would permit HLPD to take transmission service under NEP's FERC Electric Tariff No. 4, which is more economical for HLPD's needs. HLPD continues to take Rate-TD services under NEP's Tariff No. 3 to transmit its power purchase from Refuse Fuels, a Qualified Facility, to NEP's transmission system. The purpose of the revised Service Agreement is to describe the revised delivery points under NEP's Tariff No. 3.

Comment date: June 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. DC Tie, Inc.

[Docket No. ER91–435–003]

May 26, 1992.

Take notice that on April 30, 1992, DC Tie, Inc. filed certain information as required by the Commission's July 11, 1991 letter order in Docket No. ER91–435–000. Copies of DC Tie, Inc.'s informational filing are on file with the Commission and are available for public inspection.

18. Kansas Gas and Electric Company

[Docket No. ER92–552–000]

May 26, 1992.

Take notice that on May 15, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed new service schedule to operate under the Second Supplement to the Electric Interconnection Agreement (the Operating Agreement) between KG&E and the KPL division of Western Resources, Inc. (Formally The Kansas Power and Light Company). KG&E states that the proposed service schedule provides for a one year sale of short term peaking power under the Operating Agreement (Supplement No. 27 to FERC Rate Schedule No. 93) between KG&E and KPL.

Copies of the filing were served upon the KPL division of Western Resources, Inc. and the Kansas Corporation Commission.

Comment date: June 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Northern States Power Company

[Docket No. ER92–551–000]

May 26, 1992.

Take notice that on May 15, 1992, Northern States Power Company (Minnesota) (NSP) tendered for filing a Transmission Exchange Agreement (Agreement) dated May 12, 1992 with Heartland Consumers Power District (Heartland).

The Agreement essentially provides that NSP will provide on an exchange basis outlet transmission service for Heartland's 19.2 MW oil-fired peaking generation located in and leased from the City of Marshall, Minnesota. The City is a full requirements firm municipal transmission service customer of NSP.

NSP requests that the Transmission Exchange Agreement be accepted for filing effective May 16, 1992, one day after filing, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on that date.

Comment date: June 9, 1992, in accordance with Standard Paragraph E end of this notice.

20. WestPlains Energy a Division of UtiliCorp United, Inc.

[Docket No. ER92–553–000]

May 26, 1992.

Take notice that on May 15, 1992, WestPlains Energy a Division of UtiliCorp United Inc. (WestPlains) tendered for filing an amendment to Service Schedule 90–P–1 in order to add five municipal customers (Ashland, Beloit, Lincoln Center, Osborne and Stockton, Kansas (collectively "the Municipalities")) to those eligible for service under that Service Schedule. Service Schedule 90–P–1 was approved by the Commission in a letter order issued April 23, 1990 in Docket No. ER90–274–000. WestPlains states that the five Municipalities were inadvertently omitted from the filing in Docket No. ER90–274–000 and that this filing is to rectify the technical omission so that the five Municipalities will be eligible for service under Service Schedule 90–P–1 was originally intended.

WestPlains requests waiver of the Commission's notice requirements in order to make the amendment effective June 1, 1990 as to Osborne, August 1, 1990 as to Stockton and June 1, 1992 as to Ashland, Beloit and Lincoln Center.

Copies of the filing were served upon each of the Municipalities, and the Utilities Division, Kansas Corporation Commission, Topeka, Kansas.

Comment date: June 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Florida Power & Light Company

[Docket No. ER92–561–000]

May 26, 1992.

Take notice that on May 18, 1992, Florida Power & Light Company (FP&L), tendered for filing a Notice of Cancellation for (i) the Contract for Interchange Service between Florida Power & Light Company and the Sebring Utilities Commission (Sebring), F.P.C. No. 41 (Interchange Agreement) and, (ii) the Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the Sebring Utilities Commission, F.P.C. No. 64 (Transmission Agreement). FPL requests that the Interchange Agreement and the Transmission Agreement be canceled effective May 1, 1992.

Comment date: June 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Dennis P. Baldassari

[Docket No. ID-2716-000]

May 28, 1992.

Take notice that on May 14, 1992, Dennis P. Baldassari (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions:

President and Director—JCP&L
Director—First Morris Bank

Comment date: June 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. 92-12764 Filed 6-1-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed with the Commission

May 27, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

Notice of Application Tendered for Filing With the Commission

a. *Type of Application:* Major License.
b. *Project No.:* 11286-000.
c. *Date filed:* May 4, 1992.
d. *Applicant:* City of Abbeville, South Carolina.
e. *Name of Project:* Abbeville Hydroelectric Project.
f. *Location:* On the Rocky River, in Abbeville and Anderson Counties, South Carolina.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).
h. *Applicant Contact:* David H. Krumwiede, City Manager, P.O. Box 40, Abbeville, South Carolina 29620, (803) 459-2109.
i. *FERC Contact:* Mary C. Golato (dt) (202) 219-2804.
j. *Comment Date:* 60 days from the date in paragraph (c).
k. *Description of Project:* The constructed project consists of the following facilities: (1) An existing dam 500 feet long and 80 feet high; (2) an existing reservoir with a surface area of 1,425 acres and a gross storage capacity of 25,650 acre-feet; (3) an existing powerhouse containing two turbine-generating units having a total existing capacity of 2,800 kW; (4) an existing switchyard; and (5) appurtenant facilities. The owner of the project is the City of Abbeville. The average annual generation will be approximately 8.6 gigawatthours and the cost of the project is $459,040.
1. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-12766 Filed 6-1-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed with the Commission

May 27, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

Notice of Application Tendered for Filing With the Commission

a. *Type of Application:* Minor License.
b. *Project No.:* 10736-001.
c. *Date filed:* May 6, 1992.
d. *Applicant:* Schmidt Industries, Inc.
e. *Name of Project:* Ceresco Dam Project.
f. *Location:* On the Kalamazoo River, near Ceresco, Calhoun County, Michigan.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).
h. *Applicant Contact:* David A. Schmidt, 3290 Patterson Road, Bay City, Michigan 48706, (517) 684-3216.
i. *FERC Contact:* May C. Golato (dt) (202) 219-2804.
j. *Deadline Date:* 60 days from the date in paragraph (c).
k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing 183-foot-long dam; (2) an existing reservoir with 170 acres at 878 feet NGVD-normal pool; (3) a proposed powerhouse containing four turbine-generator units having a total installed capacity of 800 kilowatts; (4) proposed transmission facilities; and (5) appurtenant facilities. The owner of the dam is Schmidt Industries, Inc. The average annual generation is 2,500,000 kilowatthours and the estimated project cost is $518,000.00
l. Pursuant to 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-12765 Filed 6-1-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-212-000]

Stingray Pipeline Co.; Informal Settlement Conference

May 26, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, June 4, 1991, at 9 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 docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(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).

For additional information, contact William J. Collins (202) 208-0248 or Edith A. Gilmore (202) 208-0524.

Lois D. Cashell,

Secretary.

[FR Doc. 92-12768 Filed 6-1-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4138-2]

Proposed De Minimis Settlement Under Section 122(g) of Comprehensive Environmental Response, Compensation and Liability Act, Regarding Sarney Farm Site, Amenia, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency ("EPA") Region II announces a proposed settlement pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Sarney Farm Superfund Site ("Site") in Amenia, Dutchess County, New York. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Order on Consent ("AOC"), is being entered into by EPA and the following parties: the Arthur I. Sarney Revocable Trust (the "Trust"), Arthur I. Sarney (individually and as trustee of the Trust), and Joan W. Sarney (hereinafter collectively referred to as "Respondents"). EPA has determined that Respondents are eligible for a *de minimis* settlement pursuant to section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(B), in connection with the Site.

Under the settlement, Respondents grant EPA and its representatives an irrevocable right of access to the Site for the purposes of monitoring the terms of the AOC and performing response actions at the Site. The AOC also requires Respondents to, among other things, cooperate with EPC in the implementation of response actions at the Site, and exercise due care with respect to the hazardous substances at the Site. EPA, in turn, covenants not to sue Respondents for injunctive relief or cost recovery pursuant to sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606, 9607(a), or section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, with regard to the Site, subject to certain reservations of rights.

DATES: EPA will accept written comments relating to the proposed settlement on or before July 2, 1992.

ADDRESSES: Comments should be sent to: Eric Schaaf, Chief, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 26 Federal Plaza, room 437, New York, NY 10278. For a copy of the AOC, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Henry Guzman, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 26 Federal Plaza, Room 437, New York, NY 10278, telephone: (212) 264-4942.

Dated: May 13, 1992.

William J. Muszwynski,

Acting Regional Administrator.

[FR Doc. 92-12743 Filed 6-1-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-44586; FRL-4068-9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data for isopropanol (CAS No. 67-63-0), submitted pursuant to a final test rule. Test data were also submitted for 4-nonylphenol branched (CAS No. 84852-15-3), submitted pursuant to a testing consent order. All data were submitted uder the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 799.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for isopropanol were submitted by the Chemical Manufacturers Association Isopropanol Panel on behalf of the test sponsors and pursuant to a final test rule at 40 CFR 799.2325. They were received by EPA on May 6, 1992. The submission describes a multi-generation rat reproduction study with isopropanol. Health effects testing is required by this test rule. This chemical is used as a solvent in consumer products and industrial products and procedures.

Test data for 4-nonylphenol branched were submitted by the Chemical Manufacturers Association's Alkylphenol and Ethoxylates Panel pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on April 21, 1992. The submission describes the toxicity of nonylphenol to the tadpole (*Rana catesbiana*). Environmental effects testing is required by this consent order. This chemical is used: (1) As an intermediate in the production of nonionic ethoxylated surfactants, (2) as a reactive intermediate in lube additives, formaldehyde resins, polymeric stabilizers and epoxy resins, and (3) in the manufacture of phosphate antioxidant, oil additives, synthetic lubricants and corrosion inhibitors.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is inable to provide any determination as to the completeness of the submissions.

IL Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44586). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: May 21, 1992.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-12827 Filed 6-1-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Offer To Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Insurance Administration is republishing for public information and convenience the Financial Assistance/Subsidy Arrangement for 1992–1993 governing the duties and obligations of insurers participating in the Write Your Own Program (WYO) of the National Flood Insurance Program (NFIP). The Financial Assistance/Subsidy Arrangement sets forth the responsibilities of the Government to provide financial and technical assistance to the insurers.

DATES: The offer is effective June 2, 1992. The Financial Assistance/Subsidy Arrangement is effective with respect to flood insurance policies written under the Arrangement with an effective date of October 1, 1992, and later.

SUPPLEMENTARY INFORMATION: By way of background, the Federal Insurance Administration (FIA), working with insurance company executives, FEMA's Comptroller's Office and FEMA's Office of the Inspector General, addressed the operating and financial control procedures for the Write Your Own Program. The Statistical Plan (now the Transaction Record Reporting and Processing Plan), Accounting Procedures, and the Financial Control Plan were specifically referenced in the final rule, as amended, and, in addition, procedural manuals have been issued by the FIA in aid of implementation by the WYO companies of the procedures published in the final rule, as amended, such as the Flood Insurance Manual, Flood Insurance Adjuster's Manual, and FEMA Letter of Credit Procedures, all of which comprise the operating framework for the WYO Program.

The purposes of this Notice are:

(1) To offer, publicly, financial assistance to protect against underwriting losses resulting from floods on Standard Flood Insurance Policies written by private sector insurers;

(2) To provide a method by which the offer may be accepted; and

(3) To provide notice of the duties and obligations under the Financial Assistance/Subsidy Arrangement for the Arrangement year 1992–93.

Method of Acceptance of Offer

1. Acceptance of this offer shall be by telegraphed or mailed notice of acceptance or signed Arrangement to the Administrator prior to midnight e.d.t. September 30, 1992.

2. The telegraphed or mailed notice of acceptance to the Administrator must be authorized by an official of the insurance company who has the authority to enter into such arrangements.

3. A duly signed original copy of the Notice of Acceptance must be on file with the Administrator by November 16, 1992.

4. If 1., 2., or 3. above are not satisfied, the acceptance will be considered by the Administrator as conditional and the commitment of NFIP resources to fulfill the "Undertaking of the Government" under Article IV of the Arrangement will take a lower priority than those needed to fulfill the requirement of the other participating insurance companies.

5. Send all acceptances of this offer to: Federal Emergency Management Agency, Attn: Federal Insurance Administrator, WYO Program, Washington, DC 20472.

Offer To Provide Financial Assistance

Pursuant to the provision of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329, and Executive Order 12127 of March 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, Federal Emergency Management Agency, subject to all regulations promulgated thereunder, including the final rule published at 53 FR 15208, April 28, 1988, and to the duties, obligations and rights set forth in the Financial Assistance/Subsidy Arrangement as printed below, the Federal Insurance Administrator, herein the "Administrator," offers to enter into the Financial Assistance/Subsidy Arrangement with any individual private sector property insurance company. This offer is effective only in a State in which such private sector insurance company is licensed to engage in the business of property insurance.

Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

Purpose: To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

Accounting Data: Pursuant to section 1310 of the Act, a Letter of Credit shall be issued for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1992.

Issued By: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

Article I—Findings, Purpose, and Authority

Whereas, the Congress is its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance Program (the Program) "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of section 1345 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (section 1304 of the Act); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be able to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would otherwise not be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

Article II—Undertakings of the Company

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administrator, including
1.1 Community Eligibility/Rating Criteria
1.2 Policyholder Eligibility Determination
1.3 Policy Issuance
1.4 Policy Endorsements
1.5 Policy Cancellations
1.6 Policy Correspondence
1.7 Payment of Agents Commissions

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards and the Financial Control Plan. The Write Your Own Claims Manual, the Federal Emergency Management Agency Adjuster Manual, the FIA National Flood Insurance Program Policy Issuance Handbook, the Write Your Own Operational Overview, and other instructional material also provide guidance to the Company.

3.0 Reports.

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Transaction Record Reporting and Processing Plan for the Write Your Own (WYO) Program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

3.3 The Company shall establish a program of self audit acceptable to the FIA or comply with the self audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to the FIA annually.

B. The Company shall use the following time standards of performance as a guide:

1.0 Application Processing—15 days

(Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);

1.1 Renewal Processing—7 days;
1.2 Endorsement Processing—7 days;
1.3 Cancellation Processing—15 days;
1.4 Correspondence, Simple and/or Status Inquiries—7 days;
1.5 Correspondence, Complex Inquiries—20 days;
1.6 Supply, Materials, and Manual Requests—7 days;
1.7 Claims Draft Processing—7 days from completion of file examination;
1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.
1.9 For the elements of work enumerated above, the elapsed time shown is from date of receipt through date of mail out. Days means working, *not* calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and date processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards can be a factor considered by the Federal Insurance Administrator (the Administrator) in determining the continuing participation of the Company in the Program or other action, e.g., limiting the Company's authority to write new business.

C. The Company shall coordinate activities and provide information to the FIA or its designee on those occasions when a Flood Insurance Catastrophe Office is established.

D. Policy Issuance.

1.0 The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;

3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;

4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;

5.0 The Administrator may require the Company to immediately discontinue issuing policies subject to this Arrangement in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, as a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company may market flood insurance policies in any manner consistent with its customary method of operation, provided that there is adherence to Program statutes, regulations and explicit guidelines, e.g., for the Mortgage Portfolio Protection Program.

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production expenses, including any taxes, dividends, agent's commissions or any board, exchange or bureau assessments, or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold as operating and administrative expenses, other than agents or brokers commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. of this Article, which amount shall equal the average of industry expense ratios

for "Other Acq." "Gen. Exp." and "Taxes" as published in the latest available (as of March 15 of the prior Arrangement year) "Best's" Aggregates and Averages Property Casualty, Industry Underwriting—by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril Combined (weighted average using premiums earned as weights) calculated and promulgated by the Administrator. Premium income net of reimbursement (net premium income) shall be deposited in a special account for the payment of losses and loss adjustment expenses (see article II, section E).

The Company shall be entitled to 15% of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions and/or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Administrator to incur.

D.1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account established under article II, section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to article IV.

2. Loss payments will include payments as a result of awards or judgments for damages arising under the scope of this Arrangement, policies of flood insurance issued pursuant to this Arrangement, and the claims processing standards and guides set forth at article II, section A, 2.0 of this Arrangement. Prompt notice of any claim for damages as to claims processing or other matters arising outside the scope of this section (D)(2) shall be sent to the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services (OIPATS), along with a copy of any material pertinent to the claim for damages arising outside of the scope of the matters set forth in this section (D)(2).

Following receipt of notice of such claims, the General Counsel (OGC), FEMA shall review the cause and make a recommendation to FIA as to whether the claim is grounded in actions by the Company which are significantly outside the provisions of this section (D)(2). After reviewing the General Counsel's recommendation, the Administrator will make his decision and the Company will be notified, in writing, within thirty (30) days of the General Counsel's recommendation, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for reconsideration of the notification that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from funds retained in the bank account established under article II, section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to article IV.

Article IV—Undertakings of the Government

A. Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds, daily, if needed, pursuant to prescribed procedure as implemented by FEMA. The amount of the authorizations will be increased as necessary to meet the obligations of the Company under article III, sections (C), (D), and (E). Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit expenses.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter or Credit. This Letter of Credit may be drawn by the Company for any of the following reasons:

1. Payment of claim as described in article III, section D; and

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refunds as described in article III, section E; and

3. Allocated and unallocated Loss Adjustment Expenses as described in article III, section C.

b. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the Federal Register and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy

Arrangement. In the event the Company chooses not to resubscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, or (2) the transfer to the FIA of:

a. All data received, produced and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

b. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the program including provisions for coordination assistance; and

c. All claims and policy files, including those pertaining to receipts and disbursements which have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) non payment to the FIA of any amount due the FIA. Under these very specific conditions, FIA may require the transfer of data as shown in section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in forces which shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

Article VI—Information and Annual Statements

The Company shall furnish to the FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

A. The FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to article V, section C., the Letter of Credit provided for in article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in article IV which exceed net written premium collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

Article VIII—Arbitration

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the company and the FIA cannot agree on the appointment of an arbitrator, than two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Article X—Officials Not to Benefit

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, it successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement, the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

Article XIV—Access to Books and Records

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Agreement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

Article XV—Compliance With Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this _____ day of _____, 1992.

Company
by _____
(Title) _____

The United States of America
Federal Emergency Management Agency
by _____
(Title) _____

EXHIBIT A—FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous Assignment	$40
Closed Without Payment	125
Minimum for Upton-Jones Claims	800
$0.01 to $600.00	150
$600.01 to $1,000.00	175
$1,000.01 to $2,000.00	225
$2,000.01 to $3,500.00	275
$3,500.01 to $5,000.00	350
$5,000.01 to $7,000.00	425
$7,000.01 to $10,000.00	500
$10,000.01 to $15,000.00	550
$15,000.01 to $25,000.00	600
$25,000.01 to $35,000.00	675
$35,000.01 to $50,000.00	750
$50,000.01 to $100,000.00	1,000
$100,000.01 to $150,000.00	1,300
$150,000.01 to $200,000.00	1,600
$200,000.01 to limits	2,000

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $500) and limited to the amount of insurance purchased.

Notice of Acceptance for Federal Emergency Management Agency; Federal Insurance Administration; Financial Assistance/Subsidy Arrangement (Arrangement)

Whereas, in 1992, there was published a Notice of Offer by the Federal Emergency Management Agency to enter into a Financial Assistance/Subsidy Arrangement (hereafter the Arrangement).

Whereas, the above cited Arrangement, as published in and reprinted from the **Federal Register**, does not provide sufficient space to type in the name of the Company.

Whereas, the Arrangement may include several individual companies within a Company Group and the Arrangement as published in and reprinted from the **Federal Register** does not provide sufficient space to type in a list of companies.

Therefore, the parties hereby agree that this Notice of Acceptance form is incorporated into and is an integral part of the entire Arrangement and is substituted in place of the signature block contained in the **Federal Register** under article XVI of the Arrangement. The above mentioned Arrangement is effective in the States in which the insurance company (ies) listed below is (are) duly licensed to engage in the business of property insurance:

_____

_____

_____

_____

_____

In witness whereof, the parties hereto have accepted this Arrangement on this _____ day of _____, _____.

By: _____

Title: _____

The United States of America
Federal Emergency Management Agency

By: _____

Title: Federal Insurance Administrator

Dated: May 22, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-12713 Filed 6-1-92; 8:45 am]

BILLING CODE 6718-05-M

FEDERAL MARITIME COMMISSION

[Docket No. 92-24]

Frata Shipping PTE, Ltd. v. U.S. Eurasia Lines; Filing of Complaint and Assignment

Notice is given that a complaint filed by Frata Shipping PTE, Ltd. ("Complainant") against U.S. Eurasia Lines ("Respondent") was served May 27, 1992. Complainant alleges that Respondent engaged in violations of section 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(d)(1), by failing to remit Complainant's property, namely specific and identifiable sums of money to Complainant as promised. Complainant requests shorteded procedure pursuant to Commission Rule 181, 46 CFR 502.181.

This proceeding has been assigned to Administrative Law Judge Frederick K. Dolan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by May 27, 1993, and the final decision of the Commission shall be issued by September 24, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 92-12784 Filed 6-1-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. 7100-0128]

Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final approval of agency forms.

SUMMARY: Under the Bank Holding Company Act of 1956, as amended, the Board is responsible for the supervision and regulation of all bank holding companies. Notice is hereby given of final approval by the Board of Governors of the Federal Reserve System of revisions to the Consolidated Financial Statements for Bank Holding Companies With Total Consolidated Assets of $150 Million or More or With More Than One Subsidiary Bank (FR Y-9C; OMB No. 7100-0128), 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), to parallel changes made to the commercial bank Reports of Condition and Income for the March 1992, reporting date.[1] The Board gave approval, on an interim basis, to these revisions on March 26, 1992. The notice of the new reporting requirements was published in the Federal Register on April 8, 1992 (57 FR 11952 April 8, 1992). The Board received no public comments and has determined that the changes as proposed should become final.

These revisions are consistent with the Board's policy to maintain, to the extent possible, agreement between the bank holding company reports and the commercial bank reports. Bank holding companies have reported, in prior quarters, that the impact on reporting burden is lessened when parallel changes are made concurrently to the FR Y-9C bank holding company report and the Reports of Condition and Income.

On March 26, 1992, the Board also gave final approval to changes in the FR Y-9C that were the result of modifications to the components of risk-based capital adopted by the Board in October 1991 and January 1992. In addition, the Board also gave final approval to changes to the FR Y-9C relating to issues of credit availability. Those revisions also were published in the Federal Register on April 8, 1992.

All changes to the reporting requirements for bank holding companies were effective with the March 31, 1992, reporting date.

Revisions Approved under OMB Delegated Authority—the Approval of the Collection of the Following Report:

Report Title: Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of $150 Million or More, or With More Than One Subsidiary Bank.

This report is to be filed by all bank holding companies that have total consolidated assets of $150 million or more *and* by all multibank holding companies regardless of size. The following bank holding companies are exempt from filing the FR Y-9C, unless the Board specifically requires an exempt company to file the report: bank holding companies that are subsidiaries of another bank holding company *and* have total consolidated assets of less than $1 billion; 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 quarterly basis as of March 31, 1992, with a submission date of 45 days after the "as of" date.

Agency Form Number: FR Y-9C

OMB Docket Number: 7100-0128

[1] One of the proposed items parallels an item that was added to the Report of Condition and Income at an earlier date.

Frequency: Quarterly
Reporters: Bank Holding Companies
Annual Reporting Hours: 148,054
Estimated Average Hours per Response: Range from 5 to 1,250 hours
Number of Respondents: 1,598
Small businesses are affected.

The information collection is mandatory (12 U.S.C. 1844) and part of the information is given confidential treatment. Confidential treatment is not routinely given to the remaining information on the form. However, confidential treatment for the remaining information, in whole or in part, can be requested in accordance with the instructions to the form.

FOR FURTHER INFORMATION CONTACT: Arleen Lustig, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-2987), Robert T. Maahs, Senior Financial Analyst, Division of Banking Supervision and Regulation (202/872-4935), or Mark Benton, Financial Analyst, Division of Banking Supervision and Regulation (202/452-5205). 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 System has given final approval under delegated authority from the Office of Management and Budget (OMB) to the revisions in the FR Y-9C (OMB No. 7100-0128), the Consolidated Financial Statements for Bank Holding Companies With Total Consolidated Assets of $150 Million or More or With More Than One Subsidiary Bank, to parallel changes made to the commercial bank Reports of Condition and Income for the March 1992, reporting date.

The FR Y-9C consolidated financial statements are filed by large bank holding companies and bank holding companies with more than one subsidiary bank. The report includes a balance sheet, income statement, and statement of changes in equity capital with supporting schedules providing information on securities, loans, risk-based capital, deposits, interest sensitivity, average balances, off-balance sheet activities, past due loans, and loan charge-offs and recoveries.

The Board gave approval, on an interim basis, to the revisions of bank holding company reporting requirements that parallel the Reports of Condition and Income on March 26, 1992. The notice of the new reporting requirements was published in the **Federal Register** on April 8, 1992 (57 FR 11952 April 8, 1992). The comment period ended on May 8, 1992. No comments were received.

The revisions to the bank holding company reporting requirements received final approval from the Board of Governors of the Federal Reserve System, on May 21, 1992. The revisions approved by the Board are listed below under *Report Form Revisions.*

The FR Y-9 reports historically have been, and continue to be, the primary source of financial information on bank holding companies and their nonbanking activities between on-site inspections. Financial information, as well as ratios developed from the Y series reports, are used to detect emerging financial problems, to review performance for pre-inspection analyses, to evaluate bank holding company mergers and acquisitions, and to analyze a holding company's overall financial condition and performance as part of the Federal Reserve System's overall analytical effort. The revisions to the bank holding company reporting requirements over the last several years have been directed towards: (a) Strengthening the Federal Reserve's ability to monitor risk between on-site inspections, (b) identifying supervisory problems at an earlier stage, and (c) monitoring the bank holding companies' capital adequacy.

Report Form Revisions

FR Y-9C is a set of quarterly financial statements filed by bank holding companies on a consolidated basis. The Board has given final approval to the revisions of the FR Y-9C that are comparable to those revisions made to the commercial bank Reports of Condition and Income for the March 1992, reporting date. These revisions resulted in: (1) The splitting of Schedule HC, item 10.b, into "Purchased credit card relationships" and "All other identifiable intangible assets;" and (2) the addition of detail to Schedule HC-G, Memoranda, item 17, on the outstanding principal balance of 1-4 family residential mortgage loans serviced under contract with quasi-governmental agencies (GNMA, FNMA, and FHLMC) and other contracts to identify varying amounts of risk of loss to the servicer on mortgages serviced under a servicing contract. One additional item, which was included on the commercial bank Reports of Condition and Income effective with the March 1991 reporting date, also was added to Schedule HC-G, item 18, "Excess residential mortgage servicing fees receivable."

Legal Status

The reports are required by law (12 U.S.C. 1844(b) and (c) and § 225.5(b) of Regulation Y, 12 CFR 225.5(b)).The Federal Reserve System has generally not considered the data in these reports to be confidential. However, Column A and Memoranda item 2 of Schedule HC-H, Past Due and Nonaccrual Loans, Lease Financing Receivables, Placements, and Other Assets, and all items of Schedule HC-K, Highly-Leveraged Transactions, are accorded confidentiality by the Federal Reserve System pursuant to section (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(8)). Section (b)(8) exempts matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

In addition, 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. 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."

Regulatory Flexibility Act Analysis

The Board certifies that the above bank holding company reporting requirements 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.*). The reporting requirements for the small companies require significantly fewer items of data to be submitted than the amount of information required of large bank holding companies.

The information that is collected on the reports is essential for the detection of emerging financial problems, the assessment of a holding company's financial condition and capital adequacy, the performance of pre-inspection reviews, and the evaluation of expansion activities through mergers and acquisitions. The imposition of the reporting requirements is essential for the Board's supervision of bank holding

companies under the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, May 27, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-12798 Filed 6-1-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Request for Applications: Capacity Expansion Program

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction notice.

SUMMARY: Public notice was given in the Federal Register on April 20, 1992, Volume 57, No. 76, on pages 14407-14418 that the Office for Treatment Improvement (OTI), in its role of implementing demand reduction programs under the Office of National Drug Control Policy (ONDCP) National Drug Control Strategy is soliciting State applications for the creation of new addiction treatment capacity in high-incidence jurisdictions of greatest need under its FY 1992 Treatment Capacity Program.

An example was inadvertently given in the Availability of Non-Federal Matching Funds section of the notice (page 14411, first column) that non-Federal (State) Medicaid contributions are allowable as a non-Federal match. Non-Federal (State) Medicaid contributions may not be used as a match, thus the second sentence of the section has been corrected to read:

Matching resources may be financial or in-kind, must be derived from non-Federal sources (e.g., State or sub-state non-Federal revenues, foundation grants), and must constitute at least 10 percent of the total annual costs (direct and indirect) of the proposed project(s) for which the assurance is provided.

Dated: May 27, 1992.

Joseph R. Leone,

Associate Administrator for Management.

[FR Doc. 92-12843 Filed 6-1-92; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 92E-0156]

Determination of Regulatory Review Period for Purposes of Patent Extension; Mivacron®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Mivacron® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and

an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Mivacron®. Mivacron® (mivacurium chloride) is indicated for inpatients and outpatients, as an adjunct to general anesthesia, to facilitate tracheal intubation and to provide skeletal muscle relaxation during surgery or mechanical ventilation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Mivacron® (U.S. Patent No. 4,761,418) from Burroughs Wellcome Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated April 21, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Mivacron® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Mivacron® is 2,755 days. Of this time, 2,245 days occurred during the testing phase of the regulatory review period, while 510 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: July 7, 1984. FDA has verified the applicant's claim that the investigational new drug application became effective on July 7, 1984.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: August 30, 1990. FDA has verified the applicant's claim that the new drug application (NDA) for Mivacron® (NDA 20-098) was submitted on August 30, 1990.

