10-10-90
Vol. 55 No. 196

federal register

Wednesday
October 10, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

10-10-90
Vol. 55 No. 196
Pages 41177-41328

federal register

Wednesday
October 10, 1990

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AD97

Pay Administration (General); Annual Premium Pay for Administratively Uncontrollable Overtime Work

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on the calculation of annual premium pay for administratively uncontrollable overtime (AUO) work. The regulations implement Public Law 101-173, November 27, 1989, which eliminate the rate of basic pay for GS-10, step 1 (currently $27,206 per year), as the maximum base for computing annual premium pay for AUO work. The final regulations require that annual premium pay for AUO work be calculated on the basis of the employee's actual rate of basic pay.

EFFECTIVE DATES: The first day of the first pay period beginning after September 30, 1990.

FOR FURTHER INFORMATION CONTACT: James R. Weddel, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Public Law 101-173, November 27, 1989, amends section 5545(c)(2) of title 5, United States Code, effective with the first pay period beginning after September 30, 1990, by removing the GS-10, step 1, limit on the rate of basic pay used to compute annual premium pay for administratively uncontrollable overtime (AUO) work.

To implement this statutory change, OPM published proposed regulations on June 6, 1990 (55 FR 23088), to remove the GS-10, step 1 limit as the maximum base for computing annual premium pay for AUO work and to eliminate the requirement that annual premium pay for AUO work be limited to the amount of premium pay (exclusive of pay for regular overtime work) that would otherwise be payable. The 60-day public comment period ended on August 6, 1990. Written comments were received from three individuals, one agency, and two labor organizations. These comments are summarized below.

Identical comments were received from three individuals stating that they agreed with the proposed regulations. However, the commenters recommended that members of the Federal law enforcement community be exempted from the limitation on premium pay in 5 U.S.C. 5547(a). This limitation provides that an employee may be paid overtime pay, premium pay for nightwork, and premium pay for Sunday and holiday work only to the extent that the payment does not cause the employee's aggregate rate of pay for any pay period to exceed the maximum rate for GS-15.

The commenters noted that the aggregate pay limitation does not apply to certain employees of the Federal Aviation Administration and the Department of Defense who are paid differentials under 5 U.S.C. 5546a for duties related to the operation and maintenance of an air traffic control system. However, OPM cannot adopt this recommendation since the GS-15, step 10, aggregate pay limitation has been established by law, and any exception for law enforcement personnel would require legislative action.

One agency and one labor organization expressed support for the regulations as proposed and recommended no changes.

Several individuals informally requested an explanation of the nature and purpose of AUO pay. AUO pay can be paid only to Federal employees in positions in which the hours of duty cannot be administratively controlled and which require substantial amounts of irregular, unscheduled overtime duty. For example, this authority is often used in certain law enforcement positions where employees are required to perform substantial amounts of irregular, unscheduled overtime work and are responsible for recognizing without supervision circumstances requiring them to remain on duty. Under these circumstances, agencies are authorized to pay premium pay on an annual basis *instead of* paying premium pay for each hour of irregular or occasional overtime work performed, as authorized by 5 U.S.C. 5542.

A labor organization pointed out that a conforming change eliminating a reference to the GS-10, step 1, limitation is needed in 5 CFR 550.154(a). This change has been incorporated in the final regulations.

Pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this amendment effective in less than 30 days. The 30-day delay in the effective date is being waived because the effective date of the statute is the first day of the first pay period beginning after September 30, 1990.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Goverment employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

1. The authority citation for subpart A of part 550 is revised to read as follows, and the authority citations following all the section in Subpart A are removed:

Authority: 5 U.S.C. 5548 and 6101(c).

2. Section 550.151 is revised to read as follows:

§ 550.151 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of other

premium pay prescribed in this subpart (except premium pay for regular overtime work, and work at night, on Sundays, and on holidays), to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of the employee's rate of basic pay.

§ 550.152 [Reserved]

3. Section 550.152 is removed and reserved.

4. In § 550.154, the introductory language of paragraph (a) is revised to read as follows:

§ 550.154 Rates of premium pay payable under § 550.151.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.151 to an employee who meets the requirements of that section, at one of the following percentages of the employee's rate of basic pay:

* * * * *

[FR Doc. 90-23882 Filed 10-9-90; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Parts 841, 870, 871, 872, 873, and 890

RIN: 3206-AD53

Survivor Benefits, Health Benefits, and Life Insurance for Certain Annuitants

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is making final its interim Federal Employees Retirement System (FERS), Federal Employees' Group Life Insurance (FEGLI) Program, and Federal Employees Health Benefits (FEHB) Program regulations regarding individuals eligible for an immediate annuity under the "Minimum Retirement Age (MRA) plus 10" provision of the FERS law. The regulations clarify the retirement and insurance status of individuals who qualify for certain retirement benefits. These regulations (1) Provide for reinstatement of life insurance and health benefits coverage for individuals who qualify for an immediate annuity when they leave Federal service but postpone the commencing date of the annuity, and (2) enable survivors of these individuals to qualify for survivor benefits and health insurance coverage as surviving family members.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 606-0780, extension 207.

SUPPLEMENTARY INFORMATION: Public Law 99-335, enacted June 6, 1986, established the Federal Employees Retirement System (FERS). Under a provision of FERS, known as the "MRA plus 10" provision (5 U.S.C. 8412(g)), employees who separate from service after attaining the minimum retirement age specified in 5 U.S.C. 8412(h) (currently age 55) and completing 10 years of creditable service (including at least 5 years of civilian service) are eligible for an immediate annuity. The annuity is reduced by 5/12 of 1 percent for each month the retiree is under age 62 when the annuity commences (5 U.S.C. 8415(f) and 5 CFR 842.404). To lessen this age reduction, separated employees may postpone the annuity commencing date to the first day of any month before they become age 62. The separated employees may apply for retirement immediately and then postpone the commencing date of the annuity or they may wait until they are ready for the annuity to begin to make application. On January 11, 1990, OPM published interim regulations in the **Federal Register** (55 FR 993) to clarify the circumstances under which health and life insurance may continue for employees who postpone their annuity commencing date under FERS and the status of their survivors if they die before they apply for the annuity. On February 16, 1990, OPM published a correction to the January 11 interim regulation in which § 890.301(bb) was redesignated as 890.301(cc).

OPM received comments from one Federal agency. The comments primarily concerned revisions in language rather than any substantive changes in the provisions themselves. We did not adopt most of these editorial changes because they did not improve clarity of the interim regulations.

The commenter expressed a concern that people might try to apply § 841.204(b), which provides that certain deceased former employees are considered as deceased annuitants, to entitlement to life insurance benefits. Therefore, we have revised § 841.204(b) to clarify that it applies only for the purpose of determining eligibility for a survivor annuity.

The commenter also suggested that a provision be added to part 890 (health benefits) to provide that a former employee who had exercised his or her conversion right or his or her right under the temporary continuation of coverage (TCC) provisions (5 CFR 890, subpart K) and whose regular health benefits coverage is restored when the MRA-plus-10 annuity begins would receive a refund of premiums for the conversion contract or TCC coverage for any time after the MRA-plus-10 annuity commenced. The stated reason for this is to parallel the life insurance provision in the last sentence of § 870.601(a)(4).

It is not necessary or desirable to make the health benefits provisions parallel to the life insurance provisions in this respect because the circumstances are different. Under the life insurance regulations, a conversion contract terminates when FEGLI coverage resumes under these regulations. Therefore, a refund of premiums covering a period after the termination is reasonable. However, the health benefits regulations do not require that a conversion contract terminate when FEHB coverage is restored. The termination of the contract is controlled by the former employee and any refunds are subject to the terms of the conversion contract.

The TCC regulations provide that TCC coverage stops whenever an enrollee becomes covered under a regular health benefits enrollment. Any premiums collected after that date would be erroneous, and therefore refundable.

OPM has revised the last sentence of § 890.301(cc) to correct a typographical error.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects

5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

5 CFR Part 870, 871, 872, and 873

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Life insurance, Health insurance.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is adopting its interim regulations under 5 CFR Parts 841, 870, 871, 872, 873, and 890 published on January 11, 1990, (55 FR 993) as corrected on February 16, 1990, (55 FR 5563), as final rules, with the following changes:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Pub. L. 100–654; § 890.803 also issued under sec. 303 of Pub. L. 99–569, 100 Stat. 3190, sec. 188 of Pub. L. 100–204, 101 Stat. 1331, and sec. 204 of Pub. L. 100–238, 101 Stat. 1744; Subparts J and K also issued under titles I and II, respectively, of Pub. L. 100–654.

2. In § 841.204, paragraph (b) is revised to read as follows:

§ 841.204 Deemed application to protect survivors.

* * * * *

(b) For the purpose of determining entitlement to a survivor annuity, a former employee who is deemed to have filed an application under paragraph (a) of this section is considered to have died as a retiree.

* * * * *

3. In § 890.301, the last sentence of paragraph (cc) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(cc) *Reenrollment upon application for postponed MRA–plus–10 annuity.*

* * *

If such former employee dies before the end of the 60-day election period in the preceding sentence, a survivor who is entitled to a survivor annuity may register to enroll in a health benefits plan under this part within 60 days after OPM mails the survivor a notice of eligibility and the appropriate registration form.

[FR Doc. 90–23881 Filed 10–9–90; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Privacy Act Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) amends 7 CFR 1.123 by adding another system of records to those exempted from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(k). Notice of the amendment, inviting public comments, was published as a proposed rule in the **Federal Register** on August 1, 1990, at 55 FR 31191. No public comments were received. The final rule, as published, is identical to the proposed rule.

DATES: The amendment is effective November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Jinhee K. Wilde, Office of the General Counsel, USDA, (202) 447–8045.

SUPPLEMENTARY INFORMATION: This amendment is made necessary due to the fact that the Forest Service system of records entitled "Law Enforcement Investigation Records, USDA/FS–33" was inadvertently omitted when 7 CFR 1.123 was amended in 1988. This system contains investigations conducted pursuant to 16 U.S.C. 559, which authorizes Forest Service employees "to make arrests for the violation of the laws and regulations relating to the national forests * * *." The system, therefore, contains "investigatory material compiled for law enforcement purposes * * *" and may be exempted from certain sections of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k)(2).