3. *The date the application was approved*: January 22, 1992. FDA has verified the applicant's claim that NDA 20-098 was approved on January 22, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 172 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 3, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 30, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 27, 1992.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 92-12845 Filed 6-1-92; 8:45 a.m.]

BILLING CODE 4160-01-F

[Docket No. 92E-0133]

Determination of Regulatory Review Period for Purposes of Patent Extension; Supprelin®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Supprelin® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Supprelin®. Supprelin® (histrelin acetate) is indicated for the control of the biochemical and clinical manifestations of central precocious puberty. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Supprelin® (U.S. Patent No. 4,244,946) from The Salk Institute for Biological Studies, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated March 25, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Supprelin® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Supprelin® is 2,876 days. Of this time, 1,930 days occurred during the testing phase of the regulatory review period, while 946 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: February 8, 1984. No investigational new drug application (IND) effective date was stated in the application for patent extension. FDA records indicate that the IND effective date was February 8, 1984, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: May 22, 1989. The applicant claims May 19, 1989, as the date the new drug application (NDA) for Supprelin® (NDA 19-836) was filed. However, FDA records indicate that NDA 19-836 was submitted on May 22, 1989.

3. *The date the application was approved*: December 24, 1991. FDA has verified the applicant's claim that NDA 19-836 was approved on December 24, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,752 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 3, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 30, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 27, 1992.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 92-12846 Filed 6-1-92; 8:45 a.m.]

BILLING CODE 4160-01-F

[Docket No. 92E-0023]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ticlid®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Ticlid® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ticlid®. Ticlid® (ticlopidine hydrochloride) is indicated to reduce the risk of thrombotic stroke (fatal or nonfatal) in patients who have experienced stroke precursors, and in patients who have had a completed thrombotic stroke. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Ticlid® (U.S. Patent No. 4,051,141) from Syntex (U.S.A.) Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated February 24, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Ticlid® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Ticlid® is 5,487 days. Of this time, 4,772 days occurred during the testing phase of the regulatory review period, while 715 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: October 22, 1976. Applicant claims September 22, 1976, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 22, 1976, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: November 15, 1989. The applicant claims October 31, 1989, as the date the new drug application (NDA) for Ticlid® (NDA 19-979) was filed. However, FDA records indicate that NDA 19-979 was submitted on November 15, 1989.

3. *The date the application was approved*: October 31, 1991. FDA has verified the applicant's claim that NDA 19-979 was approved on October 31, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 731 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 3, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 30, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 21, 1992.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 92-12847 Filed 6-1-92; 8:45 a.m.]

BILLING CODE 4160-01-F

[Docket No. 92E-0024]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ticlid®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Ticlid® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ticlid®. Ticlid® (ticlopidine hydrochloride) is indicated to reduce the risk of thrombotic stroke (fatal or nonfatal) in patients who have experienced stroke precursors, and in patients who have had a completed thrombotic stroke. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Ticlid® (U.S. Patent No. 4,591,592) from Syntex (U.S.A.), Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated February 24, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Ticlid® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Ticlid® is 5,487 days. Of this time, 4,772 days occurred during the testing phase of the regulatory review period, while 715 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: October 22, 1976. The applicant claims September 22, 1976, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 22, 1976, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: November 15, 1989. The applicant claims October 31, 1989, as the date the new drug application (NDA) for Ticlid® (NDA 19–979) was filed. However, FDA records indicate that NDA 19–979 was submitted on November 15, 1989.

3. *The date the application was approved*: October 31, 1991. FDA has verified the applicant's claim that NDA 19–979 was approved on October 31, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 888 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 3, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 30, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 27, 1992.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 92-12848 Filed 6-1-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Food and Drug Administration
[Docket No. 92N-0230]

Drug Export: Vironostika HIV-1,2 Microelisa System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Organon Teknika Corp. has filed an application requesting approval for the export of the biological product Vironostika HIV-1,2 Microelisa System test kits to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Organon Teknika Corp., 100 Akzo Ave., Durham, NC 27704, has filed an application requesting approval for the export of the biological product Vironostika HIV-1,2 Microelisa System test kits to Canada. The Vironostika HIV-1,2 Microelisa System is an enzyme-linked immunosorbent assay (ELISA) for the qualitative detection of antibodies to Human Immunodeficiency Virus, Type 1 (HIV-1) and/or Human Immunodeficiency Virus, Type 2 (HIV-2) in human serum and plasma. The application was received and filed in the Center for Biologics Evaluation and Research on May 6, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 12, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: May 19, 1992.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 92-12844 Filed 6-1-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Health Care Financing Administration

Hearing: Additional Issue To Be Considered at the Hearing for Reconsideration of Disapproval of Texas State Plan Amendment (SPA)

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

ACTION: Notice of additional issue to be considered at the hearing.

SUMMARY: This notice announces an additional issue to be considered at an administrative hearing to reconsider HCFA's decision to disapprove Texas SPA 90-37.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, Telephone: (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an additional issue to be considered at an administrative hearing to reconsider our decision to disapprove Texas State plan amendment (SPA) number 90-37.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we must also publish that notice.

An individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Texas submitted SPA 90-37 on February 1, 1991, requesting to add coverage for rehabilitative chemical dependency residential treatment facility services for recipients of Early Periodic Screening Diagnostic, and Treatment services. Under this SPA, Texas would provide 24-hour supervised living arrangements (including room and board) under which the chemically dependent person would receive individual and group counseling and intensive therapeutic activities designed to initiate and promote the individual's status, free of chemicals of abuse.

On May 2, 1991, HCFA disapproved the amendment on the basis that facilities licensed by the Texas

Commission on Alcohol and Drug Abuse (TCADA), which do not meet the requirements of subpart D of 42 CFR 441, may be institutions for mental diseases (IMDs).

On July 5, 1991, HCFA notified Texas that a hearing was scheduled to reconsider the disapproval, and at the same time, published a notice in the Federal Register announcing the hearing date and the issues to be considered. The hearing which was originally scheduled for August 14, 1991 was postponed. As a result of an April 15, 1992 meeting with the State, HCFA wishes to clarify the May 2, 1991 disapproval and add an additional issue pursuant to 42 CFR 430.74.

The additional issue concerns coverage for room and board associated with chemical dependency services in a residential treatment facility; HCFA believes such coverage may only be permitted if the facility is a participating institutional provider in the State's Title XIX Medicaid program; i.e., a hospital, a nursing facility, an intermediate care facility for the mentally retarded (42 CFR 440.10 and 440.150), or a psychiatric facility that meets the requirements of 42 CFR 441.151 *et seq.*

HCFA believes, from the information furnished during the meeting of April 15, 1992, that many of the residential facilities licensed by the TCADA are not title XIX participating providers. For example, a recovery center, a halfway house, or the broad category of "any other facility" required to be licensed and approved by TCADA (permitted in the State law) does not meet the definitions of a residential facility which may be covered under the Texas State plan.

Therefore, HCFA believes the State may not obtain Federal financial participation in the State's Medicaid program for room and board furnished in these facilities.

The notice to Texas announcing an additional issue to be considered at an administrative hearing to reconsider the disapproval of Texas SPA 90–37 reads as follows:

Donald L. Kelley, M.D., F.A.C.S.,
State Medicaid Director, Texas Department of Human Services, Post Office Box 149030, Mail Stop 000–W, Austin, Texas 78714–9030

Dear Dr. Kelley: Representatives of the Health Care Financing Administration (HCFA), your agency and the Texas Commission on Alcohol and Drug Abuse (TCADA) met in Baltimore, Maryland on April 15, 1992 to discuss Texas State Plan Amendment (SPA) 90–37. As a result of this meeting, and information provided by the State of Texas, HCFA wishes to clarify Administrator Wilensky's letter of May 2, 1991 to you disapproving SPA 90–37, and add an additional issue pursuant to 42 CFR 430.74.

Under SPA 90–37, the State seeks to add coverage for residential chemical dependency rehabilitative services in TCADA licensed residential treatment facilities for Medicaid recipients under age 21 who are eligible for Early and Periodic Screening, Diagnostic, and Treatment services.

The TCADA manual for such licensing, titled Chemical Dependency Treatment Facility Licensure Standards, sets out minimum requirements for operation and kinds of treatment services that are to be provided by TCADA licensed residential facilities. As required by TCADA's licensing program, facilities would provide 24-hour supervised living arrangements (including room and board) for chemically dependent persons. Such persons would receive individual and group counseling and intensive therapeutic activities. The services are provided by or under the auspices of a qualified credentialed professional, as defined in the manual. The State law provisions allow a broad range of residential facilities from hospitals to far less structured residential facilities, e.g., halfway houses, to be licensed by TCADA to provide these services.

A qualified credentialed professional may include a Certified Alcoholism and Drug Abuse Counselor, Certified Social Worker, Advanced Clinical Practitioner, Licensed Professional Counselor, Psychological Associate, Physician, Psychologist, Physician Assistant or Registered Nurse. Non-licensed or non-certified counselors may be included in the staffing of the residential facilities when under the supervision of a qualified credentialed professional. In conjunction with a developed treatment plan for an individual, the services may include medical detoxification services, 24 hour a day medical care and supervision, individual counseling, group counseling, and substance abuse education.

HCFA has previously approved as part of the Texas state plan the provision of counseling and substance abuse education as outpatient rehabilitative services. By SPA 90–37, the State seeks approval to provide these services in an inpatient setting, and to receive Federal financial participation (FFP) for room and board. In the meeting of April 15th, HCFA personnel explained that SPA 90–37 was written so broadly that (a) services furnished in institutions for mental diseases (IMDs) were included, and (b) it would allow for FFP for room and board in facilities which do not meet medicaid statutory and regulatory requirements as participating providers.

As Administrator Wilensky's letter of May 2, 1991 indicated, the amendment as presently written cannot be approved because the treatment facilities may be IMDs. Medicaid services in such facilities cannot be reimbursed for individuals under age 65, unless the services are impatient psychiatric services furnished to recipients under age 21 or over age 64 (42 CFR 435.1008(a)(2), 435.1009, 440.140, 440.160, 441.100, and 441.151).

Whether a residential treatment facility is an IMD is necessarily determined by an evaluation of the individual facility (42 CFR 435.1009). The regulatory definition of an IMD, as interpreted by HCFA's State Medicaid manual, section 4390 B., provides that a facility's character would be determined in accordance with the indicia set out therein, reflecting on the nature of the services performed in the facility. If more than 50 percent of the patients in a facility are to receive medical treatment for mental diseases, including chemical dependency, then a significant determinant exists that the facility is an IMD.

The additional issue which we discussed and are now adding pursuant to 42 CFR 430.74, concerns coverage for room and board associated with chemical dependency services in a residential treatment facility. Such coverage may only be permitted if the facility is a participating institutional provider in the State's Title XIX Medicaid program: i.e., a hospital, a nursing facility, an intermediate care facility for the mentally retarded (42 CFR 440.10 and 440.150), or a psychiatric facility that meets the requirements of 42 CFR 441.151 *et seq.*

It is clear from the information furnished during the meeting of April 15th that many of the residential facilities licensed by TCADA are not Title XIX participating providers. For example, a recovery center, a halfway house, or the broad category of "any other facility" required to be licensed and approved by TCADA (provided in the State law) does not meet the definitions of residential facilities which may be covered under the Texas state plan. Therefore, the State may not obtain FFP in the State's Medicaid program for room and board furnished in these facilities.

Based on the above, I am reaffirming Administrator Wilensky's disapproval of SPA 90–37 on May 2, 1991.

Sincerely,
William Toby, Jr.,
Acting Administrator.

Dated: May 27, 1992.
William Toby, Jr.,
Acting Administrator, Health Care Financing Administration.

[FR Doc. 92–12759 Filed 6–1–92; 8:45 am]
BILLING CODE 4120–03–M

National Institutes of Health

National Center for Research Resources; Meeting of the Biomedical Research Support Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Research Support Advisory Committee, National Center for Research Resources (NCRR), National Institutes of Health, June 26, 1992, Building 31C, Conference room 3C07, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 26, from 9 a.m. to adjournment to discuss program

policies, the Minority High School Student Research Apprentice Program, planning for the Biomedical Research Support Grant Program, and the Biomedical Research Support Shared Instrumentation Grant Program. Attendance by the public will be limited to space available.

Mr. James J. Doherty, Acting Information Officer, NCRR, Building 12A, room 4007, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496–5795, will provide a summary of the meeting and a roster of the Committee members upon request.

Dr. Marjorie A. Tingle, Director, Biomedical Research Support Advisory Committee, (301) 496–6743, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program No. 93.337, Biomedical Research Support, National Institutes of Health)

Dated: May 26, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–12832 Filed 6–1–92; 8:45 am]

BILLING CODE 4140–01–M

Office of Science Policy and Legislation; Meeting—Unconventional Medical Practices

The Office of the Associate Director for Science Policy and Legislation in the Office of the Director, National Institutes of Health (NIH), announces a meeting and public hearing on unconventional medical practices. The meeting is scheduled for June 17 and 18, 1992 from 9 a.m. until 5 p.m., Conference Room 10, Building 31C, Sixth Floor, 9000 Rockville Pike, Bethesda, MD. The purpose of this meeting is to convene a working group on unconventional medical practices and to receive public testimony from individuals and organizations interested in the subject of research and validation of unconventional or alternative medical practices. The entire meeting is open to the public. Attendance by the public will be limited to space available.

Comments received at the meeting will be used by the working group to identify and frame the issues and develop the agenda for a meeting to follow in September 1992. This second meeting will address the issue of an increase in efforts to evaluate unconventional medical practices to be held at a workshop sponsored by the Office of Science Policy and Legislation.

Comments should address the following issues:

(1) Methods to identify and select procedures or therapeutic interventions for evaluation and the development of specific methodologies and measurements of effectiveness of unconventional medical practices and treatments.

(2) The needs or special requirements of investigators who are willing to conduct investigations and are seeking funds for research on unconventional medical practices.

(3) The adequacy of the observational, experiential, theoretical, or scientific basis for such research, including the adequacy of the peer review process to evaluate research proposals on unconventional medical practices.

(4) Activities that could be undertaken by the NIH to encourage research on unconventional medical practices.

(5) The methods to improve the effectiveness of the coordination between the investigators of unconventional medical practices, Institutes, Centers, and Divisions of the NIH, and private entities in supporting such research; and

(6) Activities to disseminate as widely and quickly as possible knowledge developed from research or evaluation of unconventional medical practices.

Any person wishing to make a presentation at the public hearing should notify the contact person by June 8, 1992. A one-page summary of their presentation should accompany the request. Each speaker will be limited to a maximum of five minutes. The full text of all presentations as well as written testimony from individuals not making oral presentations should be available no later than the start of the meeting. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make a brief oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Due to time constraints, only one representative from each organization will be allowed to present oral testimony.

Written requests to participate should be sent to Stephen C. Groft, Pharm. D., Office of the Science Policy and Legislation, National Institutes of Health, 9000 Rockville Pike, Building 1, room 218, Bethesda, MD 20892, 301–402–2466.

Dated: May 27, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92–12831 Filed 6–1–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–00–6310–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for collection of information below has been submitted to the Office of Management and Budget for approval under the provisions of the Paper Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1004–0058), Washington, DC 20503, Telephone 202–395–7340.

Title: Substitution Determination.

OMB Approval Number: 1004–0058.

Abstract: The respondent provides identifying information and date on amount of Federal timber purchased and private timber exported for the historical period. The BLM uses the information to determine whether substitution has taken place.

Bureau Form Number: 5460–17.

Frequency: On Occasion.

Description of Respondents: Firms purchasing BLM timber and exporting private timber.

Estimated Completion Time: 1 Hour.

Annual Responses: 100

Annual Burden Hours: 190

Bureau Clearance Officer (Alternate): Gerri Jenkins 202–653–6105.

Dated: April 9, 1992.

Kemp Conn,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 92–12805 Filed 6–1–92; 8:45 am]

BILLING CODE 4310–84–M

[WO–620–4110–02–241B]

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 collection of information and

related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0034), Washington, DC 20503, telephone 202–395–7340.

Title: Oil and Gas Lease Transfers by Assignment or Operating Rights (Sublease).

OMB Approval Number: 1004–0034.

Abstract: Respondents supply information on forms which are submitted by an applicant wishing to assign/transfer an interest in an oil and gas or geothermal lease.

Bureau Form Numbers: 3000–3, 3000–3a.

Frequency: On occasion.

Description of Respondents: Individuals, small businesses, large corporations.

Estimated Completion Time: ½ hour.

Annual Responses: 60,000.

Annual Burden Hours: 39,000.

Bureau Clearance Officer: (Alternate) Gerri Jenkins (202) 653–6105.

Dated: April 9, 1992.

Adam A. Sokoloski,

Acting AD, Energy and Mineral Resources.

[FR Doc. 92–12806 Filed 6–1–92; 8:45 am]

BILLING CODE 4310–84–M

[UT–942–4212–11; UTU–6717]

Classification Termination and Opening Order; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a Recreation and Public Purposes Classification affecting 20.00 acres of public land in Sevier County, Utah.

FOR FURTHER INFORMATION CONTACT: Michael Crocker, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4118.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purposes Act of June 14, 1926, as amended; 43 U.S.C. 869; 869–4, it is ordered as follows:

1. Pursuant to 43 CFR 2091.7–1(b)(1) and the authority delegated to me by BLM Manual section 1203 (48FR85), classification decision UTU–6717 dated October 28, 1968, which classified 20 acres of public land as suitable for a community dumpsite is hereby revoked insofar as it affects the following described land:

Salt Lake Meridian

T. 25 S., R. 3 W.,
Sec. 7, W½SW¼SW¼.
The area described contains 20.00 acres.

2. The classification provided for segregation of the land against all forms of appropriation under the public land laws, including location under the mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws.

3. At 7:45 a.m. on July 2, 1992, the lands will be opened to appropriation under the public land laws, including location under the mining laws.

James M. Parker,

State Director.

[FR Doc. 92–12852 Filed 6–1–92; 8:45 am]

BILLING CODE 4310–DQ–M

[NV–930–92–4212–14; N–55954]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in Jean, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 of Public Law 94–579, the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 25 S., R. 59 E.,
Sec. 11: E½NE¼SE¼SW¼.
Aggregating 5 acres (gross).

This parcel of land, situated in Jean, Nevada is being offered as a non-competitive sale to Ewing Bros., Inc.

This land is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, and gas.

and will be subject to:

1. An easement in favor of Clark County for streets, roads, public utilities and flood control purposes as follows:

40' along the east side, 30' along the south side and a 20' spandrel area in the SE corner of the parcel.

2. Those rights for water pipeline purposes which have been granted to Nevada State Lands by Permit No. N–36558 under the Act of October 21, 1976.

3. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. Nev–055838 under the Act of February 15, 1901.

4. Those rights for highway purposes which have been granted to Nevada Department of Transportation by Permit No. CC–020583 under the Act of November 9, 1921.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 92–12762 Filed 6–1–92; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Meeting; Klamath River Basin Fisheries Task Force

AGENCY: Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 1 p.m. to 5 p.m. on Monday, June 15 and from 8 a.m. to 5 p.m. on Tuesday, June 16, and from 8 a.m. to 12 Noon on Wednesday, June 17, 1992.

PLACE: The meeting will be held at the Mad River Quality Inn conference room, 3525 Janes Road, Arcata, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader,

U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, suite 212), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). On June 15 the Task Force will hear status reports on the State and Federal workplans for the Klamath River Basin Fisheries Restoration Program, for fiscal years 1990 through 1992. The Task Force will also discuss the process for amending the long range fishery restoration plan. Dates and frequency of opening public comment periods are issues for discussion. On June 16, the Task Force will discuss watershed based action planning and project prioritization with emphasis on development of the Fiscal Year 1993 Federal workplan. On June 16, the Task Force will take action to recommend a Federal workplan to the U.S. Fish and Wildlife Service. Public comment will be accepted at 4:30 p.m. on June 15 and 16, and at 11:30 a.m. on June 17.

Dated: May 21, 1992.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–12804 Filed 6–1–92; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 19, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 17, 1992.

Carol D. Shull,

Chief of Registration, National Register.

California

Napa County

Andrews, William, House, 741 Seminary St., Napa, 92000789
Bank of Napa, 903 Main St. and 908 Brown St., Napa, 92000785
Napa County Courthouse Plaza, Bounded by Coombs, Second, Brown and Third Sts., Napa, 92000778
Noyes Mansion, 1750 First St., Napa, 92000788
Pinkham, Capt. George, House, 529–531 Brown St., Napa, 92000786

Sonoma County

Sweed, Philip, House, 301 Keokuk St., Petaluma, 92000787

Maine

Cumberland County

Evergreen Cemetery, Off W side of Stevens Ave., N of jct. with Brighton Ave., Portland, 92000791
Hamblen Development Historic District, 188–208 Danforth St., Portland, 92000802
Watkins House and Cabins, Jct. of Raymond Cape Rd. and US 302, South Casco, 92000792

Hancock County

Soderholtz, Eric E., Cottage, Off W side of WA 186, .5 mi. S of US 1, West Gouldsboro, 92000793

Penobscot County

All Souls Congregational Church, 10 Broadway, Bangor, 92000790
Wardwell—Trickey Double House, 97–99 Ohio St. Bangor, 92000795

Somerset County

Cotton—Smith House, 42 High St., Fairfield, 92000794

Minnesota

Douglas County

Lake Carlos State Park WPA/Rustic Style Group Camp (Minnesota State Park CCC/WPA/Rustic Style MPS), Off MN 29 on NE shore of Lake Carlos, Carlos Township, Carlos vicinity, 92000776

Itasca County

Coleraine City Hall, 302 Roosevelt Ave., Coleraine, 92000800

Lake County

Larsmont School, Co. Hwy. 61, Two Harbors vicinity, 92000799

Murray County

Lake Shetak State Park WPA/Rustic Style Group Camp (Minnesota State Park CC/WPA/Rustic Style MPS), Off Co. Hwy. 37 on Lake Shetek, Murray and Shetek Townships, Currie vicinity, 92000777

Rock County

Bridge No. 1482 (Iron and Steel Bridges in Minnesota MPS), Off US 75 S of Luverne, Schoneman Park, Luverne Township, Luverne vicinity, 92000775

St. Louis County

St. Louis County District Courthouse, 300 S. Fifth Ave., Virginia, 92000798

Montana

Missoula County

Florence Hotel (Missoula MPS), 111 N. Higgins Ave., Missoula, 92000782

Oklahoma

Tillman County

Humphreys Drugstore Building, 106 E. 2nd St., Grandfield, 92000797
Tillman County Bank of Grandfield, 123 W. 2nd St., Grandfield, 92000796

Tennessee

Coffee County

Manchester Cumberland Presbyterian Church, Jct. of Church and W. High Sts., Manchester, 92000781

Trousdale County

Turney—Hutchins House, TN 25, Hartsville, 92000780

Weakley County

Cary Lawn, 321 Linden St., Dresden, 92000779

Washington

King County

Snoqualmie Falls, Snoqualmie R. below crossing of WA 522, Snoqualmie, 92000784

Thurston County

Steele, Alden Hatch, House, 1010 S. Franklin St., Olympia, 92000783

Wisconsin

Dane County

Oregon Masonic Lodge, 117–119 S. Main St., Oregon, 92000803

[FR Doc. 92–12716 Filed 6–1–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–23 (Preliminary) and 731 TA–565–570 (Preliminary)]

Ferrosilicon From Argentina, Kazakhstan, the People's Republic of China, Russia, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 303–TA/23 (Preliminary) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) and of preliminary antidumping investigations Nos. 731–TA–565–570 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially regarded, by reason of imports from Argentina, Kazakhstan, the People's Republic of China, Russia, Ukraine, and Venezuela of ferrosilicon, provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of

the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Venezuela and to be sold in the United States at less than fair value. The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by July 6, 1992.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 22, 1992.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on May 22, 1992, by AIMCOR, Pittsburgh, PA; Alabama Silicon, Inc., Bessemer, AL; American Alloys, Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech, Inc., Seattle, WA; United Autoworkers of America (locals 523 and 12646); United Steelworkers of America (locals 2528, 3081, and 5171); and Oil, Chemical & Atomic Workers (local 389).

Participation in the Investigations and Public Service List.

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI service list

Pursuant to § 207.7(a) of the Commission's rules the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 12, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brad Hudgens (202–205–3189) not later than June 10, 1992, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 17, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 28, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–12948 Filed 6–1–92; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 92–26]

Henry Chaker, M.D.; Revocation of Registration

On December 13, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Henry Chaker, M.D. (Respondent) of P.O. Box 9009, 2180 Garnet Avenue, San Diego, California, proposing to revoke his DEA Certificate of Registration, AC6573693, and to deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's lack of authorization to handle controlled substances in the State of California.

By letter dated January 21, 1992, Respondent requested a hearing on the issue raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. On February 27, 1992, the Government filed a motion for summary disposition. With the motion, Government counsel attached a copy of the California Medical Board Decision revoking Respondent's medical license in that state. On March 13, 1992, Respondent filed a response to the Government's motion in which he argued the merits of his case and again requested a hearing. Respondent, however, did not deny that his state license had been revoked since October 1990. On March 30, 1992, Judge Bittner issued her opinion and recommended decision, recommending the revocation of Respondent's DEA Certificate of Registration based on his lack of state authorization to handle controlled substances. Neither party filed exceptions to the administrative law judge's opinion and recommended decision and, on May 1, 1992, the administrative law judge transmitted the record to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby enters his final order in this matter.

The administrative law judge found that there was undisputed evidence that the California Medical Board revoked

Respondent's medical license, effective October 10, 1990. Consequently, Respondent is no longer authorized to handle controlled substances in the State of California.

The Drug Enforcement Administration does not have the statutory authority to maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). The Administrator has consistently so held. See *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Wingfield Drugs, Inc., 52 FR 27070 (1987)*; and *Robert F. Witek, D.D.S.*, 52 FR 47770 (1987).

Since there is no dispute about Respondent's lack of state authority to handle controlled substances, the administrative law judge properly granted the Government's motion for summary disposition. When no question of fact is involved, a plenary, adversary administrative proceeding is not required. In such situations, the rationale is that Congress did not intend for agencies to perform the meaningless task of conducting a hearing when no issues remain in dispute. See *United States* v. *Consolidated Mines and Smelting Company, Ltd.*, 445 F.2d 432, 453, (9th Cir. 1971); *N.L.R.B.* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *Philip E. Kirk, M.D.*, Docket No. 82–36, 48 FR 32887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984).

Therefore, based upon Respondent's lack of state authority to handle controlled substances, the administrator concludes that Respondent's DEA Certificate of Registration must 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, AC6573693, previously issued to Henry Chaker, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 2, 1992.

Dated: May 27, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92–12829 Filed 6–1–92; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–27]

Elliott F. Monroe, M.D.; Revocation of Registration

On September 18, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Elliott F. Monroe, M.D. (Respondent) of 4000 Third Street, Panama City, Florida 32401 proposing to revoke this DEA Certificate of Registration, AM6422062, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Respondent's lack of authorization to handle controlled substances in the State of Florida.

The Order to Show Cause was sent to Respondent at his registered location and was returned to DEA unclaimed. The Order was forwarded to another location and was received on January 27, 1992. By letter dated January 28, 1992, Respondent requested a hearing on the issue raised in the Order.

On February 27, 1992, the Government filed a motion for summary disposition. With the motion, Government counsel attached a copy of the Florida Board of Medicine final order revoking Respondent's medical license. On March 16, 1992, Respondent filed a response to the Government's motion. On March 30, 1992, the administrative law judge issued his opinion and recommended decision, granting the Government's motion for summary disposition and recommending revocation of Respondent's DEA Certificate of Registration. No exceptions were filed and, on April 30, 1992, the administrative law judge transmitted the record of these proceedings to the Administrator. After careful consideration of the record in this matter, the Administrator adopts the administrative law judge's opinion and recommended decision.

The Administrator finds that on June 13, 1989, the Florida Board of Medicine suspended Respondent's license to practice medicine. On December 30, 1991, the Board revoked Respondent's state medical license, thereby terminating his authority to prescribe, dispense, administer or otherwise handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 801(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Bobby Watts, M.D., 53 FR 11919 (1988); Wingfield Drugs, Inc., 52 FR 27070 (1987); Robert F. Witek, D.D.S., 52 FR 47770 (1987); Avner Kauffman, M.D., 50 FR 34208 (1985).

In his response to the Government's motion for summary disposition, Respondent acknowledged that he is not currently licensed to practice medicine in the State of Florida. Respondent, however, argued that his DEA registration should not be revoked because he is currently licensed to practice medicine in the State of Texas. For the reasons discussed in the administrative law judge's opinion, the Administrator finds that the status of Respondent's medical license in Texas is irrelevant to this proceeding. Respondent is not currently licensed to practice medicine or authorized to handle controlled substances in Florida, the state where he is registered with DEA. At this time, there is a lawful basis for the revocation of Respondent's registration.

Since there is no dispute about Respondent's lack of authority to handle controlled substances in the State of Florida, the administrative law judge properly granted the Government's motion for summary disposition. When no question of fact is involved, or when the facts are agreed upon, a plenary, adversarial administrative proceeding with the full panoply of due process rights is not obligatory. See *Philip E. Kirk, M.S.*, 48 FR 32887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984).

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, AM6422062, previously issued to Elliott F. Monroe, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 2, 1992.