This rule has been reviewed under the Secretary's Memorandum 1512–1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more. In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Privacy Act.

For the reasons set out in the preamble, 7 CFR, subtitle A, part 1, subpart G, § 1.123 of the Code of Federal Regulations is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 552a.

2. Part 1, subpart G—Privacy Act Regulations, § 1.123 is amended by adding a new entry for the Forest Service alphabetically to read as follows:

§ 1.123 Specific exemptions.

* * * * *

Forest Service

Law Enforcement Investigation Records, USDA/FS–33.

Done this 2nd day of October 1990, at Washington, DC.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90–23843 Filed 10–9–90; 8:45 am]

BILLING CODE 3410–14–M

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV–90–114]

Irish Potatoes Grown in Colorado; Final Rule to Revise Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires reinspection of regraded, resorted and repacked lots of Colorado potatoes except in cases where such a reinspection requirement will result in unreasonably high inspection costs to repackers. The intent of this action is to ensure that all Colorado potatoes going to fresh market outlets meet the minimum quality and size requirements established under the marketing order.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Marketing Agreement

Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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

There are approximately 45 handlers and 395 producers of Colorado potatoes under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers may be classified as small entities.

This rule requires inspection of regraded, resorted or repacked lots of Colorado potatoes except in cases where such an inspection requirement will result in unreasonably high inspection costs to repackers. This action is authorized by § 948.40 of the marketing order, and was unanimously recommended by the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3), and the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) (committees), the agencies responsible for local administration of the Federal marketing order for potatoes grown in Colorado.

The marketing order covers the entire State of Colorado, but divides the State into three geographic areas for administrative and regulatory purposes. In Area 1, which is known as the Western Slope, potatoes are no longer grown in significant volume, and no handling requirements are currently in effect for potatoes grown in that area. Potatoes grown in the other two areas are currently required to meet minimum quality and size requirements prior to being shipped to fresh market outlets. For example, potatoes grown in Area 3, which consists of 37 counties in northeastern Colorado, are required to grade at least U.S. No. 2 and be at least 1⅞ inches in diameter or 4 ounces in weight. Similar requirements are in effect for potatoes grown in Area 2, which is commonly referred to as the San Luis Valley and is comprised of 9 counties in southcentral Colorado. Potatoes grown in both Area 2 and Area 3 are also required to be inspected by the Federal-State Inspection Service (FSIS) and be certified as meeting applicable grade and size requirements.

Historically, the required inspection is performed at shipping point in the area in which the potatoes are grown. In recent years, however, potatoes have been increasingly moving within the State for regrading, resorting and repacking. These potatoes are inspected at shipping point, shipped in bulk to another packing facility within the production area and then repacked in consumer size containers before reentering commercial channels.

When a lot of potatoes that has been inspected is subsequently regraded, resorted or repacked, it loses its identity with respect to the initial inspection certificate issued to cover the lot. Since the inspection certificate cannot be readily associated with the repacked lot, it is difficult to ascertain whether the repacked lot has been inspected and whether it is in compliance with the applicable grade and size requirements that are in effect.

Quality assurance is very important to the Colorado potato industry. The committees believe that providing the public with potatoes that are of acceptable quality and size is necessary in order to maintain the position of Colorado potatoes in the industry. This rule is expected to benefit Colorado potato producers and handlers by assuring consumers that all Colorado potatoes shipped to fresh market outlets, including those that have been regraded, resorted or repacked, meet the minimum quality and size requirements established under the applicable handling regulations.

The committees therefore recommended that regraded, resorted or repacked lots be required to be reinspected. This will ensure that all Colorado potatoes being handled are in compliance with the terms of the handling regulations.

While the committees recommended that regraded, resorted or repacked lots be subject to a reinspection requirement, they also recognized that such a requirement could result in unreasonably high inspection costs to repackers under certain circumstances. Some repacking facilities in Colorado are located at a considerable distance from an FSIS office, and it could be costly and difficult for such repackers to obtain the necessary inspection. The committees therefore recommended that such repackers be able to apply for a waiver from the reinspection requirement. To be entitled to a waiver, the repacker will have to be located at a site where inspection is not readily available, or such repacker's actual inspection costs will have to be unreasonably high.

The FSIS establishes its inspection fees on a per hundredweight basis. Typically, this standard fee covers all inspection costs. Under certain circumstances, however, additional fees are charged. For example, a handler who is located far from an FSIS office is also charged for the inspector's travel time and associated costs. The committees recommended that any repacker whose actual inspection costs will exceed 1⅓ times the established per hundredweight inspection fee should be entitled to a waiver because the reinspection requirement will impose an unreasonably high inspection cost.

Any repacker seeking an inspection waiver will have to meet these criteria. The repacker will be required to apply to the respective area committee for the waiver, and the committee shall give prompt consideration to each application received.

The committees recommended additional safeguard procedures to ensure that repackers operating under waivers remain in compliance with all other handling requirements in effect. To be eligible for a waiver, the repacker will be required to agree to comply with all handling requirements. Such repackers will also be required to file periodic reports of potato receipts and dispositions. The information provided in such reports will enable the respective area committee to determine whether the potatoes handled by a repacker had been previously inspected and whether they were in compliance with the quality and size requirements in effect.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection requirements included in this final rule were approved by the Office of Management and Budget (OMB) and have been assigned OMB number 0581–0111. It has been estimated that it will take an average of approximately 30 minutes for each handler applying for waiver of reinspection requirements to complete the waiver of inspection form and 10 minutes to complete the weekly shipment report form.

Based on the above, the Administrator of the AMS has determined that this section will not have a significant economic impact on a substantial number of small entities.

A proposed rule concerning this action was published in the July 23, 1990, **Federal Register** (55 FR 29850) affording interested persons until August 22, 1990, to file written comments. None were filed.

After consideration of all relevant matters, including the information set forth in the proposed rule and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register**, (5 U.S.C. 553) because (1) The shipping season has begun in Area 3 and will soon begin in Area 2, and this rule should apply to as many shipments as possible to be of maximum effect, and (2) the rule was discussed in public meetings held by the respective committees and all interested persons were given the opportunity to participate.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is hereby amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

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

2. Sections 948.386 and 948.387 are amended by adding a new paragraph (c)(3) to read as follows:

Note: This section will be published in the Code of Federal Regulations.

§ 948.386 Handling regulation.

* * * * *

(c) * * *

(3) Each handler who handles potatoes after such potatoes are regraded, resorted, or repacked shall have such potatoes reinspected, unless such handler has received a waiver from reinspection pursuant to rules established by the Secretary upon the recommendation of the committee.

* * * * *

§ 948.387 Handling regulation.

* * * * *

(c) * * *

(3) Each handler who handles potatoes after such potatoes are regraded, resorted, or repacked shall have such potatoes reinspected, unless such handler has received a waiver from reinspection pursuant to rules established by the Secretary upon the recommendation of the committee.

* * * * *

3. A new heading entitled "Modification of Inspection Requirements" and §§ 948.140, 948.141, 948.142, 948.143 are added to read as follows:

Modification of Inspection Requirements

§ 948.140 Application.

Any handler whose packing facilities are located in an area where inspection is not readily available or the actual cost for inspection would otherwise exceed 1⅓ times the current per hundredweight inspection fee, may apply to the respective area committee for a waiver from the reinspection requirements. Applications shall be made on forms furnished by the respective area committee and shall contain such information as the respective area committee, with the approval of the Secretary, may find necessary in making a determination regarding the issuance of such waiver.

§ 948.141 Issuance.

Each respective area committee shall give prompt consideration to each application for a waiver from reinspection. In granting a waiver, the handler shall agree to comply with all marketing order requirements. Approval of an application shall be evidenced by the issuance of an applicable waiver by the respective area commitee to the handler.

§ 948.142 Reports.

Each handler shipping potatoes pursuant to a waiver from reinspection shall report periodically as specified by the respective area committee on forms furnished by the respective committee the following information on each shipment: quantity of potatoes, variety or varieties, grade, size, type of container(s), date of shipment, carrier, destination, and name and address of receiver.

§ 948.143 Cancellation.

Whenever the respective area committee finds that shipments of potatoes pursuant to a reinspection waiver are not in accordance with the established application and safeguard provisions, such waiver may be cancelled.

Dated: October 3, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–23890 Filed 10–9–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1079

[DA–90–029]

Milk in the Iowa Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions of the Iowa Federal milk marketing order for the months of September through November for an indefinite period. The action increases the amount of milk not needed for fluid use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association to avoid making costly and inefficient movements of milk that would otherwise be made to pool the milk of dairy farmers who have historically supplied the market.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 22, 1990; published August 28, 1990 (55 FR 35150).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Iowa marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 28, 1990 (55 FR 35150) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Two comments were received supporting the suspension for 1990; however, one opposed an indefinite suspension.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September through November, for an indefinite period, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1079.13(d) (2) and (3), the words "50 percent in the months of September through November and," and the words "in other months," as they appear in each paragraph.

Statement of Consideration

This action for the months of September through November for an indefinite period suspends certain provisions of the Iowa Federal milk order that limit the amount of milk that may be shipped directly from farms to nonpool manufacturing plants and still be priced under the order. The order provides that cooperative associations and pool plant operators may divert up to 50 percent of milk receipts to nonpool plants during September–November and 70 percent of receipts during other months. This action removes the 50-percent diversion limitation and allows greater quantities of milk to be diverted to nonpool plants.

The action was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association that represents producers who supply the market. AMPI maintains that the action is necessary because of the relationship between available milk production and fluid milk sales. AMPI points out that producer milk receipts during the first six months of 1990 were up about 4 percent from the previous year while fluid milk sales were at about the same level as a year earlier. As a result, the Class I utilization of producer milk for the first six months was about 26 percent, down slightly from the previous year. Consequently, AMPI projects that about 30 percent of the market's milk supply will be needed for Class I use during the September–November period this year, with about 70 percent of the milk supply being available for manufacturing uses. AMPI maintains that this reserve supply of milk can be most efficiently handled by diverting milk directly from farms to nonpool plants for processing. Absent a suspension action, AMPI contends that the costly and inefficient marketing practices of receiving and transferring milk from pool plants would be undertaken to continue to pool the milk of dairy farmers who supply the market. AMPI also requested that consideration be given to suspending the 50-percent diversion limitation for the September–November period for an indefinite duration since the same provision has been suspended during each of the last six years.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that also represents producers who supply the market, supported the proposed action for the months of September–November 1990. However, Mid-Am opposes suspending the language for an indefinite period due to the uncertainties associated with the national Federal order hearing on Class I differentials, the 1990 Farm Bill, and the GATT negotiations with respect to future milk production.

The diversion provisions of the producer milk definition recognize that reserve milk supplies that are associated with the fluid milk market can be most efficiently marketed by moving them directly from farms to manufacturing plants for processing. Absent a suspension action of the 50-percent diversion limit, the same quantities of milk would still be moved to manufacturing plants, although handlers would have to utilize the relatively inefficient and costly practice of first receiving milk at pool plants and transferring it to nonpool manufacturing facilities. Thus, the suspension of the 50-percent diversion limitation does not have a direct bearing on the availability of milk at distributing plants. Such availability is more a function of the standards for pooling the various categories of plants under the order. Although uncertainties were expressed by Mid-Am, past history warrants the suspension during the months of September through November for an indefinite period.

Further, an indefinite period of suspension is more likely to result in a reduction of suspension actions that occur in continuously adjusting these provisions of the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that uneconomic movements of milk would likely be made solely for the purpose of pooling the milk of producers who have regularly been associated with the Iowa market;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

It is therefore ordered, That the following provisions in § 1079.13(d) (2) and (3) of the Iowa order are hereby suspended for the months of September through November for an indefinite period.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority citation for 7 CFR part 1079 continues to read as follows:

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

§ 1079.13 [Suspended in part]

2. In § 1079.13(d) (2) and (3), the words "50 percent in the months of September through November and," and the words "in other months," as they appear in each such paragraph are suspended for the months of September through November for an indefinite period.

Signed at Washington, DC, on: October 3, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90–23891 Filed 10–9–90; 8:45 am]

BILLING CODE 3410–02–M

Packers and Stockyards Administration

9 CFR Part 202

Rules of Practice Governing Proceedings Under the Packers and Stockyards Act Rules of Practice Applicable to Reparation Proceedings

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This is an amendment to the existing rules of practice for reparation proceedings. It concerns the method of service of documents or papers in such proceedings, and reflects a belief that ordinary mail is sufficient for all but a few of such items. It reduces requirements for use of certified or registered mail to what is necessary. It also provides that documents and papers served by ordinary mail will be deemed to be served at the time of mailing. It also extends times for filing certain documents and papers since such times will be computed from the date of mailing, rather than the date of receipt, of the documents and papers to which they must respond.

EFFECTIVE DATE: October 10, 1990, except that these amendments shall not apply to any document or paper to be filed, for which a filing date has been set by order of a presiding officer or the Judicial Officer prior to such effective date, or for which a filing date has been specified in a written notice issued prior to such effective date and served, in a proceeding pending on such effective date.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, room 3408-South Building, U.S. Department of Agriculture, Washington, DC 20250; (202) 447–6951.

SUPPLEMENTARY INFORMATION: This is an amendment to the existing rules of practice for reparation proceedings. It concerns the method of service of documents or papers in such proceedings, and reflects a belief that ordinary mail is sufficient for all but a few of such items.

Requirements for use of certified or registered mail currently apply to all documents or papers served in such proceedings; such requirements are now being limited to a few such items:

1. A complaint or other document initially served on a person to make that person a party respondent in a proceeding;
2. A final order; and
3. Any other document specifically ordered by a presiding officer or the Judicial Officer to be served by certified mail.

The amendment also provides that all other documents and papers served by ordinary mail will be deemed to be served at the time of mailing.

The amendment also extends times for filing certain documents and papers, from 10 days to 20, since such times will be computed from the date of mailing, rather than the date of receipt, of the documents and papers to which they must respond. No change is made in the method of filing, and filing of documents with the Agency or the Hearing Clerk will be considered made when the documents are received by such office.

Recent decisions supporting the changed method of service are *Atkins* v. *Parker*, 472 U.S. 115(1985); *U.S. Fire Ins. Co.* v. *Producciones Padosa, Inc.*, 835 F.2d 950(1st Cir. 1987); *Old Ben Coal Co.* v. *Luker*, 826 F.2d 688 (7th Cir. 1987); and *U.S.* v. *Bolton*, 781 F.2d 528 (6th Cir. 1985), *cert. den.*, 476 U.S. 1158(1986).

Notice of proposed rulemaking is not required by law for this amendment on the basis that it constitutes "rules of agency * * * procedure, or practice" under 5 U.S.C. 553(b)(A).

Executive Order 12291 and Regulatory Flexibility Act

This final rule is exempt from Executive Order 12291 since it relates to internal agency management concerning rules of procedure or practice in formal adjudicatory proceedings. Also, this action is exempt from the provisions of the Regulatory Flexibility Act since it is not a rule as defined by that Act.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 does not apply to this final rule since it does not seek answers to identical questions or reporting or recordkeeping requirements imposed on ten or more persons, and the information collected is not used for general statistical purposes.

List of Subjects in 9 CFR Part 202

Agriculture, Animals, Administrative practice and procedure, Reparation proceedings.

Accordingly, 9 CFR part 202 is amended as set forth below.

PART 202—[AMENDED]

1. The authority citation for 9 CFR part 202 is revised to read as follows:

Authority: 7 U.S.C. 228(a); 9 CFR 2.17(e); 2.56.

2. Section 202.102 is amended by adding new paragraphs (o) and (p) to read as follows:

§ 202.102 Rule 2: Definitions.

* * * * *

(o) *Mail* means to deposit an item in the United States mail with postage affixed and addressed as necessary to cause it to be delivered to the address shown by ordinary mail, or by certified or registered mail if specified.

(p) *Re-mail* means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail.

3. Section 202.105 is amended by revising paragraphs (e) and (f) and adding new paragraphs (g) and (h) to read as follows:

§ 202.105 Rule 5: Filing; time for filing; service.

* * * * *

(e) *Who shall make service.* Copies of all documents or papers required or authorized by the rules in this part to be filed with the Agency shall be served on the parties by the Agency, and copies of all documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be served on the parties by the Hearing Clerk, unless any such document or paper is served by some other employee of the Department, or by a U.S. marshal or deputy marshal, or as otherwise provided herein, or as otherwise directed by the presiding officer or Judicial Officer.

(f) *Service on party.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, a final order, or other document specifically ordered by the presiding officer or Judicial Officer to be served by certified or registered mail, shall be deemed to be received by any party to a proceeding on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *provided that*, if any such document or paper is sent by certified on registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.

(2) Any document or paper, other than one specified in paragraph (f)(1) of this section or written questions for a deposition as provided in § 202.109(c)(3) of this part, shall be deemed to be received by any party to a proceeding on the date of mailing by ordinary mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative or record of such party, or last known residence of such party if an individual.

(3) Any document or paper served other than by mail on any party to a proceeding shall be deemed to be received by such party on the date of:

(i) Delivery to any responsible individual at, or leaving in a conspicuous place at, the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, or

(ii) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(g) *Service on another.* Any subpoena or other document or paper served on any person other than a party to a proceeding shall be deemed to be received by such person on the date of:

(1) Delivery by certified mail or registered mail to the last known principal place of business of such person, last known principal place of business of the attorney or representative of record of such person, or last known residence of such person if an individual;

(2) Delivery other than by mail to any responsible individual at, or leaving in a conspicuous place at, any such location; or

(3) Delivery to such party if an individual, to an officer or director of such party if a partnership, at any location.

(h) *Proof of service.* Any of the following, in the possession of the Department, showing such service, shall be deemed to be accurate:

(1) A certified or registered mail receipt returned by the postal service with a signature;

(2) An official record of the postal service;

(3) An entry on a docket record or a copy placed in a docket file by the Hearing Clerk of the Department or by an employee of the Hearing Clerk in the ordinary course of business;

(4) A certificate of service, which need not be separate from and may be incorporated in the document or paper of which it certifies service, showing the method, place and date of service in writing and signed by an individual with personal knowledge thereof, *Provided* that such certificate must be verified by oath or declaration under penalty of perjury if the individual certifying service is not a party to the proceeding in which such document or paper is served, an attorney or representative of record for such a party, or an official or employee of the United States or of a State of political subdivision thereof.

§ 202.107 [Amended]

4. Section 202.107(a) is amended by removing the number "10" and inserting in lieu thereof the number "20".

5. Section 202. 109 is amended by removing the number "10" and inserting in lieu thereof the number "20" in paragraphs (b) and (h), and by revising paragraphs (c) and (d) to read as follows:

§ 202.109 Rule 9: Depositions.

* * * * *

(c) *Written questions (interrogatories).* (1) If the examination will be oral, parties who will not be present or represented at it may file written questions with the officer prior to the time of the examination.

(2) The presiding officer may direct, or the parties may agree, that the deposition, if taken, shall be taken by means of written questions. If the presiding officer finds, upon the protest of a party to the proceeding, that such party has a principal place of business or residence more than 100 miles from the pace of the examination and that it would constitute an undue hardship on such party to be present or represented at an oral examination at such place, the deposition, if taken, shall be taken by means of written questions. In any such case, the presiding officer shall state on the record at the oral hearing that, or shall serve the parties with notice that, the deposition, if taken, shall be taken by means of written questions.

(3) If the examination is conducted by means of written questions, copies of the applicant's questions must be received by the other party to the proceeding and the officer at least 10 days prior to the date set for the examination unless otherwise agreed, and any cross questions of a party other than the applicant must be received by the applicant and the officer at any time prior to the time of the examination.

(d) *Order.* The presiding officer, if satisfied that good cause for taking the deposition is present, may order its taking. The order shall be served on the parties and shall inlcude:

(1) The name and address of the officer before whom the examination is to be made;

(2) The name of the deponent;

(3) Whether the examination will be oral or on written questions; and

(4) The time, which shall be not less than 20 days after the issuance of the order, and place.

The officer, time and place need not be the same as those suggested in the application.

* * * * *

§ 202.111 [Amended]

6. Section 202.111 is amended by removing "10th"and inserting in lieu thereof "20th" in paragraph (b)(2), and by removing the number "10" and inserting in lieu thereof the number "20" in paragraph (c).