Dated: May 27, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92–12830 Filed 6–1–92; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-25, 588; TA-W-25, 588A]

The Arrow Co., Cedartown, GA; Albertville, AL; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 23, 1991 applicable to all workers of the Arrow Company in Cedartown, Georgia and Albertville, Georgia. The certification notice was published in the Federal Register on June 5, 1991 (56 FR 25700).

Department is amending the certification to clarify the appropriate worker group. The Department had inadvertently listed the Albertville workers as producing men's shirts in Georgia, instead of Alabama. The intent of the certification is to include all workers at the subject firm who were adversely affected by increased imports of articles like or directly competitive with men's dress shirts.

The amended notice applicable to the above subject firm is hereby issued as follows: All workers of The Arrow Company, Cedartown, Georgia (TA-W-25,588) and The Arrow Company, Albertville, Alabama (TA-W-25,588A) who became totally or partially separated from employment on or after March 13, 1990 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 26th day of May 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-12814 Filed 6-1-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 12, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 12, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 18th day of May 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Baron Handbag (Wkrs)	New York, NY	05/18/92	05/11/92	27,247	Leather Handbags.
Maxtec International Corp. (Wkrs)	Chicago, IL	05/18/92	04/30/92	27,248	Radio Control Devices.
Moeller Manufacturing Corp. (Co)	Lincoln, RI	05/18/92	05/05/92	27,249	Industrial Motors.
Flour City Architectural Metals (BSOIW)	Minneapolis, MN	05/18/92	05/04/92	27,250	Curtain Wall Systems.
DAW Forest Products, Bend Div. (IWA)	Bend, OR	05/18/92	05/06/92	27,251	Dimensional Softwood Lumber.
Kooshies Diapers Int'l, Inc. (Wkrs)	Wills Point, TX	05/18/92	04/30/92	27,252	Cloth Diapers.
Otis Engineering (Wireline Div.) (Wkrs)	New Iberia, LA	05/18/92	05/01/92	27,253	Wireline Logging Oil and Gas.
DeVlieg-Bullard Services Group (Wkrs)	Muskegon Heights, MI	05/18/92	05/06/92	27,254	Machine Tools.
TriQuint Semiconductor, Inc (Wkrs)	Beaverton, OR	05/18/92	05/06/92	27,255	Electronic Integrated Circuits.
Amax Specialty Coppers Corp. (Co)	Carteret, NJ	05/18/92	05/07/92	27,256	Copper.
Fair Shake Co., Inc. (Co)	Forks, WA	05/18/92	05/05/92	27,257	Cedar Shakes and Shingles.
Hinchen Bros., Inc. (Co)	Forks, WA	05/18/92	05/06/92	27,258	Cedar Shakes and Shingles.
Haight Enterprises, Inc. (Co)	Forks, WA	05/18/92	04/28/92	27,259	Cedar Shakes and Shingles.
Rexnord Corp., Roller Chain (Co/USW)	Springfield, MA	05/18/92	05/06/92	27,260	Roller Chain.
Selas Corporation of America (UAW)	Dresher, PA	05/18/92	05/02/92	27,261	Industrial Heat Furnaces.
Morrison Berkshire, Inc. (Co)	North Adams, MA	05/18/92	05/05/92	27,262	Textile Machinery.
Ritz-Tex Manufacturing (Wkrs)	Montrose, PA	05/18/92	05/05/92	27,263	Kitchen Textiles.
Union Texas Petroleum (Wkrs)	Aurora, CO	05/18/92	04/10/92	27,264	Oil and Gas.
Prestolite Electric, Inc. (Wkrs)	Wagner, OK	05/18/92	05/02/92	27,265	Electric Motors.
Pinkham Lumber Co. (Wkrs)	Askland, ME	05/18/92	05/05/92	27,266	Dimensional Softwood Lumber.
Cadence Technologies, Inc. (Wkrs)	Tucson, AZ	05/18/92	04/30/92	27,278	Cable and Harness Assemblies.
Visy Board Packaging, Inc. (Wkrs)	Philadelphia, PA	05/18/92	05/11/92	27,279	Recycled Corrugated Products.
Bowie Mfg, Inc. (Wkrs)	Bowie, TX	05/18/92	04/20/92	27,280	Men's Slacks.
Olney Manufacturing Co. (Wkrs)	Olney, TX	05/18/92	04/20/92	27,281	Men's Slacks.
Haggar Apparel Co. (Wkrs)	Dallas, TX	05/18/92	04/20/92	27,282	Men's Slacks.
ABC Service, Inc. (Wkrs)	Dickinson, ND	05/18/92	05/07/92	27,283	Oil and Gas.
A and A Manufacturing Co. (Wkrs)	Franklin Springs, GA	05/18/92	05/05/92	27,284	Ladies' Blouses.
Scott Paper Worldwide (UPIU)	Philadelphia, PA	05/18/92	05/11/92	27,285	Flat Grade High Gloss Paper.
Kerr-McGee Corp. (Co)	Oklahoma City, OK	05/18/92	05/04/92	27,286	Oil and Gas.
Kerr-McGee Refining Corp. (Co)	Oklahoma City, OK	05/18/92	05/04/92	27,287	Oil, Gas Production.
Chevron USA, Inc. (Wkrs)	Midland, TX	05/18/92	05/04/92	27,267	Crude Oil, Natural Gas.
Wilner Wood Products (Wkrs)	Norway, ME	05/18/92	04/30/92	27,268	Plastic Heels.
Saco Defense, Inc. (Wkrs)	Saco, ME	05/18/92	05/04/92	27,269	Weapons.
Inland Steel Co. (USWA)	East Chicago, IL	05/18/92	05/05/92	27,270	Steel.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Trim-Line, Inc. (Wkrs)	Penndel, PA	05/18/92	04/29/92	27,271	Automotive accessories.
Canton Drop Forge (USWA)	Canton, OH	05/18/92	04/29/92	27,272	Forgings.
John E. Chance & Associates (Wkrs)	Lafayette, LA	05/18/92	04/30/92	27,273	Oil and Gas.
L-Bar Products, Inc. (Co)	Chewelah, WA	05/18/92	05/07/92	27,274	Reprocessed Magnesium Metal.
Hondo Oil and Gas Co. (Co)	Roswell, NM	05/18/92	05/06/92	27,275	Oil and Gas.
NRM Corp. (IAM)	Columbiana, OH	05/18/92	05/04/92	27,276	Tire Building Machinery.
FWA Drilling Co. (Wkrs)	Wichita Falls, TX	05/18/92	05/12/92	27,277	Oil and Gas Drilling.
Kerr-McGee Coal Corp. (Co)	Oklahoma City, OK	05/18/92	05/04/92	27,288	Coal.
Kerr-McGee Chemical Corp. (Co)	Oklahoma City, OK	05/18/92	05/04/92	27,289	Chemicals.

[FR Doc. 92-12813 Filed 6-1-92; 8:45 am]
BILLING CODE 4810-30-M

[TA-W-27,096]

Halliburton Services Houma, LA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 6, 1992 in response to a worker petition which was filed on March 24, 1992 on behalf of workers at Halliburton Services' Houma, Louisiana field office. This site is the subject of investigation TA-W-27,096.

On May 6, 1992, on its own motion, the Department of Labor reopened investigation TA-W-26,918G assigned to Halliburton Services' Houma, Louisiana field office. The revised determination, a certification, was issued May 6, 1992 and remains in affect through May 5, 1994. The revised determination covers the workers at the site of the subject investigation. Therefore, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 22d day of May 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-12817 Filed 6-1-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-27,053]

Schlumberger Well Services Corpus Christi, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 30, 1992 in response to a worker petition which was filed on March 16, 1992 on behalf of workers at Schlumberger Well Services' Corpus Christi, Texas field office. This site is the subject of investigation TA-W-27,053.

On May 6, 1992, on its own motion, the Department of Labor reopened investigation TA-W-26,821 assigned to Schlumberger Well Services' Corpus Christi, Texas field office. The revised determination, a certification, was issued May 6, 1992 and remains in affect through May 5, 1994. The revised determination covers the workers at the site of the subject investigation. Therefore, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 22d day of May 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-12816 Filed 6-1-92; 8:45 am]
BILLING CODE 4510-30-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for the U.S. Merit Systems Protection Board Publication, "Questions & Answers About Appeals"

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of call for riders for the Board's publication, "Questions & Answers About Appeals."

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that the U.S. Merit Systems Protection Board's information publication, "Questions & Answers About Appeals," will be available on a rider basis from the Government Printing Office. Departments and agencies may order this publication by riding the Board's requisition number 2-00131.

DATES: Agency requisitions must be received by the Government Printing Office on or before August 3, 1992.

ADDRESSES: Interested departments and agencies should send requisitions from their Washington, DC, headquarters office authorized to procure printing to the Government Printing Office, Requisition Section, room C-836, Washington, DC 20401. The estimated cost is approximately 50 cents per copy.

FOR FURTHER INFORMATION CALL: Duward Sumner, Office of Management Analysis, U.S. Merit Systems Protection Board, 1120 Vermont, Avenue, NW., Washington, DC 20419, 202-653-8892.

SUPPLEMENTARY INFORMATION: This publication contains general information on the rights of Federal employees to appeal certain personnel actions to the Board, information on how to file an appeal with the Board, and other procedural information regarding the appeals process. The publication is written in a question and answer format to enhance understanding.

In making this publication available, the Board intends to provide general information about appeal rights and procedures in a convenient, readable format for Federal employees and others with an interest in the Board's activities. The publication is not all-inclusive, nor is it regulatory in nature. The availability of this publication does not relieve an agency of its obligation, under the Board's regulations at 5 CFR 1201.21, to provide an employee against whom an action appealable to the Board is taken with notice of the employee's appeal rights and the other information specified in the Board's regulations.

This requisition is for reprinting the latest edition of the publication, dated October 1991.

The Board is unable to fill large volume orders from agencies for this publication; therefore, agencies are urged to take advantage of this opportunity to order copies directly from the Government Printing Office. Because of budgetary constraints, the Board anticipates that this will be the final reprinting of this publication in the current fiscal year and that no additional copies will be printed during fiscal year 1993.

Dated: May 27, 1992.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 92-12769 Filed 6-1-92; 8:45 am]

BILLING CODE 7400-01-M

Call for Riders for the U.S. Merit Systems Protection Board Publication, "Questions & Answers About Whistleblower Appeals"

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of call for riders for the Board's publication, "Questions & Answers About Whistleblower Appeals."

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that the U.S. Merit Systems Protection Board's information publication, "Questions & Answers About Whistleblower Appeals," will be available on a rider basis from the Government Printing Office. Departments and agencies may order this publication by riding the Board's requisition number 2-00132.

DATES: Agency requisitions must be received by the Government Printing Office on or before August 3, 1992.

ADDRESSES: Interested departments and agencies should send requisitions from their Washington, DC, headquarters office authorized to procure printing to the Government Printing Office, Requisition Section, Room C-836, Washington, DC 20401. The estimated cost is approximately 50 cents per copy.

FOR FURTHER INFORMATION CALL: Duward Sumner, Office of Management Analysis, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419, 202-653-8892.

SUPPLEMENTARY INFORMATION: This publication contains information on the rights of Federal employees to appeal personnel actions allegedly based on whistleblowing to the Board and to request stays of such actions. It includes information on how to file whistleblower appeals and stay requests with the Board and other procedural information regarding the appeals process for whistleblower appeals. The publication is written in a question and answer format to enhance understanding.

In making this publication available, the Board intends to provide general information about whistleblower appeal rights and procedures in a convenient, readable format for Federal employees and others with an interest in the Board's activities. The publication is not all-inclusive, nor is it regulatory in nature. The availability of this publication does not relieve an agency of its obligation, under the Board's regulations at 5 CFR 1201.21, to provide an employee against whom an action appealable to the Board is taken with notice of the employee's appeal rights and the other information specified in the Board's regulations.

This requisition is for reprinting the latest edition of the publication, dated October 1991.

The Board is unable to fill large volume orders from agencies for this publication; therefore, agencies are urged to take advantage of this opportunity to order copies directly from the Government Printing Office. Because of budgetary constraints, the Board anticipates that this will be the final reprinting of this publication in the current fiscal year and that no additional copies will be printed during fiscal year 1993.

Dated: May 27, 1992.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 92-12758 Filed 6-1-92; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-36]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee.

DATES: June 12, 1992, 8:30 a.m. to 11 a.m.

ADDRESSES: The National Aeronautics and Space Administration, 600 Independence Avenue, SW., room 226, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Lia LaPiana, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1433).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee (SSAAC) consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Astrophysics Subcommittee provides advice to the Astrophysics Division and to the SSAAC on the operation of the Astrophysics Program and on the formulation and implementation of the Astrophysics research strategy. The Subcommittee will meet to review Subcommittee activities and to discuss future meeting planning, status of the Astrophysics Division, and results of senior reviews of Data Centers. The Subcommittee is chaired by Dr. Irwin Shapiro and is composed of 27 members. The meeting will be open to the public up to the capacity of the room (approximately 50 people including Subcommittee members). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Friday, June 12

8:30 a.m.—Introduction and Remarks by Current Chairman.

8:45 a.m.—Introduction and Remarks by New Chairman.

9 a.m.—Developments Since January 1992 Meeting.

10:15 a.m.—Remarks by New Acting Astrophysics Division Director.

10:45 a.m.—Results of Recent Senior Reviews of Data Centers.

11 a.m.—Adjourn.

Dated: May 26, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-12782 Filed 6-1-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice 92-35]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

DATES: June 23, 1992, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building

10B, room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2367.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics and Space Technology (OAST). The Committee, chaired by Dr. Joseph F. Shea, is composed of 15 members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the Committee members and other participants).

Type of Meeting: Open.

Agenda

June 23, 1992

8 a.m.—Welcome.
8:15 a.m.—Review of Meeting Agenda and Objectives.
8:30 a.m.—Status of Fiscal Year 1993 & Preliminary Fiscal Year 1994 Space Research & Technology Planning.
9:30 a.m.—Technology Review Discussion: Discipline Research in the Research & Technology Base.
12:30 p.m.—Status of Commonwealth of Independent States Space Technology Activities.
1:45 p.m.—Space Research & Technology Program "Vision".
2:15 p.m.—Technology Transfer Improvement.
3:15 p.m.—Overview of the Fall Integrated Technology Plan.
3:45 p.m.—Aerospace Research & Technology Subcommittee Reorganization Plans.
4 p.m.—Ad Hoc Reports and Responses.
4:30 p.m.—Group Discussion.
5 p.m.—Adjourn.

Dated: May 26, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92–12783 Filed 6–1–92; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Publication

The National Commission on Severely Distressed Public Housing announces publication on June 1, 1992, of its Preliminary Report and Proposed National Action Plan pursuant to the requirements of Public Law 101–235. The Commission invites public comment on this draft material. Public comments must be received at the Commission offices by 5 p.m. on July 1, 1992. Free copies of the draft materials can be obtained from, and public comments should be sent to: National Commission on Severely Distressed Public Housing, 1111 18th St., NW., suite 806, Washington, DC 20036. Tel: (202) 275–6933. Fax: (202) 275–7191.

Dated: June 1, 1992.

By Order of the Commission.

Donna Mosley Coleman,

Executive Director.

[FR Doc. 92–12860 Filed 6–1–92; 8:45 am]

BILLING CODE 6820–07–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the Subcommittees on Computers in Nuclear Power Plant Operations and Reliability and Quality

The ACRS Subcommittee on Computers in Nuclear Power Plant Operations and Reliability and Quality will hold a joint meeting on June 16, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, June 16, 1992—8:30 a.m. until the conclusion of business.

The Subcommittees will review NRC research activities for environmental qualification of digital instrumentation and control systems.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Herman Alderman (telephone 301/492–7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individiual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 22, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 12833 Filed 6–1–92; 8:45]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on June 23–24, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information deemed proprietary to the Westinghouse Electric Corporation (W) pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, June 23, 1992—8:30 a.m. until the conclusion of business.

Wednesday, June 24, 1992—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the Westinghouse Electric Corporation's and the NRC staff's proposed test programs in support of the AP600 passive plant design certification effort.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring

to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the Westinghouse Electric Corporation, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., they may have occurred.

Dated: May 22, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 12834 Filed 6–1–92; 8:45am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92–036]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on July 15, 1992, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update of Marine Events.
3. Update of dredging operations in New York harbor.
4. Update on Vessel Traffic Service.
5. Update on Coast Guard regulatory initiatives.
6. Bayonne Bridge work.
7. 40 foot channel through the Kill Van Kull and Newark Bay.
8. "P.O.R.T.S." update.
9. Topics from the floor.
10. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than one day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J.P. BENVENUTO, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Vessel Traffic Service, Building 108, Governors Island, New York, NY 10004–5070; or by calling (212) 668–7429.

Dated: May 14, 1992.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port of New York, NYHTMAC Executive Director.

[FR Doc. 92–12812 Filed 6–1–92; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Advisory Circular: Fatigue and Fail-Safe Evaluation of Flight Structure and Pressurized Cabin for Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC, which provides information and guidance concerning fatigue and fail-safe evaluation of flight structure and pressurized cabin for part 23 airplanes.

DATES: Comments must be received on or before August 3, 1992.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Julea Bell, Standards Staff (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number (816) 426–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."**

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 23–XX–18 and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standard Office (ACE–110), room 1544, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

Fatigue evaluation of pressurized cabins has always been a part of 23 requirement (§ 23.571). Amendment 23–7, effective September 14, 1969, introduced a fatigue requirement for the wing, wing carrythrough, and attaching structure. Amendment 23–34, effective February 17, 1987, added commuter category airplanes to part 23, including an empennage fatigue requirement for these airplanes. SFAR 41 (which applied to part 23 derivative-model airplanes) always had such a requirement. Amendment 23–38, effective October 26, 1989, added a fatigue requirement to § 23.572 for empennage, canard surfaces, tandem wing, and winglets/tip fins for all part 23 airplanes.

Accordingly, the FAA is proposing and requesting comments on AC 23–XX–18, which will provide an acceptable means of compliance with part 23 of the Federal Aviation Regulations (FAR) applicable to fatigue and fail-safe evaluation of flight structure and pressurized cabin for part 23 airplanes.

Issued in Kansas City, Missouri, May 18, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-12789 Filed 6-1-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-92-16]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 22, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Indpendence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 27, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemptions

Docket No.: 006SW.
Petitioner: Robinson Helicopter Company.
Sections of the FAR Affected: 14 CFR 27.955(a)(7) and 27.1305(q).
Description of Relief Sought: To allow Robinson Helicopter Company to demonstrate compliance with FAR 23.955(b) by meeting the requirement of a minimum fuel flow rate of 150 percent of the takeoff power fuel consumption at most critical attitude for the R-44 fuel system.

Docket No.: 106CE.
Petitioner: Raisbeck Engineering.
Sections of the FAR Affected: CAR 3.242(b).
Description of Relief Sought: To amend Exemption No. 5146 by removing unnecessary stringency from conditions and limitations.

Docket No.: 107CE.
Petitioner: Raisbeck Engineering.
Sections of the FAR Affected: 14 CFR 23.1001.
Description of Relief Sought: To allow exemption from requirement for fuel jettison system if maximum landing weight is less than 95 percent of maximum takeoff weight for certain Beech Model 99 and 100 airplanes.

Docket No.: 22451.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.613, 121.619, and 121.625.
Description of Relief Sought: To extend Exemption No. 3585, as amended, which allows member airlines of Air Transport Association of America and similarly situated part 121 operators to dispatch an airplane, under IFR, to a destination airport and to list an alternate airport for that destination airport when the weather forecasts for either one or both of those airports indicate by the use of conditional words, such as "occasionally," "intermittently," "briefly," or "a change of," in the remarks section of such reports that the weather could be below authorized weather minimums at the time of arrival.

Docket No.: 23653.
Petitioner: University of North Dakota.
Sections of the FAR Affected: 14 CFR Appendixes A, C, D, F, and H of part 141.
Description of Relief Sought: To extend the expiration date of Exemption No. 3825E from Appendixes A, C, D, F, and H of part 141 of the Federal Aviation Regulations (FAR). This exemption allows University of North Dakota (UND), Center for Aerospace Sciences, Department of Aviation, students to graduate from the appropriate courses when they have been trained to a specific performance level rather than when they have obtained the minimum flight time requirements of part 141. Additionally, UND requests that this exemption be granted without a specific expiration date.

Docket No.: 24741.
Petitioner: United Airlines.
Sections of the FAR Affected: 14 CFR part 121, appendix H.
Description of Relief Sought: To extend Exemption No. 5219A, which allows United Airlines to allow the 1-year employment requirement for instructors to be met by similar experience with another part 121 operator or in military operations.

Docket No.: 26660.
Petitioner: Keflavik Navy Flying Club.
Sections of the FAR Affected: 14 CFR 91.411(b) and 91.413(c).
Description of Relief Sought: To allow Keflavik Navy Flying Club to use Iceland Air Maintenance to perform tests and inspection of the ATC transponders and pitot static systems installed on the Piper Warrior PA 29-151 and Grumman AA-1B model aircraft.

Docket No.: 26749.
Petitioner: Falcon Jet Corporation.
Sections of the FAR Affected: 14 CFR 43.9(a).
Description of Relief Sought: To allow Falcon Jet Corporation's (FJC) aircraft to be released during the completion process for functional test flights performed by FJC's professional flight crews. The flight crews outfit and complete the new Falcon model aircraft at FJC'S repair station located in Little Rock, Arkansas.

Docket No.: 26214.
Petitioner: Epps Air Service, Inc.
Sections of the FAR Affected: 14 CFR 135.165(b)(5), (6), and (7).
Description of Relief Sought: To extend Exemption No. 5252, which allows Epps Air Service, Inc., to operate certain airplanes equipped with one long-range navigation system and one high-frequency communication system in extended overwater operations.

Docket No.: 26812.
Petitioner: Arkansas Agricultural Aviation Association.
Sections of the FAR Affected: 14 CFR 43.3(g) and 91.417.
Description of Relief Sought: To allow Arkansas Agricultural Aviation Association members' pilots to

remove and replace liquid chemical booms and/or dry chemical spreaders.

Docket No.: 26826.
Petitioner: AAR Aircraft Turbine Center, Inc., and AAR Allen Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 21.237(e)(4).
Description of Relief Sought: To allow AAR Aircraft Turbine Center, Inc., and AAR Allen Aircraft Corporation to export parts or products without requiring a written statement from the importing country listing the conditions not met. Further, the petition requests that the Federal Aviation Administration allow the terms "new", "overhauled", and "repaired" to be used to describe the conditions of the product in Block 12 of the FAA Form 8130–3 Airworthiness Approval Tag.

Docket No.: 26831.
Petitioner: Trans States Airlines, Inc.
Sections of the FAR Affected: 14 CFR 135.219, 135.221, and 135.223.
Description of Relief Sought: To allow Trans States Airlines, Inc. to dispatch or release its Part 135 aircraft to a destination or list an airport as an alternate airport even though the weather reports or forecast contain such conditional words as "a chance of," "occasionally," and others.

Docket No.: 26835.
Petitioner: DynAir Tech of Texas, Inc.
Sections of the FAR Affected: 14 CFR 145.35(c).
Description of Relief Sought: To allow DynAir to repair the Airbus 300 series aircraft in a permanent hangar that does not enclose the empennage.

Docket No.: 26840.
Petitioner: Seneca Flight Operations.
Sections of the FAR Affected: 14 CFR 91.511(a)(2) and 135.165 (b)(5), (6), and (7).
Description of Relief Sought: To allow Seneca Flight Operations to conduct extended overwater flights from the eastern United States to Bermuda and the Caribbean Sea in an aircraft with one long-range communications radio and one long-range navigation unit.

Docket No.: 26843.
Petitioner: National Agricultural Aviation Association.
Sections of the FAR Affected: 14 CFR 43.3(g) 91.417.
Description of Relief Sought: To allow properly certified and trained NAAA member's pilots to remove and replace liquid chemical spray booms and spreaders.

Docket No.: 26847.
Petitioner: FlightSafety International.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought: To allow FlightSafety Academy to provide appropriate computer medium written examinations for flight instructor and airline transport pilot certificates that are equivalent to Federal Aviation Administration (FAA) originated and administered tests.

Docket No.: 26856.
Petitioner: Continental Micronesia Inc.
Sections of the FAR Affected: 14 CFR 121.163 and 121.291.
Description of Relief Sought: To allow Continental Micronesia, Inc., (CMI) to operate without conducting proving tests and actual emergency evacuation partial demonstrations as a demonstration of CMI's compliance capability.

Docket No.: 26865.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.417(c).
Description of Relief Sought: To extend the compliance date for member airlines of the Air Transport Association and other similarly situated air carriers to meet the training requirements for crewmembers in the use of protective breathing equipment.

Dispositions of Petitions

Docket No.: 25060.
Petitioner: McDonnell Douglas.
Sections of the FAR Affected: 14 CFR 21.197.
Description of Relief Sought/ Disposition: To extend Exemption No. 4936 which allows McDonnell Douglas to conduct training of its pilot flightcrew personnel while operating under special flight permits issued for the purpose of production flight testing. Grant, May 11, 1992, Exemption No. 4936A.

Docket No.: 26063.
Petitioner: British Aerospace, Inc.
Sections of the FAR Affected: 14 CFR 121.411, 121,413, part 121 appendix H, 135.337, and 135, 339.
Description of Relief Sought/ Disposition: To extend Exemption No. 5190 which permits part 121 and part 135 certificate holders to utilize British Aerospace, Inc., flight and simulator instructors and check airmen. Grant, May 11, 1992, Exemption No. 5190A.

Docket No.: 26067.
Petitioner: SimuFlite Training International.
Sections of the FAR Affected: 14 CFR 135.303, 135,337, 135.339 and appendix H part 121.
Description of Relief Sought/ Disposition: To extend Exemption No. 5187 which permits SimuFlite, subject to certain conditions and limitations, to use its qualified instructors pilots and approved simulators to train the pilots of part 135 certificate holders that contract with SimuFlite for training. Grant, May 11, 1992, Exemption No. 5187A.

Docket No.: 26721.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 135.63(a)(4) and subparts E, G, and H of part 135.
Description of Relief Sought/ Disposition: To permit Regional Airline Association member airlines and other similarly situated commuter air carriers to train, check and qualify their pilots under §§ 121.681, 121.683 and all sections of subparts N and O, and appendices E, F and H of part 121 of the FAR. Grant, May 8, 1992, Exemption No. 5450.

Docket No.: 26860.
Petitioner: Airline of the Americas, Inc.
Sections of the FAR Affected: 14 CFR 121.358(c)(1).
Description of Relief Sought/ Disposition: To permit Airline of the Americas, Inc. to submit a request for approval of a retrofit schedule after the June 1, 1990 deadline to the Flight Standards Division Manager in the region of the certificate holding district office. Grant, May 12, 1992, Exemption No. 5452.

Docket No.: 26218.
Petitioner: USAir, Inc.
Sections of the FAR Affected: 14 CFR 121.579(a).
Description of Relief Sought/ Disposition: To permit pilots operating USAir's F–100 aircraft to engage the autopilot after takeoff at an altitude of 100 feet above the terrain. Denial, May 6, 1992, Exemption No. 5449.

Docket No.: 26533.
Petitioner: Jump Shack.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/ Disposition: To allow Jump Shack employees, representatives, and other volunteer experimental parachute test jumpers under its direct supervision and control to make tandem parachute jumps, and permit pilots in command of aircraft involved in these operations to allow such persons to make parachute jumps wearing a dual harness, dual parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with § 105.43(a). Grant, May 6, 1992, Exemption No. 5448.

Docket No.: 26868.
Petitioner: Ground Air Transfer, Inc.

Sections of the FAR Affected: 14 CFR 121.358(c)(1).

Description of Relief Sought/ Disposition: To permit Ground Air Transfer, Inc., to submit a request for approval of a retrofit schedule after the June 1, 1990 deadline to the Flight Standards Division Manager in the region of the certificate holding district office. Grant, May 14, 1992, Exemption No. 5453.

[FR Doc. 92-12792 Filed 6-1-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Great Falls International Airport, Great Falls, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Great Falls International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). Two PFC applications were received: One to impose only and one to impose and use. These applications were combined with the consent of the public agency and will be processed as one application.

DATES: Comments must be received on or before July 2, 1992.

ADDRESSES: Comments on the application may be mailed or delivered in triplicate to the FAA at the following address:

Helena Airports District Office, FAA Building, room 2, Helena Regional Airport, Helena, Montana 59601.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. M.J. Attwood, Airport Director of the Great Falls International Airport Authority at the following address:

2800 Terminal Drive, Great Falls, Montana 59404-5599.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Great Falls International Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David P. Gabbert, Manager, Helena Airports District Office, FAA Building, room 2, Helena Regional Airport, Helena, Montana 59601, (406) 449-5271. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Great Falls International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 22, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by Great Falls International Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 27, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 1992.

Proposed charge expiration date: June 30, 2003.

Total estimated PFC revenue: $2,995,900.00.

Brief description of proposed project(s): Airport fire station (only project listed in the application to impose only), connecting taxiway, rehabilitate airport electrical system, rehabilitate runways 16/34 and 3/21, erosion control, land acquisition, security system, perimeter road and master plan.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ commercial operators that file FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Great Falls International Airport Authority.

Issued in Renton, Washington, on May 22, 1992.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92-12796 Filed 6-1-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Worcester Municipal Airport, Worcester, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Worcester Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 2, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Thomas P. Nolan, Acting Airport Director of the Worcester Municipal Airport at the following address: Worcester Municipal Airport, Terminal Building—Second Floor, 375 Airport Drive, Worcester, Massachusetts 01602.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Worcester under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803 (617) 273-7054. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Worcester Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 28, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Worcester was substantially complete within the requirements of § 158.25 of part 158. The

FAA will approve or disapprove the application, in whole or in part, no later than July 28, 1992.