§ 202.112 [Amended]

7. Section 202.112(f)(2) is amended by removing the third sentence.

§§ 202.113 and 202.114 [Amended]

8. Sections 202.113(e) and 202.114(b) are each amended by removing the number "10" and inserting in lieu thereof the number "20".

Done at Washington, DC this 2nd day of October, 1990.

Virgil M. Rosendale,

Administrator, Packers and Stockyards Administration.

[FR Doc. 90-23764 Filed 10-9-90; 8:45 am]

BILLING CODE 3410-KD-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0707]

Delegation of Authority to Staff Director for Banking Supervision and Regulation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Secretary of the Board, in accordance with 12 CFR 265.2(a)(11), has approved a technical amendment to the Board's Rules Regarding Delegation of Authority (12 CFR part 265) to conform a reference to the Board's Rules Regarding Availability of Information (12 CFR part 261) to the revised version of that part that became effective in 1988.

EFFECTIVE DATE: October 3, 1990.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452-2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the amendment will not have a significant economic impact on a substantial number of small entities. The

amendment does not have particular effect on small entities.

Public Comment

The provisions of 5 U.S.C. 553 relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, Banking, Federal Reserve System.

For the reason set forth above, 12 CFR part 265 is amended as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: Section 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

§ 265.2 [Amended]

2. In section 265.2(c)(20), the reference "§ 261.6(a) (2) and (3)" is revised to read "§ 261.8(a) (2) and (3)."

By order of the Board of Governors, acting through its Secretary under delegated authority, October 3, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23869 Filed 10-9-90; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1400

Organization and Functions; Effective Date

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) published final regulations under part 1400, September 6, 1990 (55 FR 36609). The final regulations in part 1400 relate to the Corporation's organization and functions. The Corporation's Board of Directors provided that these regulations will be effective 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 9, 1990.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Bobbie Jean Norris, Project Analyst, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, (703) 883-4367, TDD (703) 883-4444.

Authority: 12 U.S.C. 2277a-7(10).

Dated: October 3, 1990.

James M. Morris,

Acting Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 90-23841 Filed 10-9-90; 8:45 am]

BILLING CODE 6710-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-36-AD; Amdt 39-6752]

Airworthiness Directives; Boeing of Canada Ltd., de Havilland Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective to all persons an amendment adopting Airworthiness Directive (AD) 90-11-01, which was made effective as to all known U.S. owners and operators of Boeing of Canada, Ltd., de Havilland Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 airplanes. This AD specified a visual inspection followed by a high sensitivity fluorescent dye penetrant inspection to ensure that the elevator pushrod and rod ends are not bent, corroded, cracked, or damaged, and that the rod end bearings are free to rotate. The AD was issued based on an April 12, 1990, accident in Norway in which the aircraft experienced a fatigue fracture of the referenced elevator pushrod ends. This action will preclude failure of the elevator pushrod assembly and subsequent loss of the airplane.

EFFECTIVE DATE: November 16, 1990 as to all persons except those persons to whom it was made immediately effective by priority letter from the FAA, dated May 21, 1990.

ADDRESSES: This AD is not predicated on manufacturer's data. Other information on Boeing of Canada, Ltd., de Havilland Model DHC-6 airplanes is available from the manufacturer, Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. Information pertaining to the issuance of this AD may be examined at the Rules Docket at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Aerospace Engineer, Airframe Branch, FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581, Telephone (516) 791-6220, FAX (516) 791-9024.

SUPPLEMENTARY INFORMATION: On May 21, 1990, the FAA issued Priority Letter AD 90-11-01, applicable to Boeing of Canada, de Havilland, Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 airplanes, that requires a visual and high sensitivity fluorescent dye penetrant inspection for cracks, corrosion, or any damage to the connection between the aft elevator control quadrant and the elevator control horn pushrod. The AD also requires a visual inspection of the rod end bearings to ensure that they are free to rotate.

This action was prompted by reports that an airplane involved in an accident in Norway on April 12, 1990, had a fatigue fracture of the subject elevator pushrod. As a result of this incident, Transport Canada, which has the responsibility for and authority to maintain the continuing airworthiness of these airplanes in Canada, issued Emergency Airworthiness Directive CF-90-10, which required a visual inspection followed by a high sensitivity flouorescent penetrant inspection to detect cracked pushrod ends or other deficiencies. The Civil Aviation Authority of Norway also issued a similar airworthiness directive. The FAA determined that pushrod fatigue is an unsafe condition that may exist on other airplanes of the same type design, certificated for operation in the United States. It was also determined that an emergency condition existed, that immediate corresponding action was required, and that notice and public procedure thereon was impracticable and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by AD 90-11-01 by priority mail letter, dated May 21, 1990. The AD became effective immediately as to those individuals who received the letter.

Since the unsafe condition described therein may still exist on other Boeing of Canada, de Havilland Models DHC-6-1,

DHC–6–100, DHC–6–200, and DHC–6–300 airplanes, the AD is being published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons who did not receive the letter notification. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The requirements of this AD do not relate to AD 80–13–11 R2, which relates to the inspection or replacement of elevator, flap and aileron control rods, and AD 80–13–11 R2 remains in effect.

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 responsibilites among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation or analysis is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing of Canada, Ltd., Dehavilland: Applies to Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 (all serial numbers) airplanes, certificated in any category.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD unless previously accomplished within the last 25 hours TIS prior to the effective date of this AD.

To prevent failure of the elevator pushrod assembly due to fatigue cracking, and the subsequent loss of control of the airplane, accomplish the following:

(a) Remove the aft elevator control quadrant to elevator control horn pushrod from the airplane and remove the rod ends from both ends of the pushrod.

(b) Visually inspect the pushrod and rod ends to ensure they are not bent, corroded, cracked, or damaged, and that the rod end bearings are free to rotate.

(c) Thoroughly clean the rod ends and inspect for cracks using a high sensitivity fluorescent dye penetrant.

(d) Prior to further flight, using serviceable parts, replace any pushrods, rod ends or bearings that are bent, corroded, cracked or seized. Retain all defective parts for possible future examination by the FAA for 60 days after the date of the inspection. If the FAA has not requested this part before that time, properly dispose of the defective parts.

(e) Within one week following the inspections specified in paragraphs (b) and (c) of this AD, submit a written report of the result of the inspections that indicates whether damage was found, part number(s) involved, and the extent, location, and description of any damage found. Submit the report to the FAA, Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791–6220; Facsimile (516) 791–9024. If the inspections were made previous to this AD, forward the requested data within one week of receipt of this AD. (Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.)

(f) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(g) An equivalent means of compliance or an adjustment of the compliance time of this AD may be approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791–6220; Facsimile (516) 791–9024.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

This amendment becomes effective on November 16, 1990 to all persons except those to whom it has already been made effective by priority letter from the FAA dated May 21, 1990, and is identified as AD 90–11–01.

Issued in Kansas City, Missouri, on September 26, 1990.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–23861 Filed 10–9–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–67–AD; Amdt 39–6751]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires modifications of certain hydraulic lines in the number 2 and 3 struts. This amendment is prompted by reports of chafing of the hydraulic and pneumatic lines. This condition, if not corrected, could lead to loss of hydraulic power and damage to pneumatic ducts.

EFFECTIVE DATE: November 12, 1990.

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

FOR FURTHER INFORMATION CONTACT: Mr. Mahinder K. Wahi, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2673. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires modification of certain hydraulic lines in the number 2 and 3 struts, was published in the

Federal Register on May 15, 1990 (55 FR 20164).

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

One commenter requested that the rule be revised to include the option to perform the inspection every 3,000 flight hours or 12 months in lieu of the modification, since it is unlikely that both the hydraulic tubing and the pneumatic duct would chafe simultaneously and the chafing problem requires a long period of time to cause any leakage. The commenter claimed that its own experience demonstrates that an inspection of the area will prevent occurrences of pneumatic system contamination by hydraulic fluid. The FAA does not concur. A simultaneous chafing problem did occur in service and that is what prompted this AD action. While repeat inspections may or may not reveal a chafing problem, modification of the hydraulic lines will prevent it from occurring.

Several commenters requested that, to accommodate their regularly scheduled maintenance, the compliance time be expanded from the proposed 3,000 flight hours or 12 months, whichever occurs first. The FAA does not concur. The compliance time, as proposed, represents what the FAA determined to be the maximum interval of time allowable wherein the modification could reasonably be accomplished, parts could be obtained, and an acceptable level of safety could be maintained. However, the FAA has revised the number of flight hours specified in the compliance time from 3,000 to 4,000 to make the number comparable to 12 months time-in-service, based on average utilization rates of the affected fleet.

The Air Transport Association (ATA) of America, commenting on behalf of its members, made the following suggestions to the proposed rule:

First, it questioned the need to replace and reroute the case drain line in the number 2 strut, since there had never been a finding of mechanical interference in the number 2 strut location, and that accomplishment of modifications described in Boeing Service Bulletin 747–29–2045 addresses the concerns the FAA may have regarding chafing of the number 2 strut hydraulic lines. The FAA does not concur. The manufacturer has examined hydraulic lines in all four strut areas and concluded that, in order to preclude chafing problems, the number 2 case drain line should be rerouted and replaced to provide additional clearance from a pneumatic duct. The FAA concurs with this conclusion. Furthermore, accomplishment of the modifications described in Service Bulletin 747–29–2045 addresses chafing of the case drain line against some mounting clamps and not the pneumatic duct in question.

Second, it questioned the need to modify the hydraulic line at the number 3 strut location if accomplishment of the modifications described in Boeing Service Bulletins 747–29–2038 and 747–29–2024 has been completed. The FAA does not concur. This AD action requires modifications in accordance with Boeing Service Bulletin 747–29–2051, which states that concurrent or previous accomplishment of Service Bulletins 747–29–2038 and 747–29–2024 is also necessary, depending upon whether the affected airplane is identified as Group I, II, or III.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

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

There are approximately 296 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 136 airplanes of U.S. registry will be affected by this AD, that it will take approximately 42 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost for replacement parts is estimated at $3,250 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $670,480.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747 series airplanes, line position 001 through 331, identified in Boeing Service Bulletin 747–29–2051, Revision 1, dated August 8, 1980, certificated in any category. Compliance required within the next 4,000 flight hours or 12 months after the effective date of this AD, whichever occurs first, unless previously accomplished.

To prevent damage to hydraulic and pneumatic systems and flight deck/cabin air contamination, accomplish the following:

A. Modify the hydraulic system in the number 2 and 3 struts in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–29–2051, Revision 1, dated August 8, 1980.

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

Note: The request should be forwarded through an FAA Principal Inspector (PI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to The Boeing Commercial Airplane Group, P.O. Box 3707, Seattle,

Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 12, 1990.

Issued in Renton, Washington, on September 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23860 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. Nos. 33-6877, 34-28513, 35-25161, 39-2250, IC-17773, IA-1258]

Public Reference Room Dissemination Services

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is revising subpart D, part 200 of title 17 to direct the public how to obtain copies of certain publicly available documents from the Commission. In addition, the addresses of three regional offices are updated.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Carol K. Scott, Assistant General Counsel (202-272-2472), or Fran L. Paver (202-272-2453), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: To facilitate the dissemination of public information, the Commission, through a contractor, makes copies of certain public records available through the Commission's public reference rooms, at prices and terms regulated by the Commission. In the past, the contractor provided a number of services at regulated prices regardless of where ordered. This is still true for microfiche subscriptions, and notification that a particular document has been filed ("watch services"). However, for services other than microfiche subscriptions and watch services, orders must be placed through the Commission's public reference rooms in order to obtain regulated prices. To ensure that these services are accurately reflected in the Code of Federal Regulations, certain changes to 17 CFR part 200, subpart D are warranted. Rather than contacting the contractor at the contractor's private facilities, members of the public requesting copies of public records at regulated prices should direct their written requests to the Commission's Washington, DC public reference room. Written requests directed to the Commission's public reference room will be filled by the contractor at regulated prices. Sections 200.80(c)(1), 200.80(e)(7) (i) and (ii), and 200.80e are revised to reflect these changes.

In addition, § 200.80(c)(1)(iii) is amended to correct the addresses of the Boston, New York and Philadelphia Regional Offices.

The Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment. Accordingly, it is effective upon publication in the **Federal Register**.

List of Subjects in 17 CFR Part 200

Organization and functions, Federal buildings and facilities.

Text of Amendments

For the reasons set out in the preamble, the Commission is amending part 200 of chapter II, title 17 of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D—Information and Requests

1. The authority citation for part 200, subpart D, continues to read as follows:

Authority: 80 Stat. 383, as amended, 31 Stat. 54, secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 85, 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 78m(F)(3), 78w, 79t, 79v(a), 77sss, 80a-37, 80a-44(c), 80a-44(b), 80b-10(a), 80b-11.

2. Section 200.80(c)(1) introductory text is revised as follows:

§ 200.80 Commission records and information.

* * * * *

(c)(1) *Public reference facilities.* In order to disseminate records, including those listed in Appendix A to this section, the Commission has a specially staffed and equipped public reference room located at 450 Fifth Street NW., Room 1024, Washington, DC (202-272-3100) and public reference facilities in its New York and Chicago regional offices. Copying machines, which are available to requesters on a self-service or contractor-operated basis, can be used to make immediate copies up to 8½ by 14 inches in size of materials that are available for inspection in the Washington, DC, New York and Chicago offices. Fees and levels of service are set out in the Commission's schedule of fees in Appendix E to this section and in information available from the public reference room. The Commission accepts only written requests for copies of documents.

* * * * *

§ 200.80 [Amended]

3. Section 200.80(c)(1)(iii) is amended by revising the addresses of the Boston, New York, and Philadelphia Regional Offices as follows:

Boston Regional Office, John W. McCormack Post Office and Courthouse Building, Suite 700, Boston, Massachusetts 02109.

New York Regional Office, 75 Park Place, Room 1228, New York, New York 10007.

Philadelphia Regional Office, The Curtis Center, Suite 1005 E, 600 Walnut Street, Philadelphia, Pennsylvania 19106-3322.

4. Sections 200.80(e)(7) (i) and (ii) are revised as follows:

§ 200.80 Commission records and information.

* * * * *

(e) * * *

(7) * * *

(i) *Facsimile copies.* Requests for facsimile copies may be made either in person at the Commission's Washington, DC, New York, or Chicago public reference rooms, or by mail addressed to the Securities and Exchange Commission, Public Reference Room Branch, 450 Fifth Street, NW., room 1024, Washington, DC 20549. The contractor will send copies directly to the purchaser unless attestation is requested. Persons who request copies of documents through the public reference room will be billed by the contractor at regulated prices, and will be billed separately by the Commission for search, review and attestation charges, if any. Copies of documents requested directly from the contractor or from any other information service or vendor are not subject to regulated prices. Special classes of copying services, such as telecopies, not listed herein or in the current schedule of fees posted in the public reference room, are not provided or regulated by the Commission, but may be obtained from private vendors at market prices.

(ii) *Microfiche copies.* A contractor also makes available to the public microfiche copies of certain public documents on file with the Commission, at prices and on terms governed by its contract with the Commission. Microfiche services include subscription

microfiche service on an annual basis. Microfiche subscription prices are regulated by the Commission whether requested through the public reference room or directly from the contractor. Certain other microfiche services are provided at prices that are regulated by the Commission only if ordered through the Commission's public reference room. The Commission will accept only subscription requests made in writing, although the contractor may elect to accept subscription requests by telephone. All microfiche subscription charges are payable directly to the contractor, whether placed through the Commission or not. Information concerning the types and cost of regulated microfiche services may be obtained by writing to the Commission at its public reference room located at 450 Fifth Street, NW., room 1024, Washington, DC 20549 or calling this facility at 202–272–3100.

* * * * *

5. Section 200.80e is amended by revising the paragraph entitled, "Other Services" as follows:

§ 200.80e Appendix E—Schedule of fees for records services.

* * * * *

Other services. The Commission's dissemination contractor also provides a wide range of additional regulated dissemination services through the Commission's public reference rooms. Two offsite services also are provided at prices that are regulated: microfiche subscriptions and watch services. Information concerning the availability of all dissemination services may be obtained by writing to the Commission's public reference room located at 450 Fifth Street, NW., room 1024, Washington, DC 20549 or calling 202–272–3100. Copies made pursuant to requests submitted to the Commission's public reference room will be filled by the contractor and sent directly to the purchaser, unless attestation is requested. The contractor will bill the purchaser directly for the cost of copies plus postage or other delivery charges, and applicable taxes. Purchasers shall make full payment directly to the contractor for these services. Search, review or attestation charges will be billed separately by the Commission.

By the Commission.

Dated: October 3, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23887 Filed 10–9–90; 8:45 am]

BILLING CODE 8010–01–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–47

[FPMR Amendment H–179]

Utilization and Disposal of Real Property; Appraisal

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation increases the estimated fair market value threshold above which an appraisal must be obtained in disposing of Government-owned surplus real property through competitive sale procedures. This measure is intended to promote economy in property sales in instances where the cost of an appraisal would be disproportionate to realized proceeds.

EFFECTIVE DATE: This regulation is effective October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Marjorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, Federal Property Resources Service, General Services Administration (202–501–0052).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) is amending its regulations to provide a more comprehensive specification of the circumstances where appraisals of Federal surplus real property are not required and to increase from $10,000 to $50,000 the estimated fair market value threshold at or beneath which an appraisal need not be obtained for Government-owned surplus real property that is to be disposed of through competitive sale procedures.

GSA has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–47

Government property management, Surplus Government property.

Accordingly, 41 CFR part 101–47 is amended as follows:

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for part 101–47 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–47.3—Surplus Real Property Disposal

2. Section 101–47.303–4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–47.303–4 Appraisal.

(a) Except as otherwise provided in this subpart 101–47.3, the disposal agency shall in all cases obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of property available for disposal.

(b) No appraisal need be obtained.

(1) When the property is to be disposed of without monetary consideration, or at a fixed price, or

(2) When the estimated fair market value of property to be offered on a competitive sale basis does not exceed $50,000;

Provided, however, That the exception in paragraph (b)(1) of this section shall not apply to disposals that take any public benefit purpose into consideration in fixing the sale value of the property.

* * * * *

Dated: August 13, 1990.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 90–21071 Filed 10–9–90; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6803

[CO–930–00–4214–10; C–47115)

Withdrawal of Public Land for the Forest Service Sulphur Center Administrative Site; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 30 acres of public lands from surface entry and mining for a period of 20 years for protection of a proposed Forest Service administrative site nearby Granby,

Colorado. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land, is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, and reserved for use by the Forest Service as an administrative site:

Sixth Principal Meridian

T. 1 N., R. 76 W.,
Sec. 8, NW¼NW¼NW¼, E½NW¼NW¼.

The area described contains approximately 30 acres of public land in Grand County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: September 27, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-23798 Filed 10-9-90; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-02; Notice 2]

RIN 2127-AD22

Federal Motor Vehicle Safety Standards; New Pneumatic Tires—Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This amendment implements the petition by the European Tyre and Rim Technical Organisation (E.T.R.T.O.) requesting that NHTSA amend its labeling requirements in Standard No. 109, *New Pneumatic Tires—Passenger Cars* to require a manufacturer to place the required markings between the bead and a point one-half the distance from the bead to the shoulder of the tire, if the tire's maximum section width is close to the bead. This amendment adds to Standard No. 109 a provision previously added by the agency to another tire standard, the one related to tires on vehicles other than passenger cars. This amendment will facilitate the marking of labeling information without any foreseeable adverse impact on safety.

DATES: This amendment is effective November 9, 1990.

Petitions for reconsideration must be filed by November 9, 1990.

ADDRESSES: Submit petitions for reconsideration to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-4803.

SUPPLEMENTARY INFORMATION: Section S4.3 of Standard No. 109, *New Pneumatic Tires—Passenger Cars* (49 CFR 571.109) sets forth information labeling requirements for tires, including requirements regarding the positioning of the information on the sidewall to ensure that it is readily visible and to minimize the possibility that it will be scuffed off if the sidewall hits a curb or similar object. Until the effective date of this rule, it provides that the information shown in paragraphs S4.3 (a) through (e) (e.g., number of plies and inflation pressure) shall appear between the maximum section width and bead. Section S4.3.1 and S4.3.2 provide more extensive local requirements for other information (e.g., the DOT certification and the name of the manufacturer or brand name and number assigned to the manufacturer) to be placed on car tires. They provide that the labeling should be done "in the manner specified in part 574." Part 574, which applies to both car tires and tires for vehicles other than cars, begins in the same manner as S4.3 of Standard No. 109, specifying that the tire identification number shall appear between the maximum section width and bead. However, part 574 goes on to provide that if a tire's maximum section width falls within one-fourth of the distance from the bead to the tire shoulder, the tire identification number must appear between the bead and a point one half the distance from the bead to the shoulder of the tire. Section S4.3 does not refer to part 574 or otherwise provide guidance about the placing of the markings required by S4.3 (a)-(g) in situations where the tire has its maximum section width close to the bead.