The following is a brief overview of the application. Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1992.

Proposed charge expiration date: June 30, 1997.

Total estimated PFC revenue: $2,300,000.00.

Brief description of proposed project(s): Reconstruct terminal apron and Taxiway "B"; Install centerline and touchdown zone lights for Runway 11–29; Construct parallel taxiway to Runway 11–29.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None excluded.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Worcester Municipal Airport.

Issued in Burlington, Massachusetts on May 20, 1992.

Vincent A. Scarano,

Manager, Airports Division New England Region.

[FR Doc. 92–12791 Filed 6–1–92; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

Change of Name of Approved Trustee

Notice is hereby given that effective March 31, 1989, First City National Bank of Beaumont, Beaumont, Texas, changed its name to First City, Texas—Beaumont, N.A.

Dated: May 27, 1992.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 92–12773 Filed 6–1–92; 8:45 am]

BILLING CODE 4910–81–M

UNITED STATES INFORMATION AGENCY

Cultural Property Advisory Committee; Meeting

AGENCY: United States Information Agency.

ACTION: Notice of subcommittee meeting of the Cultural Property Advisory Committee.

SUMMARY: A subcommittee meeting of the Cultural Property Advisory Committee will be held on Tuesday, June 9 from approximately 9:30 a.m. to approximately 3 p.m. at USIA headquarters, 301 4th Street SW., Conference Room 800–B, Washington, DC. The meeting's agenda will consist of discussion of how to investigate the effectiveness of import bans imposed under the Convention on Cultural Property Implementation Act.

The subcommittee meeting will be open to the public. Due to security requirements and limited space, persons wishing to attend should telephone (202) 619–6612 by 5 p.m. on Friday, June 5, 1992. A list of public attendees will be posted at the security desk of USIA headquarters in order to facilitate access to the meeting room.

Dated: May 27, 1992.

Barry Fulton,

Deputy Associate Director for Educational and Cultural Affairs, U.S. Information Agency.

[FR Doc. 92–12820 Filed 6–1–92; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 106
Tuesday, June 2, 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).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 1, 8, 15, and 22, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 1

Monday, June 1

10:00 a.m.
Annual Briefing on Medical Use of Byproduct Material (Public Meeting)
1:30 p.m.
Briefing on Rulemaking Procedures for Design Certification Under Part 52 (Public Meeting)
3:00 p.m.
Status Report on Enhanced Participatory Rulemaking (Public Meeting)

Tuesday, June 2

10:30 a.m.
Briefing on Status of Licensed Operator Requalification Program and Complex Simulator Scenarios (Public Meeting)

Wednesday, June 3

10:00 a.m
Briefing by INPO on National Academy for Nuclear Training (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Commission Order on Shoreham Decommissioning Issues in Response to SECY-92-140 (Tentative)
2:00 p.m.
Briefing by GE on Status of ABWR Application for Design Certification (Public Meeting)

Week of June 8—Tentative

Thursday, June 11

2:00 p.m.
Discussion of Internal Management Issues (closed—Ex. 2)
3:00 p.m.
Affirmation/discussion and Vote (Public Meeting) (if needed)

Week of June 15—Tentative

Friday, June 19

10:00 a.m.
Briefing on Requests to DOE for Technology Transfers Under 10 CFR Part 810 (Closed—Ex. 1 & 4)
11:30 a.m.
Affirmation/discussion and Vote (Public Meeting) (if needed)

Week of June 22—Tenative

Wednesday, June 24

9:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)
2:30 p.m.
Briefing on Proposed Part 100 Rule Change (Public Meeting)
4:00 p.m.
Affirmation/discussion and Vote (Public Meeting) (if needed)

Thursday, June 25

9:00 a.m.
Briefing by NUMARC on First-of-a-Kind Engineering (FOAKE) (Public Meeting)
1:30 p.m.
Meeting with Professor Feshbach on Electrical Energy Production in the Former Soviet Union (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: May 28, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-12917 Filed 5-29-92; 11:49 am]
BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 57, No. 106
Tuesday, June 2, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 920401-2101]

RIN 0651-AA54

Revision of Patent and Trademark Fees

Correction

In proposed rule document 92-11779 beginning on page 21536 in the issue of Wednesday, May 20, 1992, make the following corrections:

1. On page 21536, in the third column, in the last line, "1933" should read "1993".

2. On page 21537, in the first column, under *Workload Projections*, in the second paragraph, in the fifth line from the bottom, "1933" should read "1993".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ACE-1]

Proposed Alteration and Establishment of VOR Federal Airways

Correction

In proposed rule document 92-10909 beginning on page 20067 in the issue of Monday, May 11, 1992, make the following correction:

§ 71.1 [Corrected]

On page 20067, in the third column, in § 71.1, under V-255, in the second line, "265°" should read "264°".

BILLING CODE 1505-01-D

federal register

Tuesday
June 2, 1992

Part II

Department of Justice

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment and Instruction of Inmates; Administrative Detention Order; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment and Instruction of Inmates; Administrative Detention Order

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its rule on Inmate Discipline and Special Housing Units in order to make a nomenclature change involving administrative detention. Previously this rule specified that the Warden shall prepare a memorandum detailing the reasons for placing an inmate in administrative detention. A special form in memorandum format entitled Administrative Detention Order is used by the Warden for this purpose. In order to clarify that no other memorandum is required, the Bureau is substituting the words "Administrative Detention Order" or "order", as appropriate, for "memorandum".

EFFECTIVE DATE: June 2, 1992.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Inmate Discipline and Special Housing. A final rule on this subject was published in the **Federal Register** on January 5, 1988 (53 FR 197) and amended on October 17, 1988 (53 FR 40686) and September 22, 1989 (54 FR 39095 and 39095). In this amendment, the Bureau is substituting the words "Administrative Detention Order" or "order", as appropriate, for "memorandum" in paragraph (b) of 28 CFR 541.22 in order to clarify that the memorandum-formatted form used by the Bureau of Prisons is sufficient to detail the reasons for placement of an inmate in administrative detention. For ease of understanding, the entirety of paragraph (b) is printed below in order to incorporate this nomenclature change.

Because this amendment is editorial in nature and relates to agency management, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of Executive Order 12291. The Bureau of Prisons has determined that Executive Order 12291 does not apply to this rule because the rule pertains to agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 541

Prisoners.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), part 541 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING

1. The authority citation for 28 CFR part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 541.22, paragraph (b) is revised to read as follows:

§ 541.22 Administrative detention.

* * * * *

(b) *Administrative Detention Order Detailing Reasons for Placement.* The Warden shall prepare an administrative detention order detailing the reasons for placing an inmate in administrative detention, with a copy given to the inmate, provided institutional security is not compromised thereby. Staff shall deliver this order to the inmate within 24 hours of the inmate's placement in administrative detention, unless this delivery is precluded by exceptional circumstances. An order is not necessary for an inmate placed in administrative detention when this placement is a direct result of the inmate's holdover status.

* * * * *

[FR Doc. 92–12761 Filed 6–1–92; 8:45 am]

BILLING CODE 4410–05–M

federal register

Tuesday
June 2, 1992

Part III

Department of Education

Drug Prevention Programs in Higher Education; Analysis and Dissemination Program Competitions; Dissemination of Successful Projects; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.183E]

Drug Prevention Programs in Higher Education; Analysis and Dissemination Program Competitions: Dissemination of Successful Projects; Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To provide grants to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs). Grants awarded under Analysis and Dissemination Program competitions support projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-Wide Program competitions and Special Focus Program competitions.

Eligible Applicants: IHEs and consortia of IHEs.

Note: Under 34 CFR 612.2(d) eligibility under this Analysis and Dissemination Program competition is limited to current or former recipients of awards under an Institution-Wide Program competition or a Special Focus Program competition.

Deadline for Transmittal of Applications: July 17, 1992.

Applications Available: June 2, 1992.

Available Funds: $400,000.

Estimated Range of Awards: $35,000 to $150,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 612.

Priorities

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(d) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects designed to disseminate successful project designs, policies, and results of projects supported under Institution-Wide Program competitions and Special Focus Program competitions.

Note: Because Institution-Wide and Special Focus projects are diverse, the Department has not adopted a single operational definition of a "successful project." Instead, the Secretary expects applicants to make their most persuasive case for the success of their project and to provide convincing evidence that the project is effective and worth disseminating to other campuses. What constitutes convincing evidence may differ from one project to the next. Applicants may wish to strengthen their case by providing data on several project outcomes associated with the use of alcohol and other drugs. Examples of such outcomes include, but are not limited to, the following:

(a) Changes in students' knowledge, social skills, intentions, attitudes, and perceptions of risk.

(b) Changes in institutional policies and their enforcement.

(c) Changes in the campus social environment.

(d) Changes in rates of students' use of alcohol and other drugs.

(e) Changes in the incidence of student-related campus crime and other violations of law or campus policies.

(f) Changes in the incidence of student-related injury or death.

(g) Changes in student attrition rates, graduation rates, and academic achievement.

Invitational Priorities: Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet one or both of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1

Applications to assist other IHEs in the implementation of a successful Institution-Wide project. The project to be disseminated is based on the applicant's own successful Institution-Wide project for which departmental assistance has ended.

Invitational Priority 2

Applications to disseminate information on a specific successful project component, approach, or type of activity. The component, approach, or type of activity to be disseminated is based on the applicant's own successful Institution-Wide project and a number of other Institution-Wide projects for which departmental assistance has ended. The applicant would disseminate information to (a) IHEs, (b) one or more higher education associations or other national associations, or (c) both (a) and (b).

Selection Criteria: In evaluating applications for grants under the Analysis and Dissemination Program, the Secretary uses the selection criteria in 34 CFR 612.23(c)(3).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Design (34 CFR 612.23(c)(3)(i)). Five points are added to this criterion for a possible total of 35 points.

Key personnel (34 CFR 612.23(c)(3)(iii)). Five points are added to this criterion for a possible total of 20 points.

Evaluation (34 CFR 612.23(c)(3)(iv)). Five points are added to this criterion for a possible total of 15 points.

For Applications or Information Contact: Donald R. Fischer, FY 1992E–1 Competition, FIPSE, U.S. Department of Education, 400 Maryland Avenue SW., room 3100, ROB–3, Washington, DC 20202–5175. Telephone: (202) 708–5771. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. eastern time.

Program Authority: 20 U.S.C. 3211.

Dated: May 27, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–12776 Filed 6–1–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
June 2, 1992

Part IV

Department of Education

Special Studies Program; Notices

DEPARTMENT OF EDUCATION

Final Funding Priority for Fiscal Years 1992–1993 for the Special Services Program

AGENCY: Department of Education.

ACTION: Notice of final funding priority for Fiscal Years 1992–1993 for the Special Studies Program.

SUMMARY: The Secretary announces a final priority for the Special Studies program to ensure effective use of program funds and to direct funds to an area of identified need during fiscal years 1992 and 1993.

EFFECTIVE DATES: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue SW., Room 3524 Switzer Building, Washington, DC 20202–2640. Telephone (202) 732–1099. Deaf and hard of hearing individuals may call (202) 732–6153 for TDD services.

SUPPLEMENTARY INFORMATION: The Special Studies program, authorized by section 618 of part B of the Individuals with Disabilities Education Act (IDEA), as amended, supports studies to evaluate the impact of the Act, including efforts to provide a free appropriate public education and early intervention services to infants, toddlers, children, and youth with disabilities. The results of these studies must be included in the annual report submitted to the Congress by the Department.

This priority supports AMERICA 2000, the President's strategy for moving the nation toward the National Education Goals, by improving our understanding of the complex and critical finance issues related to enabling children and youth with disabilities to reach the high levels of academic achievement called for by the National Education Goals.

On January 28, 1991, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (57 FR 3257). That notice contained the following three proposed priorities:

(1) State Agency—Federal Evaluation Studies Projects;

(2) State Agency—Federal Evaluation Studies Projects—Feasibility Studies of Impact and Effectiveness; and

(3) The Center for Special Education Finance.

A notice of final priorities for FY 1992 will not be published for priorities (1) and (2). Instead, a notice inviting applications for State Agency awards based on regulations for this program and invitational priorities is being published separately in the **Federal Register.**

Public Comment

In the notice of proposed priorities, the Secretary invited comments on the proposed priority. The Secretary did not receive any comments. Except for minor technical revisions, the Secretary has made no changes since publication of the proposed priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that respond to the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Priority—The Center for Special Education Finance (CFDA 84.159G)

Issue and Background

Policy makers at the Federal, State, and local levels need financial and fiscal information as decisions are made regarding the provisions of special education services to children with disabilities. The IDEA, as amended, embodies broad mandates including the provision of a free appropriate public education to children with disabilities within the least restrictive environment. The expense of fulfilling these mandates continues to interest policy makers. As the number of children receiving special education has increased, there is concern that scarce education dollars be allocated in the most beneficial and equitable manner. For this reason, there continues to be a demand for timely and comprehensive estimates of educational expenditures for students with disabilities. Readily available and usable financial information is needed to provide Federal, State, and local administrators with a means to assess their respective agencies program expenditures. Knowledge of special education finance is needed in planning and improving programs that affect all school-aged children. Many schools are being restructured, seeking greater regulatory and financial flexibility, and implementing initiatives such as school choice. Implementation of these ventures affects children with disabilities and the costs associated with providing them a free appropriate public education. Policy makers at all levels, who must be responsive to increasing concerns over education expenditures, need to know special education costs and other financial information as they make funding decisions related to these initiatives and other programs intended to benefit all children. It is also critical to understand the impact of particular relationships between general and special education finance systems with respect to the programs, services, and outcomes of children with disabilities associated with implementation of the IDEA.

Policy makers are confronted with a number of finance issues for which potential alternatives are needed. Among these issues is the need to understand the way in which funding acts as an incentive or disincentive in the implementation of Federal, State, and local policies. Policy makers and administrators repeatedly request findings about the ways in which funds from multiple sources or programs at the Federal and State levels can be used in combination to support services. In addition, recent litigation concerning funding formulas and the financing of education has generated increased interest in legal issues associated with financing special education services. In the previous seven years, one-half of all States had revised their special education formula. Responding to policy makers' need for current, comparative information, the National Association of State Directors of Special Education recently updated and expanded a directory of State special education funding formulas. The 1989 edition describes relationships between State general and special education and finance systems. However, because funding formulas change, the need to periodically update directories of State formulas is expected to continue indefinitely.

Over the past decade, the Office of Special Education Programs (OSEP) and others have carried out projects relating to special education finance. In 1981, for example, with OSEP funding, the Rand Corporation.(Kakalik, Furry, Thomas and Carney, 1981) conducted a large-scale survey of expenditures for students with disabilities in a study known as "The Cost of Special Education." Because data was collected for the 1977–1978 school year, unfortunately, the estimates reflected only a partial implementation of the provisions and mandates of the IDEA, since full implementation did not occur until 1980. In 1984 OSEP funded a congressionally mandated study, known as the Expenditure Survey, to determine the costs of special education and related services (Moore, Strang, Schwartz, and Braddock, 1988). Both the Rand Corporation and the Expenditure Survey were based on a resource

allocation approach. The Expenditure Survey utilized a refinement of the approach known as the Resource Cost Model and provided administrators and policy makers with needed information regarding the average per pupil expenditures for special education and related services, the specific programs and services provided by districts to students with disabilities, and the percentage of costs paid for with Federal funds under part B of the IDEA. Other cost studies have been conducted as well. Utilizing individual child data, the Collaborative Study of Children with Special Needs (Singer and Raphael, 1988), jointly funded by OSEP and the Robert Wood Johnson Foundation, reported on health and educational expenditures received by children with disabilities in five large, diverse urban school systems.

University researchers and State level policy analysts have also conducted cost studies and other investigations of such related topics as the costs and benefits of special education services. In a recently funded OSEP policy study of the special education delivery system (Research Triangle Institute), the relationships between expenditures and service delivery patterns were investigated. These individual projects provide important information, but individually they do not have the capacity to report and interpretively describe special education finance and expenditure data and related issues in a timely manner. In addition, one-time projects are unable to respond to emerging financial trends and issues related to the availability and delivery of special education and related services to individuals with disabilities. Therefore, policy makers must often rely on limited finance policy alternatives in the face of changing educational, legal and economic events.

Finally, dissemination and utilization of the results of the finance studies, particularly expenditure surveys, are often problematic. Studies end; results are distributed. However, there is currently no ongoing resource available that a State or local official could access to help solve an ongoing or emerging finance issue even though considerable information currently exists and an outstanding level of expertise in finance issues is available from universities, government agencies, and private or public organizations.

Purpose

The purpose of this priority is to support one cooperative agreement to establish a Special Education Finance Center to provide policy makers and administrators at the Federal, State, and local levels with data, analyses, expertise, and opportunities for information sharing regarding complex and critical finance issues. The Center must provide continuity and an ongoing capacity to respond as well as anticipate the needs for special education finance information as they change over time. The Center must develop and model methodologies that could be used by State or local agencies to study finance issues. The approach must use previous and current finance studies and utilize the expertise of some of the Nation's most knowledgeable people to address the challenging and complex issues related to financing services for children with disabilities. Specific purposes of the Center are to:

(1) Provide estimates and financing sources of educational expenditures responsive to the information needs of Federal, State, and local representatives, regarding (a) children with disabilities ages 3 through 21, and (b) special education programs, including related services (see Activity 1–1a);

(2) Conduct policy studies and develop policy alternatives for addressing critical and emerging finance policy issues including interagency cost sharing and the relationship between finance alternatives and implementation of the IDEA (see Activity 1–1b (1), (2), and (3)); and

(3) Obtain, maintain, and exchange up-to-date information on State special education funding formulas, and the relationship between these and general education finance systems (see Activity 1–1b(4).

Activities

1. Develop an Agenda Responsive to Federal, State, and Local Needs for Special Education Finance Data

The Center must develop and implement an agenda for responding to Federal, State and local needs for special education finance data. For the purpose of identifying emerging areas for which cost data are needed, a network of participating local and State educational agencies must be formed. The Center must implement strategies and studies to obtain information that is needed by State and local educational agencies, and that are consistent with the activities contained in this priority announcement.

1a. Compile Expenditure Statistics—Analyses of Per Pupil Expenditure and Program/Service Costs

Valid and comparable data is needed to meet administrators' needs for accurate, useable information. The Center must carry out empirical cost analyses that use data from a network of local educational agencies (LEAs) and extant data from cost studies (at the national, State, or other levels). Topics must be selected that are responsive to the finance information needs of Federal, State and local policy makers and administrators. The Center must review the information and methodologies used by previous finance studies, and in consultation with a network of local educational agencies and the OSEP Project Officer, develop and implement an approach for identifying the finance questions and analyses to be performed.

A cost approach must be used that is capable of providing several types of estimates of expenditures for children with disabilities ages 3 through 21. The analyses must include cost estimates for average per pupil expenditures for special education and related services, the specific program and services provided by districts to students with disabilities, and the percentage of costs born by the Federal, State, and local education agencies. If appropriate, this information must be available for all the federally recognized categories of disabling conditions and all conditions combined (20 U.S.C. 1401(a)(1)). The approach and database must be configured to allow States seeking to collect representative data at the local level to adapt and model the analytic approach. The Center must work with OSEP to identify problems that affect the quality of data and to propose strategies for collecting the required data in a manner that is minimally burdensome and produces valid expenditure data.

1b. Conduct Special Education Finance Policy Studies

Using available information and experts in finance and policy issues, the Center must conduct policy studies to examine critical and emerging finance issues. The Center must develop policy options for addressing important finance policy issues by providing a forum for the Nation's finance experts to consider specific finance issues. Finance issues for which a better understanding or alternatives are needed must be identified and examined. Policy studies must use methodologies (e.g., simulation, quantitative, and qualitative) and samples appropriate to the specific inquiry. Reports must be prepared in a manner that is useful to administrators and policy makers. Development of finance policy options at the Federal, State, and local levels must be addressed. Types of policy studies to be conducted are:

(1) Policy studies of cost sharing and other alternative financing approaches. Interagency cost sharing and other alternative approaches to financing education at the Federal, State, and local levels must be identified or developed. Various topical areas covering a variety of approaches must be selected for which information and options are needed. Studies of these approaches must be conducted, and options shared with appropriated audiences.

(2) Studies of the relationship between finance alternatives and services provided to children with disabilities. Studies of the relationships between finance options and the delivery of services to children with disabilities must be conducted. For example, a study might address the manner in which specific finance systems act as an incentive or disincentive in the implementation of key provisions of the IDEA (e.g., identification, assessment, placement, provision of services in the least restrictive environment, specially designed instruction, and use of personnel or related services.) Analyses must investigate the extent to which finance systems may affect children with varying disabling conditions differently.

(3) Other special topics. Of particular concern to policy makers and program administrators is the issue of flexibility related to Federal streams of categorical funding. Inadequate attention has been given to the accounting procedures needed to support greater flexibility in the use of Federal, State, and local funds. Another issue is the extent to which finance systems affect the relationships of the identification of learning disabled students under the IDEA and disadvantaged students under chapter 1 of the Elementary and Secondary Education Act. Special analyses examining alternative accounting approaches that either have or could potentially satisfy audit requirements while achieving greater flexibility in the use of funds need to be identified, documented, and disseminated. Other areas that should be considered for study and development of options include, for example, the impact of various school reforms on special education finance such as school choice, the costs associated with dual enrollment of private school students, and legal issues related to specific finance options (e.g., legal aspects of funding formulas).

(4) Aggregate and exchange information regarding state special education finance systems. The Center must also develop and maintain information about State special education finance systems, including funding formulas. The Center must review previous compilations and develop a system for maintaining updated abstracts of special education finance systems. The system must also contain descriptive profiles of the relationship between State special and general education finance systems and narratives describing potential policy implications of the specific finance systems.

A Special Education Finance Center Study Agenda must be submitted by the end of the sixth month after award and thereafter annually, at the beginning of each successive year of the cooperative agreement. The agenda must include a list and description of Proposed Expenditure Studies (1a) and proposed policy studies of finance issues and alternatives (1b/1–4). The description must provide a detailed abstract of the finance and policy studies to be carried out in that year, and a general proposal of potential topics in the subsequent years of the project.

2. Exchange and Dissemination

The second major activity of the Center is to exchange and disseminate both the finance and cost data analyzed by the Center (Activity 1a), and the results of the finance policy studies (Activity 1b). The Center must develop and maintain the databases used to analyze cost and finance information under Activity 1a. The databases and the reports describing the results of the cost and finance studies must be exchanged and disseminated to relevant audiences. The results of the policy studies (Purpose 2) must be shared with and distributed to relevant audiences. Through Activity 2 the Center must establish and maintain linkages with relevant policy, finance, and (regular and special) educational entities to exchange and disseminate findings.

The audiences for Center products are diverse, necessitating exchange and dissemination that is tailored to the needs of various users. Products must be designed, and if necessary prepared in various forms to accommodate the information needs of the research community, policy makers, administrators, advocacy groups and other interested individuals. Charts, digests, scenarios, methodological tools, access to data bases, analyses and case studies are potential products to be developed by the Center. During year one, the project must include a plan for dissemination of products that describes the target audiences, how findings will be shared, formatting of products, and timelines for dissemination. The plan must be updated annually, as necessary, to reflect modifications in the Center agenda prepared under Activity 1.

Phasing

The Secretary will approve one cooperative agreement with a project period of sixty months subject to the requirements of 34 CFR 75.253(a) for annual continuation awards. The continuation project for year four must include a detailed analysis of the first three years progress and accomplishments, plus an assessment of the benefits to be derived from continuing the project, and if needed, any adjustments to the original work plan.

Products

During the five-year period of award the Center must produce and disseminate (1) cost studies utilizing the network of participating State and local education agencies and extant data sources; (2) a plan for improving the quality of expenditure data; (3) policy studies of finance issues and alternatives; and (4) updated profiles of State special education finance systems.

Applicable Program Regulations: 34 CFR part 327.

Program Authority: 20 U.S.C. 1418.

(Catalog of Federal Domestic Assistance Number 84.159, Special Studies Program)

Dated: May 21, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–12778 Filed 6–1–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.159G]

Special Studies Program; Inviting Applications for New Awards for Fiscal Year 1992

Purpose of Program: To support studies for improving program management, administration, delivery, and effectiveness necessary to provide educational opportunities and early interventions for all children with disabilities from birth through age 21.

Eligible Applicants: State and local educational agencies, institutions of higher education, public agencies, and private nonprofit and for-profit organizations are eligible for awards under this competition.

Deadline for Transmittal of Applications: July 23, 1992.

Applications Available: June 8, 1992.

Available Funds: $400,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months (includes 2-year option).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; (b) The regulations for this program in 34 CFR part 327, as amended on October 22, 1991. See 56 FR 54686–54705.

Priority: The notice of final priority for the Center for Special Education Finance, published elsewhere in this issue of the **Federal Register.**

This priority supports AMERICA 2000, the President's strategy for moving the nation toward the National Education Goals, by improving our understanding of the complex and critical finance issues related to enabling children and youth with disabilities to reach the high levels of academic achievement called for by the National Education Goals.

For Applications or Information Contact: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3524 Switzer Building, Washington, DC 20202–2640. Telephone: (202) 732–1099. Deaf and hard of hearing individuals may call (202) 732–6153.

Program Authority: *20 U.S.C. 1418.*

Dated: May 27, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education, and Rehabilitative Services.

[FR Doc. 92–12777 Filed 6–1–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
June 2, 1992

Part V

Department of Agriculture

Cooperative State Research Service Small Business Innovation Research Grants Program for Fiscal Year 1993; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Small Business Innovation Research Grants Program for Fiscal Year 1993; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law 99–591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Grants Program. This program will be administered by the Office of Grants and Program Systems, Cooperative State Research Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging minority and disadvantaged participation in technological innovation. The total amount expected to be available for Phase I of the SBIR Program in fiscal year 1993 is approximately $2,000,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 1, 1992. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture.
8. Industrial Applications

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR part 3403, as amended, 56 FR 47881, September 20, 1991. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, as amended, (7 CFR part 3015), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-free Workplace (Grants), (7 CFR part 3017), New Restrictions on Lobbying, (7 CFR part 3018), and Managing Federal Credit Programs, (7 CFR part 3), apply to this program. Copies of 7 CFR part 3403, 7 CFR part 3015, 7 CFR part 3017, 7 CFR part 3018, and 7 CFR part 3 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for fiscal year 1992 or who have recently requested placement on the list for fiscal year 1993, will automatically receive a copy of the fiscal year 1993 solicitation: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Washington, DC 20250–2200, Telephone (202) 401–5048.

Done at Washington, DC, this 27th day of May 1992.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 92–12815 Filed 6–1–92; 8:45 am]

BILLING CODE 3410–22–M

federal register

Tuesday
June 2, 1992

Part VI

Department of Labor

Pension and Welfare Benefits Administration

Announcement of Revised Enforcement Policy with Respect to Welfare Plans with Participant Contributions; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[ERISA Technical Release 92-01]

Announcement of Revised Enforcement Policy With Respect to Welfare Plans With Participant Contributions

The purpose of this Release is to announce the Pension and Welfare Benefits Administration's revised enforcement policy with respect to cafeteria and certain other contributory welfare plans and to provide general guidance on the application of the trust and reporting and disclosure rules under Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to such plans.

The Participant Contribution Regulation

In 1988, the Department published the plan assets-participant contribution regulation (29 CFR 2510.3–102) defining when amounts that a participant pays to or has withheld by an employer for contribution to a plan (including elective contributions) constitute plan assets. The regulation (effective August 15, 1988) provides that such contributions become plan assets as of the earliest date they can reasonably be segregated from the employer's general assets, but in no event later than 90 days from receipt by the employer.

With respect to the application of the plan assets-participant contribution regulation, the Department notes that the regulation contemplates that all amounts that a participant pays to or has withheld by an employer for purposes of obtaining benefits under a plan become plan assets without regard to when related plan expenses or benefits ar paid by the employer. At such time as participant contributions can reasonably be segregated from the employer's general assets and, therefore, constitute plan assets, plan fiduciaries are obligated under ERISA to treat those assets as any other assets of the plan, which includes ensuring compliance with applicable trust and reporting and disclosure requirements of ERISA.

Technical Release No. 88–1

Recognizing that the application of the plan assets-participant contribution regulation may have presented particular problems for plan sponsors and fiduciaries of cafeteria plans, the Department announced, in Technical Release No. 88–1 (August 12, 1988), an enforcement policy pursuant to which the Department would not assert a violation in any enforcement proceeding solely because of the failure to hold participant contributions to cafeteria plans in trust, pending consideration by the Department of regulatory relief from the trust requirement. In conjunction with the enforcement policy, the Department also expressed a willingness to consider regulatory relief from the trust requirements for other types of contributory welfare plans.

The Department notes that, while the Technical Release invited applications for regulatory relief for contributory welfare plans generally, the announced enforcement policy was expressly limited to ERISA's trust requirements as they apply to cafeteria plans.

Application of Reporting and Disclosure Requirements

Since the publication of Technical Release No. 88–1, a number of questions have been raised regarding the application of ERISA's reporting and disclosure requirements to contributory welfare plans in general and to cafeteria plans electing not to establish a trust in reliance on Technical Release No. 88–1. Specifically, these questions relate to the circumstances under which such plans may avail themselves of the reporting and disclosure exemptions set forth in regulations at 29 CFR 2520.104–20 and 2520.104–44. In general, these regulations provide relief for certain welfare plans from various reporting and disclosure requirements of part 1 of title I of ERISA, including, in the case of plans with fewer than 100 participants, the requirement to file an annual report and, in the case of a plan with 100 or more participants, the requirement to engage an independent qualified public accountant.