The agency addressed the problem of labeling tires whose maximum section width is close to the bead in a 1985 rulemaking regarding tires for vehicles other than passenger cars. (49 FR 37816, September 26, 1984; 50 FR 10773, March 18, 1985). That rulemaking amended part 574, *Tire Identification and Recordkeeping* (49 CFR 574.4) and Standard No. 119, *New Pneumatic Tires for Motor Vehicles Other Than Passenger Cars* (49 CFR 571.119) to permit placing markings at a different location in order to permit the introduction of a new tire concept for vehicles other than cars where the tire's maximum section width is at the bead. In particular, figure 1 of part 574 was amended to specify the requirements for the label's position if a tire's maximum section width falls within one-fourth of the distance from the bead to the tire shoulder. In that case, a marking must appear between the bead and a point one half the distance from the bead to the shoulder of the tire. Amending part 574 had the practical effect of applying the new requirement to section S4.3.1 and S4.3.2 of Standard No. 109 given that these provisions state that tires must be labeled "in the manner specified in part 574." However, the 1985 final rule did not amend the labeling requirements for car tires in section S4.3 of Standard No. 109. Nevertheless, the notice did expressly amend section S6.5 of Standard No. 119 to permit this new tire technology.

On June 29, 1989, the European Tyre and Rim Technical Organisation (E.T.R.T.O.) notified NHTSA that a new type of pneumatic tire for passenger cars with its maximum section width close to the bead would not comply with the current requirements in S4.3 of Standard No. 109. As a result, E.T.R.T.O. petitioned the agency to amend section S4.3 to permit labeling on this new type of tire consistent with figure 1 of part 574.

After reviewing the petition, the 1985 rulemaking, and the existing regulations NHTSA decided to grant the petition and propose the petitioner's request to expressly include the marking location provisions of Figure 1 of Part 574 in section S4.3 of Standard No. 109. (55 FR

4445, February 8, 1990) The agency tentatively concluded that amending the standard in this fashion would better address situations in which the maximum section width of passenger car tires is near the bead.

The only commenter to this rulemaking was the petitioner, which requested that the effective date be 30 days after publication of the notice rather than the 180 days proposed in the NPRM. E.T.R.T.O. claimed that an earlier effective date should be permitted given that the proposal is not "major" nor "significant" and does not impose any new requirements. In addition, it stated that the 180 days between the effective date and the publication of the Final Rule would result in considerable delay in the availability of certain vehicles currently in production that are designed to be equipped with the tires relevant to this notice. Thus, it believed that the later effective date would impose an undue burden on both the vehicle and tire manufacturers concerned.

NHTSA has decided to adopt the amendment as proposed, except that it has decided to adopt the earlier effective date suggested by E.T.R.T.O. The agency finds that there is good cause for making this final rule effective in less than 180 days because the amendment permits the production of a new type of passenger car tire that is comparable to currently produced non-passenger car tires. The agency further notes that the amendment will facilitate the marking of labeling information without any foreseeable adverse impact on safety.

Impact Assessment

The agency has analyzed this rulemaking and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments do not impose new requirements for tires but instead permit more effective labeling on certain tires. Selection of this option is a discretionary decision made by the tire manufacturer and is not a mandatory safety requirement. A Regulatory Evaluation is not required, because this rule will have minimal economic impacts.

In accordance with the Regualtory Flexibility Act, NHTSA has evaluated the effect of this action on small entities. I certify that the amendment will not have a significant economic impact on a substantial number of small entities. The agency believes that few, if any, tire manufacturers qualify as small businesses. Even the effect on small businesses, small organizations, and small governmental units through the purchase of motor vehicles, will be minimal.

NHTSA has analyzed this action under the principles and criteria of Executive Order 12612, and has determined that this final rule will not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

Finally the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and determined that the rule will not have any significant impact on the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor Vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403 and 1407; delegation of authority at 49 CFR 1.50.

§ 571.109 [AMENDED]

2. S4.3 of § 571.109 is revised to read as follows:

§ 571.109 Standard No. 109; New pneumatic tires.

* * * * *

S4.3 *Labeling Requirements.* Except as provided in S4.3.1 and S4.3.2, each tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than 0.078 inches high, the information shown in paragraphs S4.3 (a) and (g). On at least one sidewall, the information shall be positioned in an area between the maximum section width and bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires where the maximum section width falls in that area, locate all required labeling between the bead and a point one-half the distance from the bead to the shoulder of the tire. However, in no case shall the information be positioned on the tire so that it is obstructed by the flange or any rim designated for use with that tire in Standard Nos. 109 and 110 (§ 571.109 and § 571.110 of this part).

(a) One size designation, except that equivalent inch and metric size designations may be used;

(b Maximum permissible inflation pressure;

(c) Maximum load rating;

(d) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different;

(f) The words "tubeless" or "tube type" as applicable; and

(g) The word "radial" if the tire is a radial ply tire.

* * * * *

Issued on: October 3, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90–23837 Filed 10–9–90; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 900–949–0249]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Interpretive rule.

SUMMARY: NOAA publishes this interpretive rule to clarify trawl gear definitions contained in an emergency interim rule as they affect the groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands. This action, which is necessary to reduce confusion concerning these gear definitions, emphasizes that any trawl with bobbins or rollers attached is a bottom trawl. It is intended to inform the fishing industry about NOAA's interpretation of measures designed to reduce bycatches of prohibited species in these groundfish fisheries.

EFFECTIVE DATE: August 14, 1990.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: On August 17, 1990, the Secretary of Commerce published an emergency interim rule under section 305(e) of the Magnuson Fishery Conservation and Management Act that amended regulations implementing the fishery management plans for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (BSAI FMP) and the

Groundfish Fishery of the Gulf of Alaska (GOA FMP) (55 FR 33715). In part, the emergency interim rule amended regulations by redefining pelagic trawl gear. The emergency interim rule also amended regulations at § 675.21(c) that formerly had prohibited directed fishing for pollock and Pacific cod in the Bering Sea and Aleutian Islands with bottom trawls by prohibiting trawling with other than pelagic trawls.

The emergency interim rule definition of pelagic trawl gear is silent about whether bobbins or rollers are permitted on pelagic trawls. This omission has confused some fishing industry participants because the existing definition of bottom trawl in regulations codified at 50 CFR 672.2 and 675.2 specifically states that if bobbins or roller gear are attached to the ground rope of the net, the net is a bottom trawl.

NOAA clarifies the intent of the emergency interim rule that bobbins or rollers cannot be attached to a pelagic trawl. All trawls equipped with bobbins or rollers are bottom trawls under existing regulatory definitions and are consequently trawls other than pelagic trawls. Furthermore, bottom trawls are prohibited in directed fisheries for pollock and Pacific cod in the Bering Sea and Aleutian Islands Management Area for the duration of the emergency interim rule. Some fishermen apparently believe that they can circumvent § 675.20(c)(2) by attaching bobbins or rollers to a pelagic trawl. However, a trawl with this configuration is a bottom trawl.

Classification

This action is authorized by 50 CFR parts 672 and 675 and is taken in compliance with E.O. 12291. The Assistant Administrator for Fisheries, NOAA, has determined that because this action is an interpretive rule, notice and opportunity for comment and a 30-day delay of its effective date are not required pursuant to sections 553 (b)(A) and (d)(2) of the Administrative Procedure Act.

List of Subjects in 50 CFR Parts 672 and 675

Foreign fishing, Fisheries, Fishing vessels.

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

Dated: October 3, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-23889 Filed 10-4-90; 3:52 pm]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 91160-0003]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions, and request for comments.

SUMMARY: NOAA announces adjustments to restrictions on fishing in the ocean off Washington, Oregon, and California in 1990 for sablefish caught with either trawl or nontrawl gear and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and are necessary to prevent biological stress to this stock, which could occur if landings were not restricted, and to enable fishing quotas to be reached but not exceeded. These actions are intended to change fishing rates, to allow unavoidable incidental catches of sablefish in other fisheries to be landed, and to avoid or reduce the probability of a fishery closure before the end of the year while providing a reasonable opportunity for fishing quotas to be taken.

DATES: 0001 hours (local time) October 3, 1990, until 2400 hours (local time) December 31, 1990, unless modified, superseded, or rescinded. Comments will be accepted through October 25, 1990.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney R. McInnis at 213-514-6199, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR 663.22(a) authorize the Secretary of Commerce (Secretary) to reduce fishing levels to prevent or reduce biological stress in any species or species complex, consistent with the objectives and priorities of the FMP. Separate annual quotas have been designated for trawl and nontrawl landings of sablefish in 1990. Trip landing limits have been applied during the year on both the trawl and nontrawl fisheries to slow the rate of landings, avoid premature closure, minimize discards of incidental sablefish catches in excess of the desired harvest level, and thus lessen the likelihood of biological stress on the sablefish resource. In addition, trip limits were imposed to enable the gear quotas to be reached but not exceeded, to maintain trawl markets as long as possible during the year, and to enable nontrawl fishermen who land small amounts of sablefish to continue operating later in the year.

At its September 1990 meeting, the Pacific Fishery Management Council (Council) recommended reducing fishing levels for sablefish caught with trawl gear to prevent the trawl allocation from being reached before the end of the year. The Council also determined that the current nontrawl restrictions were too severe and would prevent the nontrawl quota from being reached.

The Council's Groundfish Management Team (GMT) monitors landings and recommends trip limit changes, as necessary, to meet the trawl and nontrawl quotas. Additional fishing restrictions may be imposed if needed to avoid exceeding these annual quotas or to minimize discards.

If total landings reach 8,900 metric tons (mt), the optimum yield (OY) quota, all further landings of sablefish will be prohibited.