Pursuant to the regulations, exemptive relief is available only to those welfare plans with respect to which: (i) Benefits are paid solely from the general assets of the employer (or employee organization) maintaining the plan; or (ii) benefits are provided exclusively through insurance contracts or through a qualified health maintenance organization (HMO), the premiums for which are paid directly by the employer (or employee organization) from its general assets or partly from its general assets and partly from contributions from its employees (or members), provided that contributions by participants are forwarded to the insurance carrier or HMO by the employer (or employee organization) within three months of receipt; or (iii) benefits are provided partly from the general assets of the sponsor and partly through insurance contracts or through a qualified HMO, as described in (ii). (See: sections 2520.104–20 and 2520.104–44 for specific relief and conditions).

In accordance with the terms of the regulations, the relief afforded by §§ 2520.104–20 and 2520.104–44 is not available to any welfare plan with respect to which benefits or premiums are paid from a trust. Moreover, even in the absence of a trust (*e.g.*, where a cafeteria plan elects not to establish a trust in reliance on Technical Release No. 88–1), the exemptive relief would, in the absence of additional relief, be available only to those contributory welfare plans which apply participant contributions toward the payment of premiums in accordance with the terms of the regulations. For example, a welfare plan that applies participant contributions directly to the payment of benefits (or indirectly by way of reimbursement to the employer) would not qualify for exemptive relief because the benefits under such a plan could not be considered as paid "solely from the general assets of the employer." At least part of the benefits of such a plan would be considered paid from plan assets. Once the participant contributions are used, directly or indirectly, to pay benefits, they are, by definition, segregable from the employer's general assets.

Enforcement Policy Statement

The Department is continuing to consider whether, and to what extent, relief from the trust requirements may be appropriate for certain types of contributory welfare plans. In connection with its consideration of the trust issues, the Department also is considering the extent to which reporting and disclosure relief may be appropriate for contributory welfare plans with respect to which relief from the trust requirement is made available.

The Department recognizes that there has been considerable confusion on the part of sponsors and fiduciaries of cafeteria and other contributory welfare plans with respect to the scope of the enforcement policy set forth in Technical Release No. 88–1 and with respect to the application of the reporting and disclosure exemptions referred to above. The Department also recognizes that requiring such plans to be brought into compliance with the trust and reporting and disclosure requirements for which the Department is currently considering regulatory relief may result in many sponsors incurring significant, and possibly unnecessary, administrative costs and burdens pending final resolution of the nature and scope of the relief to be provided in this area. For these reasons, the

Department has decided to announce the following enforcement policy, which is intended to provide interim relief to plan sponsors and fiduciaries of certain contributory welfare plans pending consideration of these issues by the Department.

In the case of a cafeteria plan described in section 125 of the Internal Revenue Code, the Department will not assert a violation in any enforcement proceeding solely because of a failure to hold participant contributions in trust. Nor, in the absence of a trust, will the Department assert a violation in any enforcement proceeding or assess a civil penalty with respect to a cafeteria plan because of a failure to meet the reporting requirements by reason of not coming within the exemptions set forth in §§ 2520.104–20 and 2520.104–44 solely as a result of using participant contributions to pay plan benefits or expenses attendant to the provision of benefits.

In the case of any other contributory welfare plan with respect to which participant contributions are applied only to the payment of premiums in a manner consistent with §§ 2520.104–20(b)(2) (ii) or (iii) and 2520.104–44(b)(1) (ii) or (iii), as applicable, the Department will not assert a violation in any enforcement proceeding or assess a civil penalty solely because of a failure to hold participant contributions in trust.

In the case of either of these types of plans, with respect to which a trust is not established in reliance on this Release, the reporting exemptions would continue to be available where participant contributions are used within three months of receipt to pay premiums as provided in §§ 2520.104–20 and 2520.104–44.

This Release supersedes Technical Release No. 88–1. The enforcement policy set forth in this Release shall remain in effect until the earlier of December 31, 1993, or the adoption of final regulations providing relief from the trust and reporting and disclosure requirements of Title I of ERISA.

The Department cautions that the foregoing enforcement policy in no way relieves plan sponsors and fiduciaries of their obligation to ensure that participant contributions are applied only to the payment of benefits and reasonable administrative expenses of the plan. Utilization of participant contributions for any other purpose may result not only in civil sanctions under Title I of ERISA but also criminal sanctions under 18 U.S.C. 664. See *U.S.* v. *Grizzle,* 933 F.2d 943 (11th Cir. 1991).

FOR FURTHER INFORMATION CONTACT: Cary L. Gilbert, Office of Regulations and Interpretations, (202) 523–8671 (not a toll free number).

Signed at Washington, DC, this 28th day of May 1992.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–12835 Filed 6–1–92; 8:45 am]

BILLING CODE 4510–29–M

federal register

Tuesday
June 2, 1992

Part VII

Department of Education

Urban Community Service Program, FY 1992; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.252]

Urban Community Service Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To encourage the use of urban universities as sources of skills, talents and knowledge that can serve the urban areas in which they are located in meeting urban problems. This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. This program encourages urban universities to work with local schools—both public and private—and community-based organizations and businesses to address urban community problems, including school system and student performance.

Eligible Applicants: An urban university or consortium of such institutions.

Deadline for Transmittal of Applications: July 17, 1992.

Deadline for Intergovernmental Review: September 17, 1992.

Applications Available: June 2, 1992.

Available Funds: $8,000,000.

Estimated Range of Awards: $200,000–$600,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

Priority: Under 34 CFR 75.105(c)(3) and 20 U.S.C. 1137b(b), the Secretary gives an absolute preference to applications that meet the following priority:

Applications that contain cooperative arrangements among urban universities, community colleges, and other institutions of higher education, and other entities in the public, private, and non-profit sectors within an urban area. The amount of funds to be reserved for this priority will be established after determining the number of high-quality applications received.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in EDGAR, 34 CFR 75.210.

The Regulations in 34 CFR 75.210 (a) and (c) provide that the Secretary may award up to 100 points for the selection criteria, including an additional 15 points. The Secretary distributes the additional 15 points as follows:

Fifteen points are added to the Evaluation Plan criterion for a possible total of 20 points. 34 CFR 75.210(b)(6).

For Applications or Information Contact: Mr. W. Stanley Kruger, Director, Division of Higher Education Incentive Programs, U.S. Department of Education, 400 Maryland Avenue SW., room 3022, ROB–3, Washington, DC 20202–5251. Telephone: (202) 708–7389. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1137–1138b.

Dated: May 29, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–12945 Filed 5–1–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
June 2, 1992

Part VIII

Department of Transportation

Research and Special Programs Administration

City of New York; Application for Waiver of Preemption as to Fire Department Regulations Concerning Pickup/Delivery Transportation of Flammable and Combustible Liquids and Flammable and Combustible Gases; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. WPDA-1; Waiver of Preemption Determination No. 1 (WPD-1)]

City of New York Application for Waiver of Preemption as to Fire Department Regulations Concerning Pickup/Delivery Transportation of Flammable and Combustible Liquids and Flammable and Combustible Gases

APPLICANT: The City of New York.

LOCAL LAW AFFECTED: Fire Prevention Directives 3–76, 5–63, 6–76, and 7–74 of the City of New York's Bureau of Fire Prevention.

APPLICABLE FEDERAL REGULATIONS: Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*, and the Hazardous Materials Regulations, 49 CFR parts 171–180, issued thereunder.

MODE AFFECTED: Highway.

SUMMARY: This is an administrative ruling by the Research and Special Programs Administration (RSPA) of the U.S. Department of Transportation (DOT) on an application by the City of New York (City) for a waiver of preemption as to certain sections of four City Fire Protection Directives (FPDs). This ruling was applied for, and is issued, pursuant to provisions of RSPA's Hazardous Materials Program Procedures set forth at 49 CFR 107.215–107.227.

RSPA denies the City's application for a waiver of preemption as to the design and construction requirements for trucks transporting flammable and combustible liquids, grants a waiver of preemption as to the requirements on emergency transfers and discharging gasoline by gravity into underground tanks; and dismisses the City's application without prejudice for lack of information as to the requirements for transporting compressed gases. RSPA finds that the City's inspection and permit requirements (as general safety measures, separate from its equipment requirements) and the smoking prohibitions are not preempted, and no action is taken with respect to those requirements. RSPA's determination as to each FPD section covered by the City's application is set forth in Part IV below. The analysis in Part III presents the basis on which these determinations have been reached.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research & Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

I. General Authority and Waiver of Preemption Under the HMTA

II. Background

A. The City's Application for Waiver of Preemption
1. Summary of the City's requirements
a. Equipment requirements
b. No smoking regulations
c. Emergency transfer requirements
d. Inspection and permit system
2. Scope of the City's requirements
B. Litigation and Agency Administrative Action

III. Discussion and Analysis

A. Equipment Requirements—Flammable and Combustible Liquids
1. Tank trucks and the liquids carried
a. Trucks allowed under City and DOT regulations
b. Pickup and delivery of gasoline and fuel oil
c. Pickup and delivery of other liquids
d. Alleged conflicts with Federal standards
2. Safety evaluation of City and DOT tank trucks
a. Potential damage from accidents
b. Accident frequency
c. Accident results and damage
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IV. Ruling

V. Petition for Reconsideration/Judicial Review

I. General Authority and Waiver of Preemption Under the HMTA

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It "replace[d] a patchwork of state and federal laws and regulations * * * with a scheme of uniform, national regulations." *Southern Pac. Transp. Co.* v. *Public Service Comm.*, 909 F.2d 352, 353 (9th Cir. 1980). The Hazardous Materials Regulations (HMR) have been promulgated in accordance with the HMTA's direction that the Secretary of Transportation "issue regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce." 49 App. U.S.C. 1804(a)(1).

"[U]niformity was the linchpin in the design of the [HMTA]," including the 1990 amendments to that statute. *Colorado Public Utilities Comm.* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). Congress believed that uniform regulations promote safety in the transportation of hazardous materials, specifically finding in 1990 that:

> (3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements.
>
> (4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable.
>
> (5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

49 App. U.S.C. 1801 note.

Unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, the HMTA (49 App. U.S.C. 1811(a)) explicitly preempts "any requirement of a State or political subdivision thereof or Indian tribe" if

> (1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,
>
> (3) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or
>
> (3) It is preempted under section 105(a)(4) [49 App. U.S.C. 1804(a)(4), describing five "covered subject" areas] or section 105(b) [49 App. U.S.C. 1804(b), dealing with highway routing requirements] * * *

The HMTA further provides that the Secretary of Transportation may waive preemption, in response to an application which "acknowledges" preemption, upon a determination that

the State, local or Indian tribe requirement "(1) affords an equal or greater level of protection to the public than is afforded by the requirements of [the HMTA] or the regulations issued under [the HMTA], and (2) does not unreasonably burden commerce." 49 App. U.S.C. 1811(d). A party to a waiver of preemption proceeding may seek judicial review of the Secretary's decision "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

The Secretary of Transportation has delegated to RSPA the authority to decide applications for a waiver of preemption, except for those concerning highway routing which were delegated to the Federal Highway Administration (FHWA). 56 FR 31343 (July 10, 1991). RSPA's regulations concerning waivers of preemption are set forth at 49 CFR 107.215–107.227 (including amendments published in the Federal Register on February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)).

Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety decides whether to grant a waiver or not. "Any person aggrieved by" RSPA's decision on the City's application for a waiver may file a petition for reconsideration within 20 days of service of that decision. 49 CFR 107.223(a). Any party to this proceeding may seek review of RSPA's decision "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 App. U.S.C. 1811(e). If a petition for reconsideration is filed, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final decision. 49 CFR 107.223(e).

In making decisions on applications for waiver of preemption, RSPA is guided by the principles and policy set forth in Executive Order No. 12612, entitled "Federalism." 52 FR 41685 (Oct. 30, 1987).

II. Background

A. The City's Application for Waiver of Preemption

In its October 10, 1991 application, the City requests a waiver of preemption as to requirements set forth in parts or all of 19 separate sections of FPDs 3–76, 5–63, 6–76 and 7–74. The specific requirements are set forth in full in Part I of the City's application; that application (without its exhibits) is reproduced in Appendix A to RSPA's November 15, 1991 Public Notice and Invitation to Comment. 56 FR 58126, 58128.

1. Summary of the City's Requirements

The FPD provisions for which the City requests a waiver of preemption limit the size and type of trucks that can be used for the pickup and delivery of flammable and combustible liquids and gases; prescribe certain procedures for handling such materials and for transfers of flammable and combustible liquids in an emergency; prohibit smoking on trucks transporting flammable and combustible liquids; and establish an inspection and permit system.

a. *Equipment requirements*—(i) Tank trucks for the pickup and delivery of gasoline and other flammables must be single unit vehicles (semi-trailer and full-trailer vehicles are not allowed); the tank must be made of "selected steel," must be no larger than 4,000 gallons in volume (with a 5% space for expansion), and must be elliptical in shape with internal compartments no larger than a specified size. In 4,000 gallon tanks, longitudinal baffle plates to prevent sloshing must be provided. FPD 7–74 §§ 4, 5, 29. The tank of a gasoline truck must be painted red, with "GASOLINE" in white letters of a specified size on the sides and rear of the tank. FPD 7–74 § 28. Flammable liquids may be "discharged" from a tank truck only by gravity. FPD 7–74 § 3.

(ii) Tank trucks for the pickup and delivery of combustible liquids, including home heating oil, must be either single-unit or semi-trailer vehicles (full trailers are prohibited). A tank must be made of "open hearth or blue annealed steel throughout" (or other materials which will provide equivalent "tank strengths and rigidities"), may not be larger than 4,400 gallons, and must have internal compartments. The same requirements apply to heavier grades of "oil such as Number 4, 5 and 6 fuel oil," except that for these heavier grades the tank size may be as large as 6,500 gallons, and compartments are not necessary. However, tanks larger than 5,500 gallons must have a baffle or baffles to prevent sloshing. FPD 6–76 §§ 4, 5, 24.

(iii) Tank trucks may not be used for the storage, transport or delivery of liquified petroleum gases, 22 other named gases (or mixtures thereof), or "[o]ther gases which may be deemed hazardous by the Fire Commissioner." Full trailers more than 12 feet long and 75 cubic feet in volume may not be used to transport compressed gases of any kind. FPD 5–63 § 10. Cylinders or containers of compressed gas must be restrained, "not loaded in a position which would prevent the proper functioning of the safety devices * * *" (which the City interprets as any position other than upright), and have a safety cap in place during transport. FPD 5–63 § 5.1.2, NYC Appl. 28.

b. *No smoking regulations*—Federal regulations prohibit smoking within 25 feet of a truck carrying, or while loading or unloading, flammable materials. The City extends its no smoking rules to persons on tank trucks carrying combustible liquids and mixtures "at all times," and on platform trucks "while transporting or delivering" flammable liquids or petroleum or shale oils (or the liquid products thereof). FPDs 6–76 § 25, 3–76 § 12.

c. *Emergency transfer requirements*—In an "emergency caused by an accident or defective" equipment, flammable or combustible liquids or mixtures may be transferred from a tank or platform truck "only to vehicles with Fire Department permits or otherwise authorized * * *" and when "authorized by a representative of the Fire Department." FPDs 7–74 § 26, 6–76 § 26, 3–76 § 14.

d. *Inspection and permit system*—Tank trucks for flammable and combustible liquids, and any trucks used to transport compressed gases, must have a Fire Department permit, valid for no more than one year, evidenced by a metal plate and "yearly renewal tab" attached to the truck. There is a fee for the permit. FPDs 7–74 § 1, 6–76 § 1, 5–63 §§ 1, 9. The regulations themselves do not mention an inspection, but state that the applicant must provide "such information as [the Fire Commissioner] shall require."

2. *Scope of the City's Requirements*

The requirements for which the City seeks a waiver of preemption apply throughout the City, in all five boroughs—Manhattan, Bronx, Brooklyn, Queens and Staten Island. With the exception of the "no smoking" prohibition in FPD 6–76 § 25, these requirements are among those which RSPA determined to be preempted in Inconsistency Ruling No. IR–22. 52 FR 46574 (Dec. 8, 1987), correction, 52 FR 48107 (Dec. 29, 1987), and the Administrator's Decision on Appeal (IR–22(A)), 54 FR 26698 (June 23, 1989). An application for a determination of inconsistency as to separate requirements in these FPDs relating to

driver training and certification is presently before RSPA in Docket No. IRA–40C. The City has decided to revise or eliminate many other requirements in these FPDs, and it has not asked for a waiver of preemption as to those other requirements. NYC Reply 7.

The City emphasizes that the FPDs covered by its waiver application do not apply to "through" traffic, *i.e.*, vehicles that transit the City without stopping for pickup or delivery and which are subject to separate routing and time restrictions; however, trucks which meet the requirements of these FPDs are exempted from the City's routing and time restrictions on through traffic. NYC Reply 4–5. These routing and time restrictions were determined to be inconsistent with, and preempted by, the HMTA and the HMR in Inconsistency Ruling No. IR–23, 53 FR 16840 (May 11, 1988); the City's appeal from that determination is pending. See 53 FR 32185 (Aug. 23, 1988). (These "through" traffic regulations, as considered in IR–23, also apply to "deliveries to piers, airports and shipping terminals for transshipment out of the City." However, movements in the opposite direction—pickups at piers or shipping terminals for transport out of the City—are governed by the FPDs for which a waiver of preemption is sought.)

The City also stresses that it has issued variances or waivers of the requirements in these FPDs, "upon a showing of limited use consistent with safety," NYC Reply 27, apparently under the Fire Commissioner's authority to "modify or waive such provisions * * * consistent with public safety." FPDs 7–74 § 33–1, 6–76 § 27–1, 3–76 § 15–1. Among the examples cited by the City is the variance granted to Castle Oil Corporation "for seven of its large aluminum tankers to pick up fuel oil at its bulk storage facility in the City and truck it to customers outside the City without stopping for any in-City deliveries at all, on the condition that the trucks keep to certain routes that were prescribed for them by the Fire Department * * * " NYC Reply 28.

B. Litigation and Agency Administrative Action

The City's requirements at issue here have been the subject of litigation in Federal court. On October 18, 1991, shortly after RSPA received the City's waiver application, the United States District Court for the Eastern District of New York issued an order, in *National Paint & Coatings Ass'n, Inc.* v. *City of New York*, No. CV–84–455 (ERK), confirming that the City had acknowledged preemption of the provisions of FPDs 3–76, 5–63, 6–76, and 7–74 for which it seeks a waiver here. The district court found that (except for the no smoking rules) these requirements were preempted and enjoined the City from further enforcement of them; however, the court stayed for 150 days its injunction against enforcement of the provisions for which the City had applied to RSPA for a waiver of preemption.

RSPA's November 15, 1991 notice solicited public comments on the City's waiver application. When RSPA announced it would not be able to issue a decision on the City's waiver application before the expiration of the Court's 150-day stay, see Public Notice and Reopening of Comment Period, 57 FR 6767 (Feb. 27, 1992), the City renewed an earlier request for a "temporary stay of preemption." After considering the materials and arguments submitted by the City and opponents to the City's request, RSPA found it had no authority to either (1) extend the Court's own stay of its injunction or (2) grant a temporary or interim waiver of preemption pending its final decision. Accordingly, on March 12, 1992, RSPA denied the City's request for interim relief. 57 FR 10057 (Mar. 23, 1992).

The day after RSPA denied the City's request for an interim waiver of preemption, the City asked the Federal court to extend its 150-day stay of the injunction against enforcement of the requirements for which a waiver had been applied. In a March 23, 1992 order, the Federal court denied the City's request. It stated that "a temporary waiver of the preemptive force * * * " of the HMTA, and not an extension of the stay sought by the City, was "the only relief" which would permit the City to continue to enforce its regulations. The Federal court directed the entry of a judgment, from which the City has appealed to the Court of Appeals for the Second Circuit. During the pendency of these further court proceedings, the trial and appellate courts have stayed the injunction against enforcement of the City's requirements covered by this waiver application.

Detailed comments and supporting materials have been submitted by numerous parties both in favor of, and in opposition to, the City's waiver application. Although the comment period originally ended on January 17, 1992, comments both supporting and opposing the City's application continued to be received after that date. To assure all interested parties the opportunity to present rebuttals, the comment period was reopened and extended until March 13, 1992. 57 FR 6767 (Feb. 27, 1992). RSPA later reopened the comment period until April 20, 1992. 57 FR 11984 (Apr. 8, 1992).

The City's October 10, 1991 application (NYC Appl.) and its further comments of January 16, 1992 (NYC Reply), March 12, 1992 (NYC Rebuttal), and April 17, 1992 (NYC Final) include affidavits, deposition testimony and studies submitted in the Federal court litigation, as well as further materials prepared or assembled for this application. Comments supporting a waiver of preemption (many of which were included as exhibits to the City's submissions) were received from many elected officials representing New York at the Federal, state and local government levels, New York City community groups, and other organizations and individuals.

Extensive comments and materials in opposition to the City's application were submitted jointly by American Trucking Associations, Inc., National Tank Truck Carriers, Inc., and National Paint and Coatings Association, Inc., (collectively "Industry Group"), on December 13, 1991, March 13, 1992, and April 20, 1992. These materials (referred to as "Ind. Group-Dec," "Ind. Group-Mar," and "Ind. Group-Apr" for convenience) also include affidavits, deposition testimony, and studies from the Federal Court litigation, as well as separate critiques of, or responses to, portions of the City's submissions. Additional opposing comments (some of which were included as appendices to the Ind. Group-Dec submission) were also provided by numerous associations and companies in the trucking, petroleum, paint, chemicals, chemical waste, and compressed gas industries, as well as a U.S. Senator and a U.S. Representative, both from New Jersey.

All these materials have been carefully considered in reaching a decision on the City's waiver application. Where relevant, RSPA also has considered materials and comments submitted in Docket Nos. IRA–40A (IR–22 and appeal), IRA–40B (IR–23 and appeal), and HM–183. Docket No. HM–183 was a RSPA public rulemaking proceeding which resulted in significant amendments to RSPA's regulations pertaining to the manufacture, qualification, maintenance and use of cargo tank motor vehicles. See, *e.g.*, 50 FR 37766 (Sept. 17, 1985), 54 FR 24982 (June 12, 1989), and 55 FR 37028 (Sept. 7, 1990).

The comments of both the City and the Industry Group refer to all of these proceedings. The City and the Industry Group participated, and received all submissions, in IRA–40A&B. The City's Department of Environmental Protection

submitted letter comments and the 1987 A.D. Little study (Exhibit 5 to the City's application herein) in Docket No. HM–183; many others who submitted comments on the City's waiver application also provided comments in HM–183.

RSPA has reviewed other publicly available materials for further information relevant to the issues raised by the City's application. Such materials include publications, reports and data of (or in some cases prepared for) the U.S. Government, including RSPA, FHWA, National Highway Traffic Safety Administration (NHTSA), National Transportation Safety Board (NTSB), Bureau of the Census, and the Department of Energy; reports and data of The University of Michigan Transportation Research Institute (UMTRI); and the J.J. Keller & Associates, Inc., Vehicle Sizes & Weights Manual.

III. Discussion and Analysis

A. Equipment Requirements—Flammable and Combustible Liquids

The vast preponderance of the arguments and supporting materials address the purpose and effects of the City's limitations on the size and types of tank trucks that pick up and deliver gasoline and fuel oil. These "petroleum-based products" make up at least 90% of the flammable and combustible liquids transported by tank trucks in the City. NYC Appl. 36. According to the City's figures, about twice as much fuel oil as gasoline is used in the City each year. NYC Appl. Ex. 5, p. 3–5. On the other hand, "fuel oil is not as dangerous as gasoline * * *" NYC Rebuttal 3.

The main focus of the City's comments on safety (*i.e.*, whether the City's requirements provide at least an equivalent level of protection to the public) is on the harm that can result from an accident involving a gasoline tank truck, including the potential for release of gasoline with the possibility of a fire or explosion. Accordingly, the major part of the discussion which follows concerns the parties' arguments with regard to the relative "risks," or levels of protection to the public, from gasoline tank trucks allowed under City and Federal regulations. Where there are significant differences with respect to other flammable liquids, or with respect to fuel oil and other combustible liquids, those differences are mentioned; otherwise, RSPA's consideration of the arguments relating to gasoline tank trucks will be dispositive of issues relating to trucks carrying other hazardous liquids.

1. Tank Trucks and the Liquids Carried

a. *Trucks allowed under City and DOT regulations*—All trucks used by interstate carriers of hazardous materials are subject to the Hazardous Materials Regulations, including requirements for packaging of the materials. 49 CFR 171.1, 173.3. Thus, the City's regulations are in addition to Federal standards. For convenience, this discussion contrasts "City trucks" and "DOT trucks" in various respects. The former term is meant to refer to trucks which are covered by both sets of regulations; "DOT trucks" refers to trucks which are allowed to transport flammable and combustible liquids everywhere else in the United States because they comply with DOT requirements and, in the absence of the City's requirements, would be allowed to pick up and deliver in the City as well. (The small category of solely intrastate carriers, not presently covered by the HMR, is not considered in this discussion.)

Several Federal specifications apply to tank trucks carrying flammable liquids. 49 CFR 173.119. The MC–306 type cargo tank (including predecessor specifications) "is the major highway transport vehicle used to transport flammable and combustible liquids, such as gasoline and fuel oils." 50 FR at 37767. Effective December 31, 1990, Federal specification MC–306 was replaced by specification DOT–406, for new construction. See 55 FR 37028. Tank trucks may not be built to specification MC–306 after August 31, 1993. 49 CFR 180.405(c)(1). The MC–306 trucks already in service may be used after that date, but they must have their "pressure relief devices and outlets" modified to meet the DOT–406 requirements. 49 CFR 180.405(c)(2).

Tank trucks carrying fuel oil and other combustible liquids must meet general regulations in the HMR covering packagings (strong and tight packagings that do not leak), empty packagings, loading and unloading, placarding, and motor carrier safety. See NYC Appl. 12; 49 CFR 173.118a(b). As already noted, many tank trucks used for fuel oil outside the City are designed to the same specifications as tank trucks which carry flammable liquids. This allows the same truck to be used for both types of products, including mixed loads of gasoline and diesel fuel, in different compartments, at the same time.

The City's requirements on tank truck design and construction, for which it seeks a waiver of preemption, relate to: (1) Truck body style (single-unit vehicles for flammables, no full-trailers for combustibles), (2) steel tanks, (3) elliptical tanks (for flammables), (4) compartments (for flammables and combustibles other than heavier grades of fuel oil), (5) longitudinal baffles (for flammables and heavier grades of fuel oil), and (6) tank capacity limits (4,000 gallons of flammables, 4,400 gallons for combustibles, and 6,500 gallons for heavier grades of fuel oil). In contrast, the DOT specifications for cargo tanks allow:

—Any truck body style, including semi- and full-trailers so long as they meet highway weight limits as discussed below;
—The tank to be either aluminum or steel of specified alloys and thicknesses; these include certain types of steel not allowed by the City, such as stainless steel, although the City states that it is amending its regulation to "permit the types and grades of steel that are specified in the federal regulations. * * *" NYC Final Ex. 39, p.2 n.1;
—Circular as well as elliptical tanks, although virtually all gasoline tanks are now elliptical or oval in shape, Botkin Dec. 2, 1987 Dep. 91 (Ex. D to Goodman Jan. 29, 1988 Aff. in Docket No. IRA–40A);
—Tank compartments; compartments are not required, although Mobil states that gasoline trucks nearly always have compartments to allow them to carry different grades of gasoline;
—Longitudinal baffles; and
—Any size or capacity of the tanks so long as the total weight of the truck complies with "federal and local highway and bridge weight limits." NYC Appl. 14. According to the J.J. Keller Vehicle Sizes & Weights Manual, p.NY–2 (1/92), the City limits total truck weight to 73,280 pounds, except on Interstate Highways where the Federal weight limit of 80,000 pounds applies. See 23 U.S.C. 127.

Trucks built to MC–306 and DOT–406 specifications for gasoline and fuel oil are generally semi-trailers with aluminum tanks which allow greater loads to be carried. *Id.* Mobil confirms that "gross weight, rather than capacity, is the determining factor" on tank truck size:

> The typical gasoline trailer which conforms to the Federal weight law of 80,000 pounds (9,400 gallons) * * * is elliptical in shape and has 4 or 5 compartments with not less than 1% additional space for thermal expansion. The industry standard is 3% * * *. Multiple compartments are utilized by the industry to carry various grades and quantities of gasoline on the same delivery. Mobil is not aware of any single compartment gasoline trailers.

The City's maximum weight limit of 73,280 pounds would permit a cargo tank of approximately 8,500 gallons. The A.D. Little study used 8,800 gallons for the capacity of a gasoline or fuel oil tank truck that could be used in the absence of the City's regulations. NYC Appl. Ex. 5, Table 3.1.

In contrast to the DOT truck, a 4,000 gallon City gasoline tank truck weighs approximately 51,560 pounds when fully loaded. *See* NYC Appl. Ex. 15, p. 2 (total of front and rear axle loads). City trucks built in the future may weigh slightly less, since the City is not requesting a waiver of preemption for (and is presumably eliminating) its requirement that the "net chassis weight" (not including the tank) of a 4,000 gallon gasoline truck must be at least "33 percent of the gross vehicle weight" when fully loaded FPD 7–74 § 23–4.

Even if this requirement is eliminated, a loaded City gasoline truck will still weigh more than 40,000 lbs.—when the chassis weight is added to that of 4,000 gallons of gasoline (24,400 lbs., at 6.1 lbs per gallon) and the steel tank (some 9,500 lbs., *see* Letter of Tank Specifications in NTSB investigation report on April 22, 1991 accident in the City). This puts the City gasoline truck in the category of "heavy trucks (defined as more than 26,000 pounds * * *) * * *" NYC Reply 19. A 4,000 gallon truck carrying a heavier liquid than gasoline, or a City fuel oil truck (with its larger tank), would weigh somewhat more.

b. *Pickup and delivery of gasoline and fuel oil*—The City states, and Mobil confirms, that truck deliveries of gasoline and fuel oil tend to be local rather than long distance. Tank farms and storage terminals, in or nearby the City, receive gasoline and fuel oil by barge, tank ship, or pipeline. NYC Reply 10. From those tank farms or terminals, gasoline and fuel oil are delivered "to service stations * * * fire stations, rental car agencies, garages and parking lots, utilities, City agencies * * * trucking companies, taxi and car service facilities, and other commercial establishments." NYC Appl. 18.

There are approximately 3,400 locations "licensed to receive gasoline and diesel fuel." *Id.* Underground tanks, which are required for gasoline, are limited to 4,000 gallons. Rogers Nov. 24, 1987 Dep. 76 (Ex. I to Goodman Jan. 29, 1988 Aff. in Docket No. IRA–40A). It appears that many locations have more than one tank; a service station generally sells more than one grade of gasoline, and many facilities may need more capacity than 4,000 gallons. A 1985 affidavit by Fire Prevention Bureau Chief DeMeo referred to "approximately 40,000" "buried gasoline storage tanks in the City * * *" DeMeo April 15, 1985 Aff. ¶ 31 (Ex. 2 to the City's July 9, 1987 comments in Docket Nos. IRA–40A&B).

Deliveries of fuel oil in the City "are even more pervasive, to virtually every residence and most commercial buildings," more than 89,000 locations (not including one and two-family homes). NYC Appl. 18. "The transportation routes of fuel oil lie in much more heavy commercial/heavy residential areas, * * " than gasoline. NYC Appl. Ex. 5, pp. 1–2. Information as to the size of individual tanks is not included in the materials submitted.

There is no information that gasoline is picked up in the City for delivery elsewhere. However, Castle Oil states that it makes deliveries of fuel oil from terminals located in the City to locations outside the City, for which it uses larger DOT trucks under the variance granted by the City. This variance explicitly provides that "a phase out plan * * * for these vehicles" must be developed and implemented if "the court upholds the City's regulations * * *" Castle asserts that additional sales to buyers outside the City would take place if those buyers could bring larger tank trucks into the City terminals.

c. *Pickup and delivery of other liquids*—Under Federal regulations, chemicals and other non-petroleum products can be transported in various DOT specification cargo tanks, including MC–306, 307, 312 and 331 (and their DOT–400 series replacements). 49 CFR 173.119. For certain products, cargo tanks of stainless steel are used, according to some industry comments. As the City notes, "[s]ome chemicals can corrode aluminum * * *" and caustic agents used for cleaning "would eat into an aluminum tank." NYC Reply 22. In this case, the heavier weight of steel will limit the size of the tank. Empire State Varnish Co. refers to 6,000 gallon tank trucks deliverying to its competitors in New Jersey.

Reichhold Chemicals states that it transports resin in MC–307 stainless steel trucks "in and around the New York metropolitan area * * *" and sets forth several ways in which the City's regulations affect it, besides the 4,000 gallon limit on tank capacity: the City prohibits stainless steel tanks, which are "best for product purity"; bans insulated tanks, which are necessary to "keep our lading warm"; "requires small compartments, which are totally unsuited to the type of product we deliver"; and requires gravity discharge even though "resin is not a highly liquid product like gasoline and fuel oil." The City represents that procedures have been initiated to amend FPD 7–74 to limit the requirement for gravity discharge to gasoline, as well as to permit the types and grades of steel allowed in the HMR. NYC Final Ex. 39 ¶ 4, n.1.

There are not as many tank trucks used for paints and chemicals in the City, "compared to the hundreds of gasoline delivery trucks." NYC Rebuttal 3. For some of the companies delivering paints and chemicals, the City has prescribed individual routes and allowed larger tank trucks to operate under variances. *Id.* The City indicates that shipments of paints and chemicals destined for the City originate farther away, and deliveries may be concentrated in industrial areas of the City. *See* NYC Appl. 40; NYC Reply 11,28. The City states that "many chemical companies maintain or use storage terminals and brokers, [from which deliveries are made] rather than shipping directly to customers in the original long-distance truck." NYC Reply 11. Chemical Waste Transportation Institute (CWTI) states that chemical wastes are transported from the City, "to treatment, storage and disposal facilities * * * geographically remote from the City."

d. *Alleged conflicts with Federal standards*—The Industry Group asserts that the City trucks were not designed to meet Federal standards, have not been inspected against those standards and, in fact, fail to meet them in one or more respects. *See* Ind. Group–Dec 9–10; Ind. Group–Mar 1–11. Among the specific allegations made about City trucks are that they (1) must be "fillet-welded pursuant to the City regulation, rather than butt-welded as is accepted by DOT * * *"; (2) "cannot maintain a speed safe for highway use * * * and exceed federal weight limitations * * *"; (3) "lack disc brakes * * *"; and (4) "do not meet the venting standards of the HMR * * *" and have " 'worthless' rollover protection." Ind. Group–Dec 9–10.

The City responds that many of these "design features [have been] relinquished in favor of the DOT specifications," NYC Final 2, and that trucks "built to the City's former specifications * * * are still safe. These trucks that can now be modified to incorporate the newly applicable federal designs for valves, hatch covers, etc., will be so modified, over time. For others, a 'grandfather' provision may be necessary * * *" NYC Reply 26.

The City's best information appears to be that all City gasoline trucks and the newer fuel oil trucks are DOT specification MC–306 type cargo tank vehicles, and the gasoline trucks bear DOT specification plates. *See* RSPA

Feb. 27, 1992 letter in the docket with attached memoranda of RSPA telephone conversations with the City's counsel. However, the manufacturer of tanks for City gasoline trucks has acknowledged that DOT specification plates were placed on vehicles which were not designed to meet DOT requirements. Ind. Group–Mar 6.

The 4,000 gallon City gasoline tank trucks presently in use appear to violate highway weight limits. According to materials submitted by the City, a loaded City gasoline truck has 37,976 pounds on its back two "tandem" axles. NYC Appl. Ex. 15, p.2. However, the Federal limit is 34,000 pounds on the tandem axles. 23 U.S.C. 127. City trucks exceed even the City's own weight limit of 36,000 pounds for tandem axles. See J.J. Keller Vehicle Sizes & Weights Manual, p.NY–2 (1/92).

Until recently, the City seems to have ignored Federal standards, believing that it its "more stringent" design requirements were met, "the less demanding federal standards" would also be satisfied. NYC Reply 25–26. The City virtually admits that annual Fire Department inspections have not considered DOT's requirements. *Id.* 26. The conditions cited by the Industry Group as violating the HMR appear to have been required by FPD provisions for which the City is not seeking a waiver, or allowed by the City's failure to enforce the HMR.

The City represents that it is eliminating many of its requirements, including some which were in conflict with the HMR, and it will now inspect for DOT's standards as well as the City's requirements. *Id.* The FPD provisions for which the City requests a waiver do not appear to require any conditions which violate Federal specifications. These FPD provisions impose as requirements conditions which simply are allowed, or are optional, under the HMR. Granting the City's application would eliminate the truck operator's options under the HMR (of having a larger tank, made of aluminum, on a semi-trailer, etc.) if it desires to pick up and deliver flammable and combustible liquids in the City. To decide the City's application, then, RSPA must determine whether the elimination of those options will (1) afford an equal or greater level of protection to the public and (2) unreasonably burden commerce. Those issues are addressed in the sections which follow.

RSPA's decision on the City's application will determine whether DOT trucks previously prohibited by the City's rules will be allowed to operate there. However, the decision will not, by itself, allow or prohibit the continued operation of City trucks now being used. In this case, all trucks used in the City, and elsewhere, must continue to meet DOT standards. Existing City trucks' actual compliance with the HMR is not determinative as to whether RSPA should grant a waiver of preemption.

2. Safety Evaluation of City and DOT Tank Trucks

The City argues that its tank truck design and construction requirements afford greater protection to the public, than Federal regulations in two respects: (1) Semi-trailer DOT trucks with larger tanks will have many more accidents than City trucks over the same number of miles, and (2) when the larger DOT trucks have accidents, the consequences of those accidents are much greater. Materials submitted by the City specifically assume that a reduction in mileage will result in a proportional reduction in accidents, because DOT trucks, with larger tanks, would make fewer trips to transport the same amount of flammable and combustible liquids. NYC Appl. Ex. 5, pp. 5–26 to 5–27; *id.* Ex. 15 pp. 5–6. However, the City asserts that this potential reduction in accidents is more than offset by an increase in accident frequency and consequences with the larger DOT trucks. *Id.* 25–26.

Opponents of the City's application dispute both parts of the City's argument. They deny that the design features of DOT trucks will result in more or worse accidents than with City trucks, and they challenge the A.D. Little study's efforts to quantify and factually support each of these conclusions. They contend that the reduction in mileage associated with fewer trips will reduce accidents. Ind. Groups-Dec 28–29, citing *Kessel* v. *Consolidated Freightways Corp.*, 450 U.S. 662, 675 (1981). Opponents also assert that most releases of hazardous materials occur during loading or unloading, and that fewer trips will reduce the number of those incidents. The City does not contend that larger DOT trucks will have a higher rate of releases during loading and unloading.

a. *Potential damage from accidents*—The nature of accidents and the consequences thereof can be seen in data compiled by FHWA. All accidents involving commercial motor vehicles resulting in death, serious injury or more than $4,400 property damage must be reported to FHWA. 49 CFR 394.3, 394.9. Among the information required to be reported is the type of vehicle, whether or not it was carrying hazardous materials, and whether hazardous materials were released, caught on fire or caused an explosion.

In 1989, the most recent year for which computerized data are available from FHWA, tank trucks carrying all types of hazardous materials were involved in a total of 1020 reported accidents throughout the U.S., in which 91 people died, 641 people were injured, and the total property damage was $20.4 million. Of the 1020 tank truck accidents, 212 involved hazardous materials releases; these 212 accidents resulted in 24 deaths, 84 injuries and $8.6 million property damage. This shows that the hazardous materials do not cause most of the damages, because (1) the majority of accidents involving tank trucks carrying hazardous materials did not result in releases of those materials, and (2) the majority of fatalities, injuries and property damage occurred in accidents when there was no release.

With regard to the majority of accidents which involve a release of hazardous materials, the FHWA data do not reveal whether deaths, injuries and property damage resulted from the release of the hazardous materials or from the impact of the collision itself. Data compiled by RSPA are available, however, to help assess this issue. A written report must be made to RSPA of any unintentional release of hazardous materials, including any incidents during transportation when a person is killed or injured "[a]s a direct result of hazardous materials * * * " 49 CFR 171.15(a), 171.16(a).

Reports to RSPA indicate that, throughout the U.S. during 1989, eight persons died and 217 were injured as a direct result of the highway transportation of hazardous materials in an accident. See RSPA's 1990 Annual Report on Hazardous Materials Transportation, Ex. 3, p.42. (These figures include all truck types, not just tank trucks). The figures for 1989 are consistent with the nationwide average of approximately 11 deaths and 200 injuries per year as a direct result of the highway transportation of hazardous materials, over the 1983–90 period. *Id.* Preliminary figures for 1991 show that 10 persons died and 332 were injured as a direct result of highway transportation of hazardous materials.

The 10 deaths in RSPA's 1991 preliminary figures for the entire U.S. include five persons who died in a May 1991 accident in the Bronx, involving a City gasoline tank truck and an automobile. Besides this accident, the City's application and accompanying materials document four other accidents in the City since 1988 involving City gasoline trucks; in two of these four,

gasoline was released and caught fire when the tank truck overturned, and occupants of the vehicles in the collisions were injured. Based on all the information available to RSPA, it appears that the injuries in both those accidents were caused by the impact of the collision itself, and not the fire. During the same period, there were two accidents involving City fuel oil trucks. Even though oil was spilled in each case, there was no fire, and the only injuries appear to have been minor ones suffered by emergency personnel responding to one of the accidents. NYC Appl. Ex. 11.

Both the City and opponents of its application focus on the May 1991 accident in the Bronx. The City's argument that, if a larger DOT tank truck were involved in such a collision, "damage could be expected to be commensurately greater," NYC Appl. 17, is discussed in detail below. The Industry Group contends that compliance with Federal requirements on protection for tank closures or fittings might have prevented the release of gasoline which caught fire. Ind. Group-Mar 8. However, as indicated earlier, there is nothing in the City's requirements that excuses compliance with DOT standards in this regard, nor does the City impose requirements in this regard beyond those of DOT.

Releases of hazardous materials during loading or unloading must also be reported to RSPA (although not to FHWA). See 49 CFR 171.15(a), 171.16(a). Nationwide data compiled by RSPA for 1990 and 1991 indicate that some three-fourths of all releases of hazardous materials from tank trucks occurred during loading or unloading, although traffic accidents accounted for much more damage (including deaths and injuries) than releases during loading and unloading.

In the City as well, most releases of hazardous materials occur during loading or unloading. RSPA received reports of 51 incidents of a release of hazardous materials from a tank truck in the City, during the ten-year period from 1982 through 1991. All of these incidents involved City trucks; in 37 incidents the trucks carried gasoline, in three cases they carried fuel oil, and 11 times the trucks carried other hazardous materials. Only three of the reported incidents (all gasoline trucks) involved traffic accidents. All but two of the remaining 48 occurred during unloading (including two cases when an automobile ran over a hose or struck a tank fitting during unloading); in the last two cases, corrosive materials escaped from a valve or hatch cover that was not securely closed after loading or unloading.

The City's Exhibit 35, from the New York State Department of Environmental Conservation, confirms that only a small fraction of releases result from traffic accidents. Human error, equipment failure, and tank overfill cause most releases. During 1990, tank truck releases in the City (Region 2, see NYC Reply 13) resulted from accidents in only eight cases, or 7.4% of the total number of 108 incidents. For 1991, accidents caused four tank truck releases in the City, 2.8% of the 142 total.

The accident data from FHWA and RSPA demonstrate that deaths, injuries and property damage directly resulting from hazardous materials account for only a small portion of the total deaths, injuries and property damage from accidents involving trucks carrying hazardous materials. This conclusion is consistent with estimates of the number and results of accidents involving gasoline tank trucks in the Batelle report ("An Estimate of the Risk of Transporting Gasoline by Truck," November 1978, for the Department of Energy by Pacific Northwest Laboratories, operated by Batelle Memorial Institute).

For calendar year 1980, nationwide, the Batelle report estimated:

—1,710 accidents involving gasoline tank trucks (p. 10–1);

—110 of these accidents would result in a release of a significant amount of gasoline (*id.*);

—There would be 29 deaths from the release of gasoline in these accidents, of which 12 would be the drivers of the gasoline trucks and 17 would be occupants of other vehicles involved in the accident (*id.* p. 10–3, 1–2);

—In the total of 1710 accidents, another 26 "traffic fatalities would be expected * * *" unrelated to the hazardous nature of the cargo (*id.* p. 10–3).

The Batelle report found a very small probability of death for persons other than the occupants of the accident vehicles, *id.* p. 9–7, and it estimated that only "one in a thousand releases will result in a serious explosion." *Id.* p. 9–11.

Opponents of the City's application assert that the number of accidents is directly proportional to mileage. As Mobil states: "Larger payloads mean fewer trucks, fewer trips, fewer miles travelled, and less exposure to accidents or incidents." See also Ind. Group-Dec 28–29 and comments by United Transport America (UTA), Chemical Manufacturers Association (CMA), and Independent Fuel Terminal Operators Association (IFTOA). The Industry Group notes that certain materials submitted by the City adopt this approach. *Id.* citing NYC Appl. Exs. 5, 15. The City seems to agree that, in the absence of other factors, "that argument might have some weight." NYC Appl. 25. The next sections analyze the factors which, according to the City, result in a greater accident frequency, and more damage in those accidents, for DOT trucks than for City trucks.

For purposes of that analysis, it is not necessary for RSPA to make a specific finding that, under any given conditions, accidents and damages will actually be reduced. The issue is whether the factors advanced by the City offset the likely reduction in the number and severity of accidents and releases of hazardous materials, if DOT trucks (with larger tanks) were allowed to pick up and deliver the same amount of materials in fewer trips with less mileage. Based on the above discussion of accident data, that likely reduction of consequences applies to all of the following situations:

—Accidents and associated damages (deaths, injuries and property damage) involving tank trucks carrying hazardous materials, when there is no release of the hazardous materials (the majority of accidents involving such trucks);

—Accidents and associated damages involving tank trucks carrying hazardous materials, when there is a release of the hazardous materials, but the hazardous materials do not cause the deaths, injuries and property damage (a substantial portion, if not the majority, of the accidents when hazardous materials are released);

—Accidents and associated damages involving tank trucks carrying hazardous materials are released and cause the deaths, injuries and property damages (a small portion of the accidents involving tank trucks carrying hazardous materials); and

—Incidents and associated damages when hazardous materials are released during loading or unloading of tank trucks (most of releases but resulting in a much smaller portion of the damages).

b. *Accident frequency*—The City contends that its smaller, straight gasoline trucks are less susceptible to being involved in accidents, for three reasons: (1) "Semi-trailer and tractor-trailer combinations have a tendency to jackknife, which, of course, a straight chassis truck cannot do." NYC Appl. 24. (2) Larger DOT trucks are more likely to overturn because of a higher center of

gravity and the lack of a requirement for baffles. *Id.* 23. (3) "[D]riving conditions are more difficult * * *" in the City. *Id.* 25. Opponents of the City's application minimize the danger of a jackknife accident; point to the lower number of rollover accidents in urban areas; state that baffles are not needed because most deliveries of gasoline are of full compartment loads; and allege that semi-trailers are more maneuverable and are being successfully used in many areas of the City.

The first factor, tendency to jackknife, applies only to tank trucks for flammable liquids, since the City already permits combustible liquids to be carried in semi-trailers. The City submitted a study showing that during a three-year period 25% of all truck accidents in the City "were of the jackknife type; * * *" NYC Appl. 24; see also Ex. 13. Another survey by the City, of incidents involving tractor-trailers during 1983, found that 59% of jackknife accidents occurred when the trailer was empty, when there was no potential for a large release. NYC Appl. Ex 6; *see* Ind. Group-Dec 32.

Matlack alleges that a jackknife accident will cause less damage by dissipating energy. CWTI states that the level of safety is better with a semi-trailer, because a semi-trailer may jackknife when a single-unit truck would roll over. Matlack, Mobil, American Petroleum Institute (API), and TUA, as well as the Industry Group, all assert that semi-trailers are presently being used successfully in many areas of New York City. *Id.* 32.

It is not necessary to make findings on these assertions, since the general result of a jackknife accident (either single or multi-vehicle) appears to be traffic congestion, rather than a release of hazardous cargo. The City admits as much, alleging that such incidents "have serious economic consequences and must be considered in an assessment of risk." NYC Reply Appx. A p. 6. The City's A.D. Little study mentioned that "these types of accidents generally do not lead to major spills. Therefore, the effect of jackknife accidents on spill frequency and, consequently, on risk is neglected." NYC Appl. Ex. 5 p. 5–26 n.2. Moreover, as discussed below, the available data do not show that the overall accident frequency for straight cargo tank trucks is less than that for semi-trailers.

Overturn or rollover accidents are less common than jackknifes; however, their potential for damage is far greater. RSPA has noted that "failures of the tank shell, manhole closures and pressure relief valves occur frequently in cargo tank overturn accidents. In a substantial number of instances, these failures resulted in serious leakage, sometimes resulting in fires." Notice of Proposed Rulemaking in Docket No. HM–183, 50 FR 37766, 37768. RSPA's revised regulations included new design requirements for rollover protection, for new construction, and modification of closures and fittings on existing cargo tanks.

However, the City's own studies fail to establish that overturns account for a large number of total accidents, or that tractor-trailers overturn more frequently than straight trucks. Its study of all truck accidents over three years discovered that 7% of accidents were overturns (NYC Appl. Ex. 13), while its survey of trailer-tractor accidents in 1983 reported 18 overturns out of 311 accidents, or 5.8% when one eliminates occasions when a truck simply breaks down or becomes disabled. NYC Appl. Ex. 6.

Both Prof. Ervin of UMTRI (NYC Appl. Ex. 15) and Mr. Pesuit (comments of D.R. Pesuit & Associates in Docket No. IRA–40A) have predicted an increased likelihood of rollover for the larger, higher center of gravity, DOT-specification truck. Neither researcher, however, concludes that this necessarily increases the total number of truck rollover accidents; other compensating factors can intervene.

In his comments, Pesuit calculates from their geometry that City trucks can go faster in a turn before overturning than can DOT trucks. His calculations show that the difference between the two types of trucks, in the speeds at which they will roll over, "is not great for sharp turns on city streets, but it is quite significant for the gradual curves found on highway exit ramps * * *" However, it is those "gradual curves found on highway exit ramps * * *" which are uncommon in the City. "[E]ven the limited access highways were largely constructed prior to the development of federal standards for such aspects as the turning radius of exit ramp curves, * * *" NYC Appl. 25. DuPont also asserts that truck drivers become familiar with the "threshold" speed for each type of truck and one should not expect the number of rollover accidents to change simply from a different truck design.

Ervin indicates that the proportion of single-vehicle accidents from rollovers increases from 27% to 50%, when one compares the City's 4,000 gallon gasoline tank truck with the larger DOT MC–306 truck. However, his example comparing data on 3,000 and 4,000 gallon trucks produces a lower number of rollover accidents because he assumes that the larger tank capacity allows the same deliveries to be made with fewer trips. This means less exposure to accident situations and fewer total accidents, even though rollovers, as predicted by Ervin, are a larger fraction of that total. See NYC Appl. Ex. 15, pp. 5–6. Similarly, if one applies Ervin's approach to a comparison of the City's 4,000-gallon truck and an 8,500-gallon DOT truck, the predicted number of rollover accidents for the DOT truck is less than that for the City truck, due to the reduction in mileage which reduces the exposure to accidents.

The City separately contends that, since DOT's specifications do not require longitudinal baffles, the "slosh" of liquid in partially loaded compartments will also result in more rollover accidents. There are two deficiencies in this argument. First, Ervin's rollover frequency rates purport to be based on historical experience. *See id.* p. 4. Therefore, Ervin's rollover frequency for the DOT MC–306 truck is based upon those trucks actually in operation, with or without baffles. An assumed lack of baffles cannot be an independent ground to find that DOT trucks will have more rollover accidents. Second, according to Mr. Botkin, an official of Fruehauf Trailer Corp., "gasoline is normally ordered and delivered in bulk quantities and thus there is no opportunity to develop lateral surge when a compartment is either nominally full or empty." Botkin Aff. ¶ 7 (Ind. Group-Dec Appx. 4). In the circumstances examined by Prof. Ervin and others in a 1980 University of Michigan study, only "13 percent of the gasoline hauling mileage occurs under the defined sloshing condition" of one or more compartments being between 20% and 80% full. Ervin et al., "Future Configuration of Tank Vehicles Hauling Flammable Liquids in Michigan," 1980, Report No. UM–HSRI–80–73 (hereinafter "1980 Michigan study"), p. 223.

The comments and 1986 report of The New York State Automobile Association, entitled "Truck Safety Shortcomings," NYC Reply Ex. 29, provide no support for the City's contention that DOT trucks have a higher rate of accidents. The City refers to a finding in that report that "heavy trucks (defined as more than 26,000 pounds * * *) are involved in proportionally more accidents * * *" than smaller trucks. NYC Reply 19. But neither that report nor the City explains how such a finding means that City trucks weighing 45,000–55,000 lbs. will have fewer accidents than DOT trucks weighing up to 73,280 lbs. The fatal crash rates portrayed in that same report (p. 4) are not relevant, since they cover all truck types and include both

"medium" (10,000 to 26,000 lbs.) as well as "heavy" single-unit trucks in the comparison to tractor-trailers. (See truck definitions at p. I-5 of the DOT Study "Large Truck Accident Causation," July 1982, DOT HS 806 300, while is cited as the source for the chart at p. 4 of the Automobile Club report.)

When "heavy" cargo tank trucks (above 26,000 lbs. gross vehicle weight) are considered, it does not appear that single-unit trucks are likely to have substantially fewer fatal accidents than semi- and full-trailers. Information on fatal accidents by truck body type is contained in UMTRI's annual survey of Trucks Involved in Fatal Accidents (TIFA), based on data from NHTSA, FHWA, state police accident reports, and follow-up telephone interviews. The most recent published TIFA report is for 1987. The most readily available source of annual truck mileage by truck body type is the Census Bureau's Truck Inventory and Use Survey (TIUS), which is compiled every five years; again the most recent edition is for 1987.

To analyze fatal accidents for heavier tank trucks, RSPA needed more detailed information than is contained in the published reports. In response to RSPA's request, UMTRI advised that single-unit straight tank trucks over 26,000 lbs. had been involved in 62 fatal accidents in 1987; tractor-trailer tank trucks were in 292 fatal accidents in the same year. (Except for three of "unknown" weight, all tractor-trailers in fatal accidents were more than 26,000 lbs.; to be conservative, these three were assumed to be more than 26,000 lbs.) Estimated mileage for tank trucks over 26,000 lbs. was obtained from computer tapes of 1987 TIUS data (which tapes are available to the public). From this nationwide information, RSPA calculated the following fatal accident rates during 1987 for single-unit and tractor-trailer cargo tank trucks over 26,000 pounds:

1987 U.S. Fatal Accidents Cargo Tank Trucks—26,000 lbs.+

	Fatal accidents (TIFA)	Annual miles (000,000) (TIUS)	Fatal accident rate (100 million miles)
Single-units	62	9,080	6.83
Tractor-trailers	292	51,334	5.69

Note.—Straight trucks pulling trailers or other vehicles have been excluded from both the TIFA and TIUS data.

This comparison shows that, for cargo tank trucks above 26,000 pounds, tractor-trailers did not have higher rates of fatal accidents than straight trucks. Assuming that the tractor-trailers have larger tanks than single-unit trucks, this would mean fewer accidents with tractor-trailers for the same amount delivered, since there would be fewer trips and fewer miles.

Even accepting the City's contention that driving conditions are more difficult in the City than elsewhere, RSPA has found nothing in the submitted materials to relate this condition to a higher rate of accidents for DOT trucks. In fact, the City asserts that smaller trucks would still be used because downtown traffic, narrow streets or other conditions make them appropriate. NYC Appl. 38. CWTI agrees that:

> No motor carrier is going to risk damage to expensive equipment and the possibility of an incident with its liabilities by sending equipment to points in the City that cannot be safely accessed. On the other hand, there are locations in the City where articulated vehicles can operate safely.

API similarly notes that, in the absence of the City's requirements: "The Borough of Manhattan would probably be served by a mixture of tractor-trailers and straight trucks with capacities from 4,000 to 9,000 gallons." API also states that many parts of the City, particularly in the Bronx, Queens, and Staten Island, can easily be served by semi-trailer trucks.

In summary, RSPA cannot find support for the City's contention that DOT trucks have a higher overall accident frequency than smaller trucks which meet the City's design and construction requirements. The City has not established that DOT trucks will have more rollover accidents than City trucks, when the potential for reducing the number of pickup and delivery trips, and thereby the total number of accidents, is considered. The City's stated goal of reducing traffic congestion, by banning tractor-trailers to prevent jackknife accidents, does not outweigh the potential reduction in the other types of accidents (rollovers, collisions) that are more likely to result in fatalities, injuries and releases of hazardous materials.

c. *Accident results and damage*—The City's argument that a catastrophe is more likely to result from an accident involving a DOT truck, as compared to a tank truck meeting City requirements, is essentially based on a premise that more product will cause more damage: "The less fuel is available to feed a fire, the more easily and faster it can be extinguished." NYC Appl. 14.

According to the City, both smaller tanks and the presence of compartments will limit the amount of a spill. The City also contends that the aluminum tank of a DOT-specification truck is more likely to rupture or puncture than a steel one and, once a fire starts, likely to melt so that the entire contents of the tank burn. *Id.* 20–22. Because the City is so densely populated, "especially stringent rules [are needed] to limit the potentially catastrophic impact that might occur to a gasoline or fuel oil truck or tank truck of extremely hazardous gas." *Id.* 19. The City says its "bottom line" (NYC Reply 20) is:

> Any accident, however minor, has the potential to create enormous damage, from lost time due to tied-up traffic in the midst of thousands of cars, to lost lives in a flaming fireball in the midst of thousands of people. Therefore, keeping the trucks small—even if it did not decrease the number of accidents—limits the damage that any accident can do, and, by that fact alone, increases safety to the public.

But the City does not provide support for its contention that, when more gasoline, fuel oil or other hazardous liquid is released, "damage could be expected to be commensurately greater." NYC Appl. 17. While the City asserts that a fire fed by a larger quantity of gasoline "would surely cause more damage in New York City," NYC Reply Appx. A p. 10 it does not "attempt to quantify the increase in damage * * *," *id.*, except in the A.D. Little study.

However, the available authorities indicate that it is the occupants of the vehicles in an accident involving a gasoline truck who are most at risk; fatalities to other persons are rare, and the expected damage is not proportional to the amount of flammable or combustible liquid released. Moreover, the City has not submitted any evidence to substantiate its claim that, in densely populated areas or elsewhere, an accident involving an 8,500 gallon gasoline truck will cause significantly more damage than an accident with a 4,000 gallon City truck.