Sablefish Caught with Trawl Gear. In 1990 to date, the trawl fishery for sablefish has been managed with a trip limit of 1,000 pounds or 25 percent of the deepwater complex, whichever is greater, which was designed to keep landings within the 4,988 mt annual trawl quota for sablefish. The deepwater complex, as defined in annual and inseason notice actions, includes sablefish, Dover sole, thornyheads, and arrowtooth flounder.

At the Septemer 19-20, 1990, Council meeting, the GMT projected that 3,795 mt of sablefish had been landed by trawl gear through August 31, 1990, and, based on observed and expected rates of landings, projected that the trawl quota would be reached by November 8, 1990. Because sablefish are caught unavoidably in trawl fisheries for other ground fish species (especially Dover sole and thornyhead rockfish), prohibiting the retention of sablefish when the trawl quota is reached, or reducing the sablefish trip limit without reducing the catch of the species with which it is closely associated, is not likely to reduce substantially the fishing mortality of sablefish. It would only result in the continuing catch and discard of sablefish.

Consequently, the Council recommended the following adjustments

to the trawl trip limit currently in effect: (1) Apply a 15,000 pound trip limit on the deepwater complex as a whole, intending to achieve a proportional decrease in sablefish, and therefore avoiding the discards that would occur if only the amount of sablefish were reduced; (2) maintain the current trip limit for sablefish of 1,000 pounds or 25 percent of the deepwater complex, whichever is greater; (3) redue the frequency of landings by allowing only one landing per week of the complex above 1,000 pounds; (4) provide for biweekly and twice-weekly trip limit options, to minimize differential impacts on small and large vessels; and, (5) remove arrowtooth flounder from the deepwater complex, because it is not as closely associated with sablefish as previously thought, and its inclusion would be unnecessarily restrictive to the arrowtooth flounder fishery. This revised trip limit is similar to that imposed on April 26, 1989 (55 FR 18658, May 2, 1989).

The Council's rationale for restricting the deepwater complex harvest relies on the best available scientific information, which indicates that sablefish are unavoidably caught while fishing for the complex. Thus, the Council was left with no realistic alternative to prevent the excessive harvest, discard, and waste of sablefish except to constrain the harvest of the complex as a whole. This is not unprecendented as, for example, landings of the *Sebastes* complex or rockfish have been reduced since 1983 to protect yellowtail rockfish.

The recommended trawl trip limit was derived primarily from fish ticket data from Oregon and California for the second quarter of 1987 when no fishing restrictions were in effect (except for sablefish smaller than 22 inches). These data indicated that approximately 22 percent of the trawl trips containing the deepwater complex were greater than 15,000 pounds. The recommended trawl trip limit will eliminate trips greater than 15,000 pounds. The 25 percent limit on sablefish is the approximate coastwide average incidence of sablefish in a landing of the deepwater complex. Because the 25 percent limit is based on an average, some discards of sablefish are likely to occur. There is no limit on the number of landings less than 1,000 pounds of the deepwater complex so that boats that have little or no sablefish on board are not unduly restricted. Approximately 33 percent of the deepwater complex landings were under 1,000 pounds, and these contained about 22 percent of the sablefish landed with the complex. The 1,000 pound limit for sablefish is intended to allow small catches to be landed without encouraging targeting. These 1987 data included arrowtooth flounder in the deepwater complex. It is not known how these percentages would have differed if arrowtooth flounder had not been included, but, since arrowtooth flounder is not found as frequently with sablefish as previously thought and is uncommon in California trawl landings, the change should not be great.

All other provisions for sablefish caught with trawl gear off the coast of Washington, Oregon, and California announced at 55 FR 3747 (February 5, 1990) remain in effect.

Sablefish Caught with Nontrawl Gear. On June 24, 1990 (55 FR 25977, June 26, 1990), when 300 mt of the nontrawl sablefish quota (3,612 mt) was projected to remain, a nontrawl trip limit of 500 pounds was imposed and subsequently adjusted to 200 pounds on July 25, 1990 (55 FR 31053, July 31, 1990). The purpose of the trip limits was to extend the nontrawl quota as long as possible by discouraging target fishing for sablefish with most nontrawl gear, while enabling nontrawl fisheries that operate later in the year to continue landing small and often unavoidable catches of sablefish. The trip limit for sablefish smaller than 22 inches (1,500 pounds or three percent of all sablefish on board, whichever is greater) was removed because the new limits were more restrictive.

More recent data have revealed that more of the nontrawl quota remains than initially projected, 318 mt as of August 31, 1990. Consequently, the Council recommended that the nontrawl trip limit be increased as soon as possible from 200 to 2,000 pounds per trip to enable the nontrawl quota to be reached.

Because some targeting could occur under the 2,000 pound trip limit, the trip limit on sablefish smaller than 22 inches that was in effect earlier in the year when the target fishery was underway, is reinstated. This limit is necessary to avoid excessive harvest of juvenile sablefish that are needed to provide future brood stock.

All other provisions for sablefish caught with nontrawl gear off the coasts of Washington, Oregon, and California announced at 55 FR 31053 (July 31, 1990) remain in effect.

Secretarial Action: The Secretary concurs with the Council's recommendations and, pursuant to § 663.22(a)(3), adjusts the management measures: at 50 CFR 663.27(b)(3); at 55 FR 3747 (February 5, 1990) by replacing paragraph 4(a) to change the trip limit for trawl-caught sablefish; and at 55 FR 31053 (July 31, 1990) by replacing paragraph (4)(b) to change the trip limit for sablefish caught with nontrawl gear. Paragraphs (4)(a) and (4)(b) appear below in full as revised, and procedures for choosing biweekly or twice-weekly trip frequency options are repeated from 55 FR 1036 (January 11, 1990) to assist the public. As in the past, all weights and percentages are based on round weights or round weight equivalents.

(4) Trip and Size Limits.

(a) Trawl gear.

(i) *Weekly trip limit.* Except for the biweekly and twice-weekly trip limits provided in paragaphs (4)(a)(ii) and (iii), no more than 15,000 pounds of the deepwater complex (including no more than 1,000 pounds or 25 percent of sablefish, whichever is greater) may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period. "One-week period" means 7 consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. Only one landing above 1,000 pounds of the deepwater complex may be made per vessel in that one-week period. There is no limit on the number of landings less than 1,000 pounds of the deepwater complex.

(A) "Deepwater complex" means sablefish (*Anoplopoma fimbria*), Dover sole (*Microstomus pacificus*), and thornyheads (*Sebastolobus spp.*).

Note: Twenty-five percent of the deepwater complex (including sablefish) is equivalent to 33.333 percent of all legal fish on board in the deepwater complex other than sablefish.

(ii) *Biweekly trip limit option.* If the fishery management agency of the State where the fish will be landed is notified as required by State law (WAC 220–44–050: OAR 635–04–033: CF&GCA 7652), no more than 30,000 pounds (round weight) of the deepwater complex (including no more than 25 percent or 1,000 pounds of sablefish, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip in a two-week period. After notification is given, and while it remains in effect, only one landing of the deepwater complex above 1,000 pounds (round weight) may be made per vessel in that two-week period. "Two-week period" means 14 consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. Notification procedures for biweekly landings of the deepwater complex are the same as for yellowtail rockfish and the *Sebastes* complex of rockfish, and are repeated at the end of this **Federal Register** notice.

(iii) *Twice-weekly trip limit option.* If the fishery management agency of the State where the fish will be landed is

notified as required by State law (WAC 220–44–050: OAR 635–04–033: CF&GCA 7652), no more than 7,500 pounds (round weight) of the deepwater complex (including no more than 25 percent or 1,000 pounds of sablefish, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip. After notification is given, and while it remains in effect, only two landings of the deepwater complex above 1,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means 7 consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. Notification procedures for twice-weekly landings of the deepwater complex are the same as for yellowtail rockfish and the *Sebastes* complex of rockfish, and are repeated at the end of this **Federal Register** notice.

(iv) Of those sablefish taken with trawl gear under paragraph (4)(a)(ii) above, no more than 5,000 pounds of sablefish smaller than 22 inches (total length) may be taken and retained, possessed, or landed per vessel per fishing trip.

(b) Nontrawl gear.

(i) No more than 2,000 pounds of sablefish caught with nontrawl gear may be taken, retained, possessed or landed per vessel per fishing trip.

(ii) Of those sablefish taken with nontrawl gear under paragraph (b)(i) above, no more than 1,500 pounds or 3 percent of all sablefish on board, whichever is greater, of sablefish smaller than 22 inches (total length) may be taken and retained, possessed, or landed per vessel per fishing trip.

Notifications for Biweekly and Twice-Weekly Trip Limit Options

Notifications for biweekly and twice-weekly trip limit options for the *Sebastes* complex of rockfish and yellowtail rockfish already are in effect, as required by State law. Notification procedures for widow rockfish (for the biweekly option) and trawl-caught sablefish (for biweekly and twice-weekly options), also required by State law, are identical. The notification procedures are repeated here.

Biweekly trip limit options. As required by State law, the fishery management agency of the State where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the biweekly limits before the first day of the first two-week period in which such landings are to occur. The notice is binding for subsequent consecutive two-week periods until revoked in writing, addressed to the appropriate State agency, prior to the two-week period in which the rescission is to occur.

Twice-weekly trip limit options. As required by State law, the fishery management agency of the State where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the twice-weekly limits before the first day of the first one-week period in which such landings are to occur. The notice is binding for subsequent consecutive one-week periods until revoked in writing, addressed to the appropriate State agency, prior to the one-week period in which the rescission is to occur.

Addresses. Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone (503) 867–4741; P.O. Box 5430, Charleston, OR 97420, telephone (503) 888–5515; 53 Portway Street, Astoria, OR 97103, telephone (503) 325–2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, telephone (206) 753–6623; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501, telephone (707) 455–6499.

Inseason Adjustments. At subsequent meetings, the Council will continue to review the best data available and may recommend further modifications to these management measures.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternative and environmental impacts of this Notice of Fishing Restrictions are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10 because the alternatives and their impacts have not changed significantly.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291.