Even the City's A.D. Little study does not assert that the amount of damage is directly proportional to the amount of gasoline or fuel oil released in an accident. A.D. Little calculated "impact factors" for releases of gasoline and fuel oil to "take into account both the relative damage caused by various scenarios * * * and the relative likelihood of these scenarios, given that a spill occurs." NYC Appl. Ex. 5, p. 5–3. In Appendix C, it sets forth examples of the impact factors for releases of 500 gallons and 4,000 gallons.

The Industry Group has challenged A.D. Little's impact factors as "subjective" and "unverified." Ind. Group-Dec Appx 8, pp. 10–11. For

purposes of this discussion, however, it is useful to point out that the impact factors for a release of 4,000 gallons of gasoline or fuel oil are generally 2.5 to 3.0 times as large as the impact factors for a 500 gallon release. See NYC Appl. Ex. 5, Appx. C. If damage were proportional to the amount of materials released, the impact factors for a 4,000 gallon release would be eight times as large as those for a 500 gallon release. In an affidavit submitted by the Industry Group, Dr. Leuba compared A.D. Little's impact factors for other quantities of assumed releases of gasoline to show that the impact factor did not increase in proportion to the increase in the quantity released (*i.e.*, "spill size"). Ind. Group-Dec Appx. 2 (Appx. C, Table 1). In short, even if the damage from a release of a larger amount increased as much as A.D. Little assumes it does, there is an even greater potential for reducing accidents by reducing trips and miles with a larger capacity tank.

Addressing the City's argument that "damage could be expected to be commensurately greater," for a larger quantity of gasoline released, NYC Appl. 17, Dr. Leuba state that this logic, "taken to its extreme, would suggest that the ideal tank truck was one whose capacity was so low that if its entire contents were spilled the resulting fire could be extinguished by a passerby without any appreciable difficulty." Ind. Group-Dec Appx. 2 (Appx. A). The issue here is the relative risks of different size trucks, including the number of trips each must make to pick up or deliver the amount of hazardous materials used by the City's residents.

Ervin and his co-authors note in the 1980 Michigan study (p. 18):

> The consensus of the fire-fighting community seems to be that the threat to life posed by large gasoline fires is not dependent upon tank size, when tank capacity exceeds a few thousand gallons. As stated in the manual of the National Fire Protection Association (NFPA), "The danger from a gasoline fire is not in direct proportion to the quantity of gasoline. One thousand gallons of gasoline released to burn in the street would be sufficient to kill everyone trapped in the flames. Four thousand gallons, while presumably covering a larger area, would certainly not be expected to cause four times the number of fatalities. Reasoning on this basis, the NFPA Standards have not recommended any limitation on the maximum size of tank trucks."

In their letter (NYC Reply Ex. 36), Staff Chiefs of the City's Fire Department point out that the very statement in the NFPA manual reads:

> Tank truck traffic through congested districts of cities should be avoided as much as possible, since any fire is likely to have more serious consequences in congested districts than in sparsely settled areas. Bypass routes, such as commonly specified for all kinds of through traffic, are the obvious solution to the particular problem.

However, this principle is similar to a Federal requirement that motor vehicles containing hazardous materials "must be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys" when there is a "practicable alternative * * * " 49 CFR 397.9. If a practicable alternative is available, gasoline trucks (of any size) must avoid such areas. Neither the NFPA Manual nor § 397.9 supports the City's prohibition against tank trucks larger than 4,000 gallon trucks throughout the City, while allowing tank trucks up to that size to pick up and deliver flammable and combustible liquids.

As discussed in section A.2. of this part III, above, the Batelle report projected 29 deaths nationwide during 1980, as a direct result of the release of a significant amount of gasoline in 110 accidents. This analysis was based on certain assumptions as to the amount of gasoline which would be released in an accident, and it used three "release fractions" to represent a significant release: 8,400 gallons (the entire tank contents), 4,200 gallons (half of the entire tank), and 3,000 gallons (more than ½ of a compartment). Batelle report p. 8–20. It also evaluated the sensitivity of its results to changes in a number of the factors "that contribute to the risk," *id.* p. 10–6, and specifically found that the probable number of deaths did not vary with the amount of gasoline released. Assuming a release of 8,400 gallons of gasoline in all instances "has a negligible effect on the risk spectrum and the expected number of fatalities." *Id.* p. 10–10.

In other words, Batelle found that greater damage was not likely from a release of 8,400 gallons of gasoline, about the amount that would be transported by a DOT truck in the absence of the City's requirements, than from a release of 4,200 gallons, the approximate capacity of a City truck.

The City separately alleges that the aluminum tank of a DOT truck is more likely to rupture or puncture than the steel tank of a City truck, and that, once a fire starts, an aluminum tank will always melt so that the entire contents of the tank are consumed. NYC Appl. 20–22. However, the available evidence does not support the City's ultimate position that the increased damages from accidents involving DOT trucks with aluminum tanks are so great as to offset the potential for a reduction in accidents overall, when larger capacity tanks allow fewer trips and fewer miles.

In comments and other materials on the issue of whether an aluminum tank is more susceptible to a puncture, both the City and its opponents rely upon a formula to measure the resistance of a metal plate to a probe. *See* NYC Appl. Ex. 5 (A.D. Little study), p. B–6; NYC Reply Appx. 1–A (Hansen Aff.); NYC Final Ex. 37 (Chan Mem.); Ind. Group-Mar 13–16; Ind. Group-Apr 2. The source of this formula is Sandia Laboratories' 1976 report, "Severities of Transportation Accidents," jointly sponsored by the U.S. Energy Research and Development Administration and DOT (Sandia report). See NYC Appl. Ex. 5, pp. 7–1, B–6.

According to the City's submissions, the Sandia report formula will allow a comparison of "the V/R ratio (velocity of impact to probe radius)" for aluminum and steel to determine the relative puncture resistance of the two materials. Hansen Aff. ¶ 4. Two factors on which the result depends are the yield strengths and the thicknesses of the metals being compared. The initial argument between the parties was over the correct numbers to use for the yield strengths of aluminum and steel; their present disagreement focuses primarily on the thicknesses to assume for an aluminum tank in a DOT truck. The essence of the parties' calculations is that, using 26,000 lbs. per square inch (psi) and 36,000 psi as the yield strengths of the aluminum and carbon steel commonly used in DOT and City tank trucks, respectively, the V/R ratio:

—Is 15% *smaller* for aluminum than for steel, when comparing metal plates of the same thickness. Hansen Aff. ¶ 4; Chan Mem. p. 2.

—Is 20% *greater* for aluminum than for steel, when comparing metal plates of the thicknesses which A.D. Little assumed were typical of DOT and City trucks. Ind. Group-Mar 15.

These and the other calculations do not establish whether the DOT truck is more likely to suffer a puncture than the City truck. Only A.D. Little translated its calculation of V/R ratios of aluminum and steel into a "an increase in puncture probability by about 50%," using a separate chart in the Sandia report. NYC Appl. Ex. 5, p. B–6. But that conclusion is invalid, because A.D. Little arrived at a 37% difference in V/R ratios based on assumed yield strengths for aluminum (20,000 psi) and steel (100,000 psi) which the City has abandoned in the further calculations made by City Fire Department engineers Hansen and Chan. *Compare* A.D. Little study, p. B–6, *with* Hansen Aff. ¶ 4 and Chan Mem. 2.

Mr. Chan's calculations of V/R ratios based on the minimum thicknesses allowed (for steel in FPD 7–74, and for aluminum in 49 CFR § 178.346, Table II) are not sufficient for analysis. He used the minimum thickness allowed for an aluminum tank no larger than 4,500 gallons (0.151 inches) rather than the minimum required for an aluminum tank between 8,000 and 14,000 gallons (0.173 inches). He also ignored the requirement in § 178.346–2 that the metal be thick enough to satisfy separate standards on structural integrity. See 49 CFR 178.345–2(b), 178.345–3.

The fact that aluminum has a lower melting point than steel may create a possibility that the entire contents of an aluminum tank truck will be consumed when an accident results in a fire, as the City argues. NYC Appl. 20–21. But it is not correct to assert, as the City does, that "all the aluminum tanks involved in initial small fires melted completely." NYC Final 2. The total consumption of the tank's contents is not inevitable, for many fires are extinguished. See the 1980 Michigan report, p. 166 and Fig. 5.12. Even when a fire is not extinguished, the longer time the fire burns does not necessarily translate into "commensurately greater" damage, NYC Appl. 17, as already discussed.

The controversy over the relative advantages of steel and aluminum tanks is not a new one; it has been argued for many years, including in Docket No. HM–183, where the City submitted the A.D. Little study and explicitly contended that use of "the federally-approved aluminum type tank truck . . . in the City would increase by 85 percent the risk of serious spills and make a 'catastrophic accident' two-and-one-half times more likely than if the City-permitted trucks were used." NYC Dept. of Environmental Protection June 30, 1987 letter to then-DOT Secretary Elizabeth Dole.

As Mobil notes, no studies have resolved the controversy. The materials submitted by the City in this proceeding are not sufficient for RSPA to change its finding that the steel and aluminum alloys permitted for DOT MC–306 trucks provide equal levels of protection to the public, when all factors are considered, including the structural integrity requirements in the HMR and the larger tank capacity when aluminum is used rather than steel.

d. *Contentions on "exporting" risk*—Several comments discuss the notion that risk is "exported" from the City to other locations. API, UTA, CMA, IFTOA, the Industry Group, and the New Jersey Turnpike Authority, among others, allege that, in order to comply with the City's requirements on truck size, flammable or combustible liquids must be transferred from larger DOT trucks into smaller City trucks before entering the City. Ind. Group-Dec 4–5. This supposedly creates dangers relating to the transfer operation in areas outside the City and unnecessarily exposes residents of those areas to such risks.

However, the materials submitted by both the City and its opponents indicate that "downloading" or "offloading" operations do not occur to any meaningful extent. The City demonstrates that virtually all gasoline and fuel oil arrives at tank farms or storage terminals by barge, tank ship or pipeline, from which local deliveries are made to thousands of locations. NYC Appl. 37, NYC Reply 10–12. It also states that other materials are either transferred at distribution centers for other business reasons or delivered in City trucks directly from farther locations. *Id.*

Matlack and Chemical Leaman confirm that they do not make deliveries to the City because of concerns that truck-to-truck transfers are unsafe. CWTI states that loads of chemical wastes, which its members carry away from the City, are not combined outside the City, "even if they are of the same hazard class, [because such a practice would] attach generator liabilities to transporters."

Thus, the same considerations of risk within the City—*i.e.*, whether larger trucks will permit fewer trips and thus reduce risk from loadings, traffic accidents, and releases—apply outside the City as well. The increased likelihood of accidents, and the damage resulting therefrom, appears applicable to all types of flammable and combustible liquids that are being transported into the City in smaller trucks to meet the City's requirements.

e. *Finding on level of protection to the public*—The study by A.D. Little is the City's only attempt to quantify the overall increase in risk which the City asserts would be presented by DOT trucks, including the factors on which the City relies for its contention that both accident frequency and result are greater for DOT trucks than for City trucks. The A.D. Little study concludes that removing the City's design and construction requirements (as to tank capacity, steel, compartments and baffles) "will increase average risk by 85%, the frequency of catastrophic spill by 225% and the magnitude of catastrophic spill by 40–59%." NYC Appl. Ex. 5, p. 1–3.

The critique of that study by the Industry Group (Ind. Group-Dec Appx. 6) points out that very few factors account for A.D. Little's conclusion that DOT trucks with aluminum tanks have a greater "accident risk (both frequency and size) * * *" NYC Appl. 26. A.D. Little "should have come out with a decreased risk with large aluminum vehicles," except for three specific factors: (1) the higher frequency of accidents assumed for DOT trucks, (2) a 50% increased puncture probability assumed for an aluminum tank, and (3) the assumption that "30% of small spills would be converted to a large spill * * *" Ind. Group-Dec Appx. 6, pp. 1–2.

RSPA finds that these three factors are not supported by the evidence. The first two have already been fully discussed. There is no information to support a conclusion that DOT trucks will have significantly more accidents, for the same number of miles, than City trucks. The conclusion that DOT trucks are 50% more likely to receive a puncture in an accident than a City truck cannot be accepted because A.D. Little's underlying assumptions about the yield strengths of aluminum and steel used in tank construction have been abandoned by the City.

A.D. Little's assumption that "30% of small spills would be converted to a large spill * * *" is based on two other assumptions: "that perhaps 60% of small spills will result in a pool fire * * *" and one-half "of the pool fire incidences * * * will engulf the tank for long enough duration to cause the melting of the shell." NYC Appl. Ex. 5, p. 5–24. There is no explanation of the bases for these two underlying assumptions in the A.D. Little study itself.

The critique by the Industry Group notes that, to the extent A.D. Little relied on historical experience, that experience was not limited to New York City. Rather it was made up of nationwide data, based on larger DOT trucks with aluminum tanks which are allowed everywhere except in the City. Ind. Group-Dec Appx. 6. Therefore, it is not proper to assume that the risks with City trucks are equal to nationwide experience, and then attempt to show an increased risk for DOT trucks. (If there is less risk with City trucks, as the City contends but the Industry Group disputes, it must be shown as a reduction from the nationwide experience.) *Id.* In addition, A.D. Little's working papers contain a handwritten summary of 131 accidents, and a "fire occurred in 22% of the spill accidents and 2% without spills." *Id.* 21–22. This is much closer to the FHWA data for 1989 accidents involving cargo tank trucks nationwide than the assumption "that perhaps 60% of small spills will result in a pool fire * * *" NYC Appl. Ex. 5, p. 5–24.

Because A.D. Little's underlying assumptions cannot be validated, there is no basis for RSPA to accept the position in the A.D. Little study that 30% of the releases of a small amount of gasoline will be converted to a large release, on the theory that fire will consume the entire contents of an aluminum tank. The City's separate assertion that a gasoline fire will never be extinguished before the aluminum tank melts cannot be adopted, as discussed above.

RSPA finds that the City's requirements, which would make mandatory several options that operators have under the HMR with respect to design and construction of cargo tank trucks, will not afford an equal or greater level of protection to the public. An 8,500 gallon tank will allow the same amount to be delivered with fewer trips, and less mileage, when compared to a 4,000 gallon tank. As noted above, the reduction in trips and mileage has the potential to reduce accidents and the damage from accidents:

—In the majority of cases when there is no release of the hazardous materials;
—In the significant number of cases when there is a release of the hazardous materials, but the deaths, injuries and property damage are caused by the collision forces and not by the hazardous materials;
—In the small number of cases when the hazardous materials are released and do cause deaths, injuries or property damage; and
—In incidents when hazardous materials are released during loading or unloading.

The City's waiver application implies that nearly every accident is accompanied by a release of gasoline or fuel oil, and that all the deaths, injuries and property damage are caused by those releases. It makes no mention of the potential for reducing deaths, injuries and property damage which are caused by the collision forces, whether or not hazardous materials are released. It gives no consideration to reducing the number of times hazardous materials are released during loading or unloading.

The HMR have been issued "for the safe transportation of hazardous materials * * *" 49 App. U.S.C. 1804(a)(1). The City has not shown that DOT trucks (which comply with the HMR) will have more accidents for the same number of miles, or that accidents with DOT trucks will cause significantly more damage, than smaller City trucks. The available data show that fatal accident rates are comparable for City trucks and DOT trucks. The studies cited by the City and its opponents indicate that the risk of death in a collision with the 4,000 gallon City gasoline truck is virtually as high as in a collision with an 8,500 gallon DOT truck.

In summary, the use of DOT trucks is safer than the use of City trucks, because use of DOT trucks will result in fewer trips, fewer deaths and injuries, and less property damage. For this reason, RSPA denies the City's application for a waiver of preemption as to the design and construction requirements (truck body type; tank capacity, material, and shape; and requirements for compartments and longitudinal baffles) contained in FPDs 6–76 §§ 4, 5, 24 and 7–74 §§ 4, 5, 29.

3. Extent of Burdens on Commerce

RSPA's finding that the City's design and construction requirements for tank trucks carrying flammable and combustible liquids do not afford an equal or greater protection to the public, than the HMR, is sufficient to deny a waiver of preemption as to those requirements. However, it is still appropriate to address the parties' contentions as to these requirements' burdens on commerce.

RSPA's regulations at 49 CFR 107.221 set forth the following factors to be considered in determining whether the City's regulations unreasonably burden commerce:

(1) The extent to which increased costs and impairment of efficiency result from the State or political subdivision requirement.

(2) Whether the State or political subdivision requirement has a rational basis.

(3) Whether the State or political subdivision requirement achieves its stated purpose.

(4) Whether there is need for uniformity with regard to the subject concerned and if so, whether the State or political subdivision requirement competes or conflicts with those of other States and political subdivisions.

a. *Increased costs and impairment of efficiency*—In its application (p. 40), the City contends that the effect of its limitation on the size of tank trucks:

is only speculative, since it appears that larger trucks (which would lower costs) would be used to make deliveries in New York City only by the chemical industry, which represents, at most, one-tenth of the flammable and combustible liquids delivered in New York City. Gasoline and fuel oil would continue to be delivered locally, probably in the smaller trucks now being used.

However, virtually every opponent disputes this, and several comments note that larger semi-trailers deliver other products in many locations in the City. API states that elimination of the City's equipment requirements would probably bring about "a mixture of tractor-trailers and straight trucks with capacities from 4,000 to 9,000 gallons" based on "traffic congestion, roadway design, service station size, underground tank capacity, and volume of service station throughput." Mobil "would replace its delivery fleet immediately in favor of the Federal specification vehicle * * *"

The City argues that City trucks could efficiently be used in markets outside the City. NYC Reply 33–34. Numerous opponents disagree, stating that two separate fleets would be necessary; according to API, the "New York City specification equipment is not useful in other markets." Mobil and Castle Oil specifically describe separate fleets, using larger DOT trucks to serve customers on Long Island (Mobil) and Westchester County (Castle Oil), rather than the smaller trucks required within the City. A company based in New Jersey, Quadrel Bros., states that it "cannot serve customers in the City," because it "cannot afford to operate two fleets of equipment * * *. New York City's rules have been an economic barrier to our expansion into New York City."

Two chemical companies, already using larger DOT trucks for deliveries in the City, state they will not serve the City if a waiver is granted. Thibault & Walker Co. "delivers daily to its New York City customers in safe full-size DOT-approved trucks without fear of harassment by the City. Should RSPA grant the City a waiver, we will terminate our business relationship with our New York City customers." Reichhold Chemicals is "in New York City on a daily basis, making multiple deliveries to our customers there." It asserts that it "will terminate its customers in New York City," if a waiver of preemption is granted.

The fact that underground gasoline tanks are limited to 4,000 gallons, the maximum tank capacity permitted by FPD 7–74, is not considered a significant factor, because most gasoline retail locations have more than one tank. As Mobil indicates, the larger DOT truck enables the delivery of different grades of gasoline or diesel fuel in one trip.

Aside from the dispute as to the extent to which the DOT trucks would actually replace smaller City trucks, the potential savings calculated by consultants to the City and the Industry Group are remarkably close. In its study for the City, A.D. Little calculated that deliveries of gasoline and fuel oil in larger trucks would reduce annual transportation costs for gasoline by more than $5 million and for fuel oil by

almost $7 million; overall the savings would be in the range of 30–35%. NYC Appl. Ex. 5, 1–3, Tables 4.7, 4.8. This is approximately the same as the "at least 50%" increase in transportation costs allegedly caused by the City's equipment regulations, according to the Industry Group. Ind. Group-Dec 19.

Mobil states that its "rate per gallon of product delivered by our carrier in New York City is twice that of the same carrier operating in neighboring Long Island and Linden, New Jersey * * *." Empire State Varnish Co. states that it pays "6% more than our New Jersey competitors who can purchase [resins and solvents] in 6000 gallon tanks which are not allowed into New York City."

The City contends that its residents willingly pay the additional costs of using smaller tank trucks to pick up or deliver these materials. NYC Appl. 33–34. This contention is rebutted by opponents, including several paint and varnish sellers who are "residents" of the City. Moreover, additional costs cannot be passed on to City residents by those companies who do not sell in the City. According to Castle Oil, Westchester County companies do not buy fuel oil from Castle because they cannot bring their own larger trucks into Castle's terminal in the City. Since they do not sell in the City, these Westchester County companies cannot recover from City residents the additional costs for separate trucks that meet the City's requirements.

In sum, the City's requirements burden commerce by increasing costs and lessening efficiency in the transportation of flammable and combustible liquids in the City.

b. *Basis and purpose of the City's requirements*—The City states that "the basis for each of the regulations as to which a Waiver of Preemption is sought is safety." NYC Appl. 41. The fact that these "regulations have been in force for more than half a century [and] very few serious accidents * * * have occurred in New York City" allegedly shows that the City's requirements achieve their stated purpose. *Id.* Opponents dispute these contentions, arguing that "[e]nforcement of DOT's standards in the City would have prevented these accidents." Ind. Group-Dec 33.

In section A.2. of this Part III, RSPA analyzed in detail the City's arguments on safety and found that the City's design and construction requirements for tank trucks for flammable and combustible liquids do not provide "an equal or greater level of protection to the public than is afforded by" the HMR. The City did not show that the expected accidents, including the results therefrom (as measured in fatalities, injuries, and property damage), would increase if DOT trucks are allowed to make pickups and deliveries of flammable and combustible liquids in the City. Rather, RSPA found that the potential for a reduction in accident numbers and consequences was not overcome or outweighed by the alleged likelihood of increased accident frequency (on a per mile basis) or damage.

The City's requirements do not provide the additional safety which is the premise for those requirements.

c. *Need for uniformity and existence of conflicts*—Uniformity is at the heart of the HMTA and the HMR. Congress has found that "greater uniformity" in regulations for the transportation of hazardous materials will "promote the public health, welfare and safety * * *" 49 App. U.S.C. § 1801, note. "[I]n enacting new preemption standards [in 1990], Congress expressly contemplated that the Secretary would employ his powers to achieve safety by enhancing uniformity in the regulation of hazardous materials transportation." *Colorado Public Utilities Comm.* v. *Harmon*, 951 F.2d at 1581.

In IR–22, 52 FR at 46580–81, RSPA confirmed an earlier finding that packaging requirements, including those applicable to cargo tanks, fell within an area

> where the need for national uniformity is * * * crucial * * * Uniform standards in this area ensure safe efficient interstate transportation. State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations.

In the 1990 amendments to the HMTA, the packaging of hazardous materials and the design and construction of packages were included within the "covered subjects," in which a local regulation is preempted unless it "conforms in every significant respect to the Federal requirement." 49 CFR 107.202(d) (as added in 57 FR 20424, 20428 (May 13, 1992)).

The City acknowledges that the HMTA "emphasizes both uniformity and safety—the former presumably not for its own sake, but as a means of achieving the latter." NYC Appl. 45. RSPA agrees that "a stated need for uniformity is not the only factor to be considered," *id.*, on an application for a waiver of preemption, but the City has not established that a departure from uniformity will meet the asserted "even more basic need for a level of safety high enough to protect the population of the nation's most densely-settled City." *Id.* 44. As discussed above, RSPA has not been able to find that these requirements afford an equal or greater level of protection to the public than the standards in the HMR.

At the same time, Chemical Leaman, the Conference on Safe Transportation of Hazardous Articles, IFTOA, and Yellow Freight System contend that a single set of regulations promotes safety in uniform training, inspections, operations, and emergency response. Many opponents also point to a potential for "a plethora of conflicting regulations as other states and/or local jurisdictions request waivers," as expressed by the Tank Truck Manufacturers Association.

The need for uniformity in the packaging of hazardous materials is critical. Deviations from uniform packaging standards are likely, as here, to create an unreasonable burden on commerce.

Because RSPA is denying the City's waiver application, it is unnecessary to consider potential conflicts with other jurisdictions which might apply for a waiver for differing local regulations.

d. *Finding on burden on commerce*—In order to determine whether the City's regulations "unreasonably" burden commerce, it is necessary to make "a sensitive consideration of the weight and nature of the state [or local] regulatory concern in light of the burden imposed on the course of interstate commerce." *Raymond Motor Transp., Inc.* v. *Rice*, 434 U.S. 429, 441 (1978). In the *Raymond* case, as here, the state or local government's "legitimate interest in regulating motor vehicles using its roads in order to promote highway safety," *id.* at 442, was advanced to justify the burdens imposed on commerce.

The City's requirements, limiting the size and types of tank trucks for the pickup and delivery of flammable and combustible liquids in the City, place a clear burden on the commerce in those products. At the same time, those regulations do not promote safety. Therefore, RSPA finds that the City's design and construction requirements (truck body type; tank capacity, material, and shape; and requirements for compartments and longitudinal baffles) contained in FPDs 6–76 §§ 4,5,24 and 7–74 §§ 4,5,29 unreasonably burden commerce.

Because it finds that the City's tank truck design and construction requirements in these FPD provisions unreasonably burden commerce, in addition to failing to afford an equal or greater level of protection to the public, RSPA denies the City's application for a

waiver of preemption in regard to those requirements.

4. Additional Gasoline Truck Requirements

Additional requirements in FPD 7–74 apply to gasoline tank trucks. First, the tanks must be painted red with the word "GASOLINE" in white letters on the tank and the truck bumpers. Sec. 28. Second, flammable liquids may be unloaded or discharged from tank trucks only by gravity. Sec. 3. As discussed below, the City states that "the Fire Department * * * will be revising the text of the regulation itself, so that it will henceforth apply only to deliveries of gasoline." NYC Appl. 27.

a. *Color and lettering requirements*—The HMR do not specify any color for trucks carrying gasoline or other flammable liquids but rather require placards indicating the nature of the hazardous materials. 49 CFR 172.500 *et seq.* The HMR also authorize marking a cargo tank containing only gasoline with the word "'Gasoline' on each side and rear in letters no less than 2 inches high." 49 CFR 172.336. Thus, the City's requirements mandate practices that a truck operator is allowed to follow, as one option, under the HMR.

In addition, by mandating these practices, the City's requirements eliminate another practice that is allowed under Federal regulations. As pointed out by Mobil and the Industry Group, the City's permanent and unique color and lettering scheme dedicates a tank truck to carrying only gasoline and prevents its use for other commodities or for delivering mixed loads (*e.g.*, gasoline and diesel fuel to a service station) in one truck. Ind. Group-Dec 24. The HMR expressly allow different commodities to be carried in separate compartments of the same truck, and provide for the use of a "Flammable" placard when both flammable and combustible liquids are carried at the same time. 49 CFR 172.504.

To the extent that tank trucks must be dedicated to separate commodities, and that a truck is not permitted to carry both gasoline and other liquids, additional trips with additional mileage may result. The potential for more accidents creates greater danger to the public. The City has provided no evidence to support the argument that dedicating vehicles to "particular categories of hazardous materials represents one way to prevent the problem of the potentially explosive mixture and contamination of flammable cargo." NYC Jan. 28, 1988 Memorandum on appeal of IR–22, p.12.

Matlack and CWTI object that, for trucks which operate both in and outside of the City, a marking system that is not uniform with other jurisdictions would cause confusion in the event of emergency. However, RSPA has already determined that some variation is permissible; a truck operator is allowed to use the red color and white "Gasoline" lettering scheme of the City's requirements as an option under the HMR.

Matlack and CWTI also asserts that, when a gasoline tank truck is empty, the City's permanent lettering scheme violates the prohibitions in the HMTA and the HMR against labelling or placarding a container which does not contain hazardous materials. See 49 App. U.S.C. 1804(e), 49 CFR 172.401(a), 172.502(a). When a tank is empty, it must remain placarded unless it has been "[s]ufficiently cleaned and purged of vapors to remove any potential hazard." 49 CFR 172.514(b). In that case, it may not be labelled or placarded, and the operator would have to remove the "Gasoline" marking. (This requirement applies to a tank truck marked under 49 CFR 172.336 as well as one conforming to the City's color and lettering requirements.)

The City also argues that "ten-inch high white letters saying 'Danger' and 'Gasoline' * * * are certainly easier to see, night or day, than a small DOT placard with a code number," NYC Reply 24–25, and that the color and lettering scheme "gives an immediate clue to emergency response personnel at an accident as to what type of hazard they are about to encounter. Placards can be removed or destroyed in a fire; a permanent marking is far safer." NYC Appl. 29. However, the dedication of separate trucks to gasoline and other liquids, which increases trips and miles as well as accident exposures, poses a greater risk than these other prospects for increasing safety. In sum, RSPA finds that the City's requirements do not afford an equal or greater level of protection to the public than the HMR.

There is also a potential for increased costs and lower efficiency when separate trucks must be used to transport gasoline and other products, as Mobil and the Industry Group point out. With separate trucks required by the City's red color and white lettering requirements, there would be more costs from the additional trips and, in some cases, the need for a truck operator to buy one or more separate trucks. This burden on commerce is unreasonable because it is not offset by an increase in safety and because it is related to the packaging of hazardous materials, a subject requiring national uniformity.

Since RSPA finds that the City's red color and white lettering requirements for gasoline trucks do not afford a greater level of protection to the public and unreasonably burden commerce, RSPA denies the City's application for a waiver of preemption as to those requirements contained in FPD 7–74 § 28.

b. *Gravity discharge*—The HMR do not contain any requirement as to discharge methods. The City does not allow the use of pumps to unload flammable liquids from tank trucks, but specifies that: "The flammable product may be discharged by approved gravity only." FPD 7–74 § 3–1. In response to objections that certain liquids, such as

> paint components, for instance, are highly viscous and therefore very hard to unload solely by gravity discharge * * * the Fire Department has revised its enforcement policy and will be revising the text of the regulation itself, so that it will henceforth apply only to deliveries of gasoline.

NYC Appl. 27. An affidavit from a Fire Department attorney attests that procedures have been initiated to amend FPD 7–74 to carry out this change. NYC Final Ex. 39.

The City states that discharge of gasoline by gravity is safer than using pumps, because there is less likelihood of overfilling a tank from over-pressurization, and less will be released if a hose ruptures. It considers this requirement feasible because, "under other Fire Department regulations, storage tanks with permits to receive gasoline must be buried below ground level; * * * " NYC Appl. 27. It appears that most, if not all, gasoline tank trucks are designed with gravity discharge equipment. See Botkin Dec. 2, 1987 Dep. 88 (Ex. D to Goodman Jan. 29, 1988 Aff. in Docket No. IRA–40A).

Mobil supports a practice of not pumping gasoline "unless absolutely necessary," but stated that on occasion an above-ground storage tank would require pumping. As already noted, Matlack and others indicate they do not perform truck-to-truck transfers because pumps "increase the probability of an accident or incident."

Based on these comments, RSPA finds that a requirement that gasoline be discharged by gravity into underground tanks affords an equal or greater level of protection to the public as the HMR and does not unreasonably burden commerce. Having made those findings, RSPA also considers that it would be appropriate to waive preemption for such a local requirement, if the requirement existed in that form.

RSPA grants the City's application for a waiver of preemption as to FPD 7–74 § 3–1, limited to the discharge of gasoline to underground tanks. Mobil's

comment suggests the possibility of above-ground storage tanks, despite the City's separate requirement of underground tanks for gasoline (which requirement is not affected in any way by this decision). The City also agrees that gravity discharge should not be required for other liquids. Accordingly, RSPA denies the City's application for a waiver of preemption as to FPD 7–74 § 3–1, insofar as it presently applies to other flammable liquids and to the discharge of gasoline into tanks which are not underground.

B. Equipment Requirements—Compressed Gases

1. Truck Types Prohibited by the City

Federal regulations permit bulk transportation of compressed gases in tank trucks which meet DOT design specifications. 49 CFR 173.315. According to the City, "DOT permits any combination that will meet weight limits; in practice, * * * hazardous gases may be carried in full trailer-trucks." NYC Appl. 24.

The City has placed two major restrictions on the transportation or delivery of compressed gases in the City. First, the City prohibits the use of tank trucks for the storage, transportation or delivery of liquefied petroleum gases, 22 other named gases, and "[o]ther Gases which may be deemed to be hazardous by the Fire Commissioner." FPD 5–63 §§ 10.2, 10.5. Second, full trailers larger than 12 feet in length and 75 cubic feet in volume are prohibited for transporting all compressed gases. FPD 5–63 § 10.1. This effectively bars all full trailers, since there are no trailers small enough to meet this size requirement. Caviness Nov. 23, 1987 Dep. 44, submitted by the City with its appeal from IR–22 (Docket No. IRA–40-A).

In response to an objection by the Compressed Gas Association (CGA), the City concedes that "the definitions of [hazardous] compressed gases must be consistent with the definitions in the federal HMRs, and in fact such amendments are among those now being processed." NYC Final 4. The City also confirms (*id.* 5) that another regulation,

> already prohibits the bulk storage in the City of liquefied gases, flammable gases in solution and other flammable gases. Most of the gases listed in F.P. Dir. 5–63 § 10.5 fall within those definitions; however, fluorine and some Class "A" poisons do not.

The City has no "data on the types or amounts of compressed gases that are used in the City, * * *" *Id.* CGA assumes that "heating, refrigerant, welding, atmospheric [and] specialty gases * * *" are delivered in the City in quantities and mixes found in "any other urban jurisdiction." CGA also asserts that, "were the fire department's ban not on the books, bulk deliveries would be considered as a serious distribution option, to the extent fixed bulk storage facilities are available."

When read together, the different provisions of FPD 5–63 § 10 allow (1) "hazardous" gases only in "portable cylinders, which must meet federal DOT standards," NYC Appl. 15, so long as the cylinders are not carried in a full trailer truck, and (2) other non-hazardous gases in tank trucks, so long as the tank truck is not a full trailer.

The City provides little information with regard to its ban on tank trucks for hazardous compressed gases. Taking the same approach as with flammable and compressed liquids, it asserts that a larger amount produces more damage: if an accident occurs, "the amount of the hazardous gas that could be released from a few damaged cylinders would be much smaller and the resulting damage much less than if the gases were transported in one huge quantity in a full-size cargo tank truck." *Id.* 15. A letter signed by Staff Chiefs of the City's Fire Department (NYC Reply, Ex. 36), also states that "compressed gases, particularly LPG [liquefied petroleum gas] and LNG [liquefied natural gas], present an even greater hazard to the unique complexity of New York City," than gasoline tank trucks. The City also refers to a single "notable accident in 1980 on the George Washington Bridge entering the City, in which a tank truck carrying propane developed a leak * * *, causing a serious safety hazard as well as massive traffic tie-ups." NYC Final 5.

As RSPA found to be true for all hazardous materials, loading, unloading and other handling present the greatest potential for releases. CGA represents that the City's ban on tank trucks makes it "necessary to download to cylinder-filling facilities outside the city and then into cylinders." However, there is no information that such transfers actually occur or, if they do, whether there are other business reasons for them.

There could be fewer trips and reduced mileage, with the potential for a reduction in accidents, if tank trucks were allowed to deliver hazardous gases in bulk in the City. On the other hand, the lack of bulk storage facilities in the City raises doubts in this regard. It is also uncertain whether the use of full-trailers for non-hazardous gases would allow fewer trips and less mileage, with a potential for a reduction in accidents, since the City appears to allow semi-trailers for transporting gas cylinders or bulk quantities of some compressed gases.

The reasons given by the City for its ban on full trailers do not demonstrate that the ban provides equal or greater safety than the HMR, but, at the same time, they do not show that the City's requirements afford less protection to the public than the HMR. Even if a "tractor-trailer rig is suspectable [sic] to jack-knifing and roll-overs," NYC Final 5, there is nothing to indicate that full trailers have more problems than semi-trailers. As discussed above, the City failed to demonstrate any likelihood that hazardous materials are released in a significant number of jackknife accidents or that combination trucks have more accidents, or more accidents in which hazardous materials are released, than straight trucks.

The City's desire "to prevent a trucker from uncoupling a trailer (which can stand alone) and leaving it with a hazardous cargo overnight or otherwise unattended in the City," NYC Appl. 24, n.3, fails to show that a full-trailer poses more risk than a semi-trailer. This concern seems to be fully addressed by the prohibition in 49 CFR 397.7(b) against parking on the roadway and the requirement in 49 CFR 397.5(c) that:

> A motor vehicle which contains hazardous materials other than Class A or Class B explosives and which is located on a public street or highway or the shoulder of a public highway must be attended by its driver. However, the vehicle need not be attended while its driver is performing duties which are incident and necessary to his duties as the operator of the vehicle.

In sum, the City and other parties have not provided sufficient information for RSPA to determine whether or not an equal or greater level of protection to the public is provided by the City's restrictions on the types of trucks allowed to pick up or deliver compressed gases, as compared to the HMR. These requirements do not mandate any conditions which violate the HMR, but, as with the City's equipment requirements for flammable and combustible liquids, simply require practices that are optional under the HMR. However, on the information in this record, RSPA cannot determine whether those procedures afford an equal, greater or lesser level of protection to the public.

The lack of adequate information also prevents an assessment of these requirements' burdens on commerce, under the factors set forth at 49 CFR 107.221. There is little basis for finding increased costs or lessened efficiency from a ban on tank trucks if there are no bulk storage facilities to receive bulk

shipments. The City contends that these requirements promote safety, but, as just discussed, there is insufficient information to make such a finding. No conflicts with other jurisdictions have been raised, nor has a need for uniformity, except in the definition of gases covered by the City's regulations.

With regard to conflicts in definitions of hazardous gases, CGA states: "It also is a problem in determining the scope of the local rules." The suggestion that a carrier should "write a letter to the [fire] department * * *" for a ruling as to any gas not included in the list, as made by Assistant Chief of Fire Prevention DeMeo in 1987, is not practical. DeMeo May 26, 1987 Dep., p. 169 (Ex. A to Industry Group July 10, 1987 Comments in IRA–40A). While the City asserts that amendments are "now being processed" to make these definitions consistent with the HMR, NYC Final 4, it provides no specifics on those amendments. Castle specifically calls attention to DeMeo's statement, in a 1985 affidavit, about a proposed change—which never took effect—that would have eliminated Castle's need for a variance to make deliveries to customers out of the City.

Uncertainties as to which gases are "hazardous" jeopardize safety and also burden commerce. The shipper is forced into making assumptions as to the manner in which the materials should be transported or simply does not ship them. For that reason, definitions of hazardous gases in the City's regulations which differ from those in the HMR do not afford as much protection to the public and unreasonably burden commerce. RSPA, therefore, denies the City's application for a waiver of preemption of FPD 5–63 § 10.5.

In the absence of more information, RSPA cannot evaluate the City's legitimate interest in safety or balance that interest against indefinite burdens on commerce. RSPA cannot determine whether or not the City's equipment requirements for trucks picking up or delivering compressed gases unreasonably burden commerce. Because there is insufficient information for RSPA to make the statutory findings on safety or commerce, the City's application for a waiver of preemption as to FPD 5–63 §§ 10.1 and 10.2 is dismissed without prejudice, in accordance with 49 CFR 107.219(b).

2. *Additional rules on gases in cylinders*—In two respects, the City mandates the use of a specific operational procedure in transporting compressed gases in cylinders, while the HMR permit alternative means of providing the same protection. FPD 5–63 § 5.1–2 states that cylinders "shall not be loaded in any position which would prevent the proper functioning of the safety devices or result in injury to such devices." The City applies this regulation by "prohibiting transportation of gas cylinders in a horizontal position; * * *" NYC Appl. 28. It also requires that the cylinders have safety caps or collars during transportation, which it states "is designed to prevent the cylinder from becoming a flying projectile, * * *" and "one more restraint * * * is clearly safer." NYC Reply 25.

DOT regulations authorize transporting cylinders upright (and require the upright position for specification DOT–4L cylinders), but also allow the cylinders to be "loaded into racks securely attached to the motor vehicle; packed in boxes or crates of such dimensions as to prevent their overturning; or loaded in a horizontal position." 49 CFR 177.840(a)(1). The HMR mention safety caps as one of several alternative means of providing protection for cylinder valves. 49 CFR 173.301(g).

DuPont's comments indicate there is no real dispute on the "principles of the security of cylinders or containers and their safe handling and securement." The City asserts that safety caps provide an "additional level of protection," and that, when a gas cylinder is horizontal, liquid rather than vapor "is next to the vent valve," and a release of the gas in liquid form "would be extremely dangerous." NYC Appl. 28. CGA denies that the requirements add anything:

> . . . [T]he different way of handling cylinders in New York injects an element of confusion but no discernible safety benefit. Provisions on restraints and valve caps are in the federal rules and it needlessly complicates national cylinder distribution by compelling this interstate industry to become aware of and to teach individual employees to comply with different rules at the municipal level.

Here, except for possible "confusion," there is no contention that the City's requirements actually lessen safety. On the other hand, there is little information from which RSPA can determine the extent to which these requirements accomplish their intended purpose of increasing safety or weigh that purported benefit against an asserted need for uniformity and reduction in confusion. No party has shown whether there are cost or efficiency differences between the City's rule and the HMR as to a carrier which only picks up or delivers gas cylinders in the City. No comments establish whether carriers which operate outside the City will have to modify their operations to comply with the City's regulations and perhaps engage in reloading before entering the City.

There is insufficient information as to the safety provided by the City's regulations and the potential for confusion and delays in transportation, for RSPA to determine whether or not the City's requirements for transporting cylinders provide an equal or greater level of protection than the HMR or unreasonably burden commerce. For that reason, RSPA cannot make the required findings on safety or burden on commerce in order to grant a waiver of preemption as to FPD 5–63 § 5.1–2. The City's application for a waiver of preemption as to FPD 5–63 § 5.1–2 is dismissed without prejudice, in accordance with 49 CFR § 107.219(b).

C. No Smoking Regulations

Federal regulations prohibit smoking "on or about any motor vehicle while loading or unloading any explosive, flammable liquid, flammable solid, oxidizing material, or flammable compressed gas * * *," 49 CFR 177.834(c), and smoking or carrying "a lighted cigarette, cigar, or pipe on or within 25 feet of—(A) A motor vehicle which contains explosives, oxidizing materials, or flammable materials; or (B) An empty tank motor vehicle which has been used to transport flammable liquids or gases * * *" 49 CFR 397.13.

The City states that its no smoking regulations extend to "anybody on any truck carrying flammable or combustible liquids or flammable gases." NYC Appl. 28. The City's application asks for a waiver of preemption only as to FPDs 6–76 § 25 and 3–76 § 7; the City has not requested a waiver of preemption as to similar prohibitions in FPD 7–74 § 31 and FPD § 5–63 § 12.

As the City notes, in IR–22 RSPA found that the HMTA and the HMR did not preempt the no smoking prohibition on FPD 6–76 applicable to tank trucks carrying combustible liquids. *Id.* The Federal court specifically excluded FPDs 6–76 § 25, 5–63 § 7, and 3–76 § 12 from its findings of preemption in the October 18, 1991 and March 23, 1992 orders.

Two commenters support broader no smoking rules without approving the exact scope of the City's regulations. "Mobile supports both the DOT and the New York City Fire Department regulations which forbid smoking during the delivery of gasoline or fuel oil." DuPont states that it "concurs with the principles behind the smoking prohibitions detailed."

The only opposition to the City's no smoking rules was expressed by CGA, which called the DOT regulations "sufficient [and] clearer than the City's

rule," and objected "to any local restriction purporting to limit the behavior of a driver of a motor vehicle in DOT-regulated commerce, stemming only from the presence of hazardous materials cargo."

RSPA affirms its decision in IR–22 that regulations on smoking such as those in FPDs 6–76 § 25, 5–63 § 7, and 3–76 § 12 are not preempted by the HMTA. Smoking is not within any of the "covered subjects" defined in 49 App. U.S.C. 1804(a)(4)(B). It is possible to comply with both the City's smoking prohibitions and the HMR at the same time, and the City's broader restriction does not create any obstacle to the accomplishment and execution of the HMTA and the regulations issued thereunder.

Because these sections of the City's FPDs are not preempted, RSPA does not reach the issue of a waiver of preemption as to these no smoking prohibitions.

D. Emergency Transfer Requirements

Federal regulations specify certain actions to be taken in the case of an accident involving a vehicle transporting flammable liquids. 49 CFR 177.856. Among those regulations is a prohibition against transferring a flammable liquid "from one motor vehicle to another vehicle, * * * on any public highway, street, or road, except in case of emergency." *Id.* § 856(d). Additional Federal requirements for prompt notification of accidents involving trucks carrying hazardous materials also apply under various circumstances. See 49 CFR § 171.15 (incidents during the course of transportation of hazardous materials with specified results); 49 CFR 394.7 (fatal accidents); see also 40 CFR 302.6 (release of a reportable quantity of any hazardous substance).

The City's FPDs do not specifically set forth notification requirements, but rather state that, in an emergency, flammable and combustible liquids may be transferred only when "authorized by a representative of the Fire Department" and only to "authorized" vehicles. FPDs 7–74 § 26, 6–76 § 26, 3–76 § 14. The City asserts that requirements concerning emergency transfers should apply to "trucks carrying combustible liquids such as fuel oil, which is almost as easily ignited as flammables." NYC Appl. 30–31. It also indicates that "the Fire Department wants to be on the scene when such truck-to-truck transfers are made and therefore requires notification to and permission by a Departmental representative before the transfer is made." *Id.* 31.

State and local governments have the primary responsibility for emergency response to highway accidents. See, *e.g.*, IR–2, 44 FR 75566, 75568 (Dec. 20, 1979); IR–17, 51 FR 20926, 20933 (June 9, 1986). In its comments, CWTI referred to the City's Local Emergency Planning Committee and argued that, to avoid confusion and promote safety, the Fire Department's role in emergency response should be addressed through that committee. CWTI also opposed additional "notification requirements," noting that "[t]ransportation-related releases [of hazardous substances] can be reported to the 911 operator" under 40 CFR 355.40(b)(4)(ii).

These concerns about the City's own coordination and organization of emergency response measures should be raised with the City agencies involved. They are not matters which prevent RSPA from finding that the City Fire Department's role in emergency transfers of flammable or combustible liquids provides at least an equivalent level of protection to the public. Similarly DuPont's desire that emergency transfers be made only with the approval of "the shipper/manufacturer" as well as the Fire Department is also a matter which is properly addressed to the City. RSPA's role in considering a waiver application is not to rewrite local regulations but to determine whether a waiver of preemption is appropriate.

There is no indication that the City's requirements for emergency transfers increase the costs or affect the efficiency of transportation of flammable and combustible liquids. These requirements are intended to increase safety in emergency situations, and it appears that they accomplish that purpose. Since emergency response is primarily local in nature, there does not appear to be a potential for confusion or conflict with other jurisdictions; a great need for uniformity, such as in the packaging area, is not present here.

For the above reasons, RSPA finds that FPDs 3–76 § 14, 6–76 § 26, and 7–74 § 26 afford an equal or greater level of protection to the public as the HMR and do not unreasonably burden commerce. RSPA further finds that it is appropriate to grant a waiver of preemption for these requirements, and RSPA grants the City's application for a waiver of preemption as to these FPD provisions.

E. Inspection and Permit System

The City also seeks a waiver of preemption as to its requirements in FPDs 5–63, 6–76 and 7–74 that tank trucks which deliver flammable and combustible liquids, and all trucks which deliver compressed gases, must have a Fire Department permit. (The City has not requested a waiver of preemption as to the permit requirements in FPD 3–76, applicable to platform trucks.)

The permit and any renewals are valid "for a period to be determined by the Fire Commissioner but in no case to exceed one year"; they are "revocable and not transferrable to a new ownership * * *"; and the metal permit plate and tab must be fastened to the truck as specified in the requirements. FPDs 5–63 § 1, 6–76 § 1, 7–74 § 1. Application for the permit must be "on forms prescribed by the Fire Commissioner and shall contain such information as he shall require." *Id.* The fee for the permit (*id.*, FPD 5–65 § 9) is presently $105. NYC Appl. 35.

Although the language of the City's permit requirements does not refer to inspections, as those requirements are "applied" and "enforced," 49 App. U.S.C. 1811(d)(2), they include an annual inspection to check "[t]he trucks' general safety level * * * as well as their conformity to the [Fire] Department's design requirements * * *" NYC Appl. 30–31.

The permit requirements of the City are part of, and tied to, the City's design and construction requirements which RSPA found to be preempted by the HMTA. For that reason, the permit requirements were held to be preempted as well. See IR–22, 52 FR at 46582. As discussed above, RSPA cannot make the statutory findings required for a waiver of preemption as to the City's equipment design and construction requirements in FPDs 5–63, 6–76, and 7–74. For the same reasons, RSPA denies a waiver of preemption as to the City's permit requirements to the extent they are a part of, and tied to, the design and construction requirements.

On the other hand, as stated in the Administrator's action on the City's appeal from IR–22, "a permit system is not *per se* inconsistent * * *" with the HMTA. IR–22(A), 54 at 26705. States may require a safety inspection of all common carriers, when the trucks home state does not have an inspection program. *American Trucking Ass'ns, Inc.* v. *Larson*, 683 F.2d 787 (3d Cir.), *cert. denied*. 459 U.S. 1036 (1982).

Valid state and local permit and fee requirements are not preempted by the registration requirements of the HMTA for certain persons offering or transporting hazardous materials. 49 App. U.S.C. 1805(c). RSPA has issued a Notice of Proposed Rulemaking to implement this section of the HMTA. 56 FR 51294 (October 10, 1991). The burdens and problems of duplicative or inconsistent state and local registration requirements are being addressed by a

working group created under another provision in the 1990 amendments to the HMTA. 49 App. U.S.C. 1819. (The preemptive effect of the requirement for motor carriers transporting hazardous materials to obtain a safety permit from DOT, under 49 App. U.S.C. 1805(d), has not yet been determined.)

However, any fees imposed by states and localities "in connection with the transportation of hazardous materials * * *" must be "equitable" and must be "used for purposes related to the transportation of hazardous materials, including enforcement and the planning, development, and maintenance of a capability for emergency response." 49 App. U.S.C. 1811(b). Any requirement to "generate and submit documentation to local authorities that is in excess of the HMR's requirements" is inconsistent with, and preempted by, the HMTA. *Colorado Public Utilities Comm.* v. *Harmon*, 951 F.2d at 1582.

RSPA encourages State and local adoption of the HMR. *E.g.*, IR–17, 51 FR at 20930; IR–19, 52 FR 24404, 24410 (June 30, 1987); IR–31, 55 FR 25572, 25579 (June 21, 1990). Congress and DOT also strongly encourage vigorous enforcement of the requirements in the HMR, and other requirements in State and local law which are not inconsistent with the HMR, through both periodic and roadside spot inspections. IR–31, 55 FR at 25584 and other rulings cited there. See also 49 CFR Part 350, and 49 App. U.S.C. 2304(g)(1) (Motor Carrier Act of 1991, Pub. L. 102–240 Section 4002(h), Dec. 18, 1991). Thus, State and local inspection requirements are not *per se* preempted by the Federal inspection requirements set forth in 49 CFR 177.804, 178.345–15 (b)(2), (c)(2), and 180.407 (b), (c).

Considered separate and apart from the City's truck design and construction requirements in FPDs 5–63, 6–76, and 7–74, the permit requirements in those same FPDs are not preempted by the HMTA, provided that (1) the annual permit fee is "equitable" and is "used for purposes related to the transportation of hazardous materials * * *" and (2) the information required on the application form is not in excess of any information requirements of the HMR and does not go beyond what is necessary for processing and issuing the City's annual permit. For that reason, as so limited, it is not necessary for RSPA to make the findings specified in 49 App. U.S.C. 1811(d) or to consider the appropriateness of a waiver of preemption as to the City's inspection requirements.

IV. Ruling

RSPA takes the following action on the City's application for a waiver of preemption:

A. A waiver of preemption is granted concerning the City's requirements covering emergency transfer, for the reason discussed in III.D., above, as those requirements are set forth in FPDs: 3–76 § 14–3(d), 6–76 § 26–3(d), and 7–74 § 26–2(c).

A waiver of preemption is granted concerning that portion of DPD 7–74 § 3–1 which requires that gasoline be discharged by gravity of gasoline from tank trucks into underground tanks, for the reasons discussed in III.A.4.b., above.

B. A waiver of preemption is denied concerning the City's design and construction requirements for trucks transporting flammable and combustible liquids for pickup and delivery in the City, including the color and lettering requirements for gasoline trucks, for the reasons set forth in III.A.1.–3. and III.A.4.a., above, as those requirements are set forth in FPDs: 6–76 §§ 4–1, 4–2, 5–1, 5–2, 5–3, 24–1; and 7–74 §§ 4–1, 4–2, 4–3, 5–1, 28–1, 28–2, 29–2.

A waiver of preemption is denied concerning the City's definition of hazardous compressed gases in FPD 5–63 § 10.5, for the reasons set forth in III.B.1, above.

For the reasons set forth in III.E. above, insofar as the City's inspection requirements are part of, or tied to, the truck design and construction requirements in FPDs 5–63 §§ 5 and 10, 6–76 §§ 4, 5, and 24, and 7–74 §§ 4, 5, 28, and 29, a waiver of preemption is denied concerning the inspection requirements set forth in FPDs: 5–63, §§ 1.1, 1.3, 1.4, 1.5, 1.6, 9: 6–76 §§ 1–1, 1–3, 1–4, 1–5, 1–6: and 7–74 §§ 1–1, 1–3, 1–4, 1–5, 1–6.

For the reasons set forth in III.A.4.b. above, a waiver of preemption is denied concerning FPD 7–74 § 3–1, which presently requires the use of gravity for discharge of flammable liquids other than gasoline and does not limit applicability of gravity discharge requirements for gasoline to tanks which are not underground.

C. The City's application for a waiver of preemption concerning the City's requirements for transporting compressed gases, in FPD 5–63, §§ 5.1–2, 10.1, and 10.2, is dismissed without prejudice for lack of sufficient information, for the reasons set forth in III.B.1.–2., above.

D. No action is taken on the City's application for a waiver of preemption concerning to the City's no smoking regulations set forth in FPDs 3–76 § 12 and 6–76 § 25, discussed in III.C., above, because these requirements are not preempted by the HMTA.

For the same reason, as discussed in III.E., above, no action is taken concerning the City's inspection requirements set forth in FPDs: 5–63, §§ 1.1, 1.3, 1.4, 1.5, 1.6, 9: 6–76 §§ 1–1, 1–3, 1–4, 1–5, 1–6: and 7–74 §§ 1–1, 1–3, 1–4, 1–5, 1–6,

to the extent that these requirements are separate, and severed by the City, from the truck design and construction requirements in FPDs 5–63 §§ 5 and 10, 6–76 §§ 4, 5, and 24, and 7–74 §§ 4, 5, 28, and 29, and provided that (1) the annual permit fee is equitable and is used for purposes related to the transportation of hazardous materials, and (2) the information required on the application form is not in excess of any information requirements of the HMR and does not go beyond what is necessary for processing and issuing the City's annual permit.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.223(a), "[a]ny person aggrieved" by RSPA's decision on the City's application for a waiver may file a petition for reconsideration within 20 days of service of that decision. Any party to this proceeding may seek review of RSPA's decision "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

This decision on the City's application for a waiver of preemption will become RSPA's final decision 20 days after service if no petition for reconsideration of this decision is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 App. U.S.C. 1811(e).

If a petition for reconsideration of this decision is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration with be RSPA's final decision. 49 CFR 107.223(e).

Issued in Washington, D.C. on May 29, 1992.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 92–12966 Filed 6–1–92; 8:45 am]

BILLING CODE 4910–60–M

federal register

Tuesday
June 2, 1992

Part IX

The President

Executive Order 12808—Blocking "Yugoslav Government" Property and Property of the Governments of Serbia and Montenegro

Federal Register
Vol. 57, No. 106
Tuesday, June 2, 1992

Presidential Documents

Title 3—

The President

Executive Order 12808 of May 30, 1992

Blocking "Yugoslav Government" Property and Property of the Governments of Serbia and Montenegro

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*), the National Emergencies Act (50 U.S.C. 1601, *et seq.*), and section 301 of title 3 of the United States Code,

I, GEORGE BUSH, President of the United States of America, find that the actions and policies of the Governments of Serbia and Montenegro, acting under the name of the Socialist Federal Republic of Yugoslavia or the Federal Republic of Yugoslavia, in their involvement in and support for groups attempting to seize territory in Croatia and Bosnia-Hercegovina by force and violence utilizing, in part, the forces of the so-called Yugoslav National Army, constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, all property and interests in property of the Government of Serbia and the Government of Montenegro that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked.

Sec. 2. Except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, all property and interests in property in the name of the Government of the Socialist Federal Republic of Yugoslavia or the Government of the Federal Republic of Yugoslavia that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked.

Sec. 3. Any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited.

Sec. 4. For the purposes of this order:

(a) The term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States (including foreign branches), or person in the United States;

(b) The terms "Government of Serbia" and "Government of Montenegro" include the governments of Serbia and Montenegro, including any subdivisions thereof or local government therein, their respective agencies, instrumentalities and controlled entities, and any persons acting or purporting to act for or on behalf of any of the foregoing, including the National Bank of Serbia, the Serbian Chamber of Economy, the National Bank of Montenegro, and the Montenegrin Chamber of Economy;

(c) The terms "Government of the Socialist Federal Republic of Yugoslavia" and "Government of the Federal Republic of Yugoslavia" include the government of the former Socialist Federal Republic of Yugoslavia, the government of the newly constituted Federal Republic of Yugoslavia, their respective

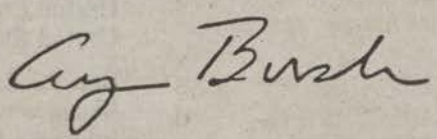
agencies, instrumentalities and controlled entities, and any persons acting or purporting to act for or on behalf of any of the foregoing, including the National Bank of Yugoslavia, the Yugoslav National Army, and the Yugoslav Chamber of Economy.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act, as may be necessary to carry out the purposes of this order. Such actions may include prohibiting or regulating payments or transfers of any property, or any transactions involving the transfer of anything of economic value by any United States person to the Government of the Socialist Federal Republic of Yugoslavia, the Government of the Federal Republic of Yugoslavia, the Government of Serbia, the Government of Montenegro, any person in Serbia or Montenegro, or any person or entity acting for or on behalf of, or owned or controlled, directly or indirectly, by any of the foregoing. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 6. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. (a) This order shall take effect at 11:59 p.m. Eastern Daylight Time, May 30, 1992.

(b) This order shall be transmitted to the Congress and published in the **Federal Register.**



THE WHITE HOUSE,
May 30, 1992.

[FR Doc. 92-13101
Filed 6-1-92; 1:09 pm]
Billing code 3195-01-M

Editorial note: For the President's letter to the Speaker of the House and the President of the Senate regarding the national emergency with respect to Yugoslavia, see issue 23 of the *Weekly Compilation of Presidential Documents.*

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S. 838/P.L. 102–295

Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992. (May 28, 1992; 106 Stat. 187; 28 pages) Price: $1.00

S.J. Res. 254/P.L. 102–296

Commending the New York Stock Exchange on the occasion of its bicentennial. (May 28, 1992; 106 Stat. 215; 1 page) Price: $1.00

Last List June 1, 1992