The biweekly and twice-weekly trip limit notifications for trawl-caught sablefish are required by state law and do not represent an additional collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These notifications are voluntary, and benefit the fishermen by minimizing the impact on their normal fishing operations by providing the choice of making smaller, shorter trips or larger, longer trips than under the weekly trip limits. Notifications are submitted to the appropriate state fishery management agency, not to the Federal government.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to public interest. Section 663.23 also states that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. The Secretary has determined that, if left unrestricted, further catches in 1990 unquestionably will exceed the trawl quota for sablefish. Prompt action to limit this fishing rate is necessary to reduce the need to close the trawl fishery for sablefish before the end of the year. Furthermore, a delay in relaxation of the notrawl trip limit would unnecessarily deny the nontrawl fleet the opportunity to take its quota in 1990. Consequently, further delay of these actions is impracticable and contrary to the public interest, and they are taken in final form effective October 3, 1990.

The public has had opportunity to comment on these management actions. The public participated in the Groundfish Advisory Subpanel, GMT, Scientific and Statistical Committee, and Council meetings in August and September 1990 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register.**

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fisheries, Fishing.

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

Dated: October 3, 1990.

David S. Crestin,

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

[FR Doc. 90–23842 Filed 10–3–90; 5:14 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 196
Wednesday, October 10, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV-90-205]

Florida Tomatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 966 for the 1990-91 fiscal period. Authorization of this budget would allow the Florida Tomato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by October 22, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule and small entities.

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

There are approximately 50 handlers and 250 producers of Florida tomatoes covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1990-91 fiscal year was prepared by the Florida Tomato Committee (committee), the agency responsible for local administraation of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are producers of tomatoes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by divising anticipated expenses by expected shipments of Florida tomatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on September 6, 1990, an unanimously recommended a 1990-91 budget of $1,964,000. Last season's budget was $1,613,500. The major expense allocation is for education and promotion projects, which at a total of $1,268,000 accounts for about 65 percent of the budget. Other major budget items include administrative expenses in the amount of $384,500 and research expenses of $216,500.

The committee also unanimously recommended an assessment rate of $0.035 per 25-pound container, an increase of $0.01 from last year's rate. This rate, when applied to anticipated shipments of 55 million 25-pound containers, would yield $1,925,000 in assessment revenue. This amount, when added to $45,000 from interest and other income, would be more than adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the market order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficeint funds to pay its expenses which are incurred on a continuous basis. The 1990-91 fiscal period began in August, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable tomatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to apy its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 966 be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

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

2. A new § 966.228 is added to read as follows:

§ 966.228 Expenses and assessment rate.

Expenses of $1,964,000 by the Florida Tomato Committee are authorized and an assessment rate of $0.035 per 25-pound container of tomatoes is established for the fiscal period July 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: October 3, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–23892 Filed 10–9–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–186–AD]

Airworthiness Directives; Canadair, Ltd., Model CL–44D4 and CL–44J Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Canadair Model CL–44D4 and CL–44J series airplanes, which would require supplemental structural inspections, and repair or replacement, as necessary, to assure continued airworthiness. Some Canadair CL–44D4 and CL–44J series airplanes are approaching, or have exceeded, the manufacturer's original fatigue design life. This proposal is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. Fatigue cracks in these areas, if not detected and repaired, could result in reduced structural integrity of these airplanes.

DATES: Comments must be received no later than November 30, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–186–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Canadair, Ltd., P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Airframe Branch, ANE–172; telephone (516) 791–6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–186–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Transport Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Canadair Model CL–44D4 and CL–44J series airplanes. Service experience shows that transport category aircraft of this type require supplemental structural inspections and maintenance to compensate for the effects of prolonged time-in-service. As a result, the manufacturer has conducted a structural reassessment of the airplanes and has identified additional structural elements where fatigue damage is likely to occur. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes." This AD is proposed to ensure the continuing airworthiness of Model CL–44D4 and CL–44J aircraft by incorporating into the aircraft maintenance program, the inspection and maintenance actions specified in Canadair Document RBD–44–100, "Supplemental Structure Inspection Program—CL44 Aircraft," Revision B, dated February 27, 1990. This document was developed based on service experience with the purpose of extending the Model CL44 series airplanes' life beyond 50,000 hours. Transport Canada has issued Airworthiness Directive CF–90–02 making the inspection and maintenance requirements in Canadair Document RBD–44–100 mandatory.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require each operator to incorporate into their FAA-approved maintenance inspection program, the supplemental maintenance, inspection, replacement, and overhaul requirements specified in Canadair Document RBD–44–00, Revision B, dated February 27, 1990. Additionally, it would require reporting inspection results to Canadair and the FAA.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 200 manhours per airplane to accomplish the

required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,000.

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 DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Canadair, LTD: Applies to all Model CL–44D4 and CL–44J series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for supplemental maintenance, inspections, replacement, and overhaul requirements of the significant structural items defined in Canadair Document RBD–44–100, Revision B., dated February 27, 1990. Inspection results, when a crack is detected, must be reported to Canadair.

B. Cracked structure detected during the inspection required by paragraph A. of this AD must be repaired or replaced prior to further flight, in accordance with instructions in Canadair Document RBD–44–100, Revision B., dated February 27, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA, New England Region.

Note: The request should be submitted directly to the Manager, New York Aircraft Certification Office, ANE–170, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York Aircraft Certification Office, ANE–170.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Canadair, Ltd., P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

Issued in Renton, Washington, on September 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–23862 Filed 10–9–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–187–AD]

Airworthiness Directives; Gulfstream Aerospace Model G–IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Gulfstream Model G–IV series airplanes, which would require detailed integrity testing of the Avionics Standard Communication Bus, and repair or replacement of defective connectors, if necessary. This proposal is prompted by reports of numerous intermittent failure annunciations while flying in turbulent Instrument Meteorological Conditions (IMC), due to defective connectors. This condition, if not corrected, could result in increased crew workload during adverse weather conditions that could cause hazardous operation during a critical phase of flight.

DATES: Comments must be recieved no later than November 30, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–187–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Williams, Systems and Equipment Branch, ACE–130A; telephone (404) 991–3020. Mailing address: FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349.

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–187–AD." The post card will be date/time stamped and returned to the commenter.

Discussion: Gulfstream has recently reported that a manufacturing defect has been found in a large number of Avionic Standard Communication Bus (ASCB) connectors installed in the Gulfstream Model G–IV series airplanes. This defect can result in intermittent function of the communication link between the unit involved and the ASCB. The ASCB connects and integrates all of the major avionics components in the Gulfstream Model G–IV cockpit. This allows for inter-system monitoring to detect failed components. The problem usually occurs when a dynamic mechanical load is placed on the connector, e.g., the type of load generated during flight through turbulence. When the connection is interrupted, the equipment involved will be declared lost by the system and a failure annunciation will be generated. Since the problem manifests itself during turbulent flight operations, the annunciation will be intermittent and will probably not occur when the airplane is traveling through smooth air. This condition, if not corrected, could result in increased crew workload during adverse weather conditions that could cause hazardous operation during a critical phase of flight.

The FAA has reviewed and approved Gulfstream Aerospace Report No. GIV–GER–276, "ASCB Databus Cable, Coupler, and Connector Integrity Test: Phase II Incorporation,"dated April 2, 1990, which describes procedures to perform the integrity test required to identify defective connectors, and repair or replacement of defective connectors, if necessary.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would require detailed integrity testing of the ASCB to identify defective connectors, and repair or replacement of defective connectors, if necessary, in accordance with the Gulfstream report previously described.

There are approximately 29 Gulfstream Model G–IV series airplanes of the affected design in the worldwide fleet. It is estimated that 26 airplanes of U.S. registry would be affected by this AD, that it would take approximately 80 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $83,200.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Gulfstream: Applies to all Model G–IV series airplanes, Serial Numbers 1060 through 1089, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure proper operation of the Avionics Standard Communication Bus (ASCB) and to prevent hazardous operation due to increased crew workload during turbulent weather conditions (Instrument Meteorological Conditions), accomplish the following:

A. Within 180 days after the effective date of this AD, perform a detailed integrity test of the ASCB, in accordance with Gulfstream Aerospace Report No. GIV–GER–276, "ASCB Databus Cable, Coupler, and Connector Integrity Test: Phase II Incorporation," dated April 2, 1990. If defective ASCB connectors are found, prior to further flight, repair or replace all defective connectors in accordance with Gulfstream Aerospace Report No. GIV–GER–276, dated April 2, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402–2206. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Parkway, Suite 210C, Atlanta, Georgia.

Issued in Renton, Washington, on September 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–23863 Filed 10–9–90; 8:45 am]

BILLING CODE 4910–3–M

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14 CFR Part 39

[Docket No. 90–NM–164–AD]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, which would require modification of the electronic flight instrument system (EFIS) control panel. This proposal is prompted by reports of electrical failure within this panel, resulting in smoke in the flight deck. This condition, if not corrected,

could result in loss of primary control of either pilot's attitude and navigation displays, with concurrent emission of smoke from the pilot's glare shield.

DATES: Comments must be received no later than November 30, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–164–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and Collins Air Transport Division/Rockwell International, 400 Collins Road NE., Cedar Rapids, Iowa 52406. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Schroer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2795. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket No. 90–NM–164–AD." The post card will be date/time stamped and returned to the commenter.

Discussion: There have been two reported incidents of failures of the EFIS control panel on Boeing Model 747–400 series airplanes, which resulted in emission of smoke from the pilot's glare shield. This condition was caused by the short circuit of a capacitor, which resulted in overheating of the control panel power supply transformer. The effects of this failure could result in emission of smoke without the automatic tripping of the circuit breaker.

The FAA has reviewed and approved Collins Service Bulletin DCP–7000–31–04, dated December 1, 1989, which describes procedures to upgrade component ratings on the power supply card (identified as "Modification 4"). In addition, Boeing has issued Service Letter 747–SL–31–11, dated June 27, 1990, informing the operators of the problem.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of certain serial numbered EFIS control panels in the flight deck, in accordance with the service bulletin previously described.

There are approximately 77 Model 747–400 series airplanes of the affected design in the worldwide fleet. It is estimated that 10 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required modification parts would be provided by Collins at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $800.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747–400 series airplanes through line number 791, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the failure of either pilot's electronic flight instrument system (EFIS) control panel, with resultant smoke in the flight deck, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect both EFIS control panels installed on the airplane and record the serial number and modification status. Control panels with serial numbers identified in Collins Service Bulletin DCP–7000–31–04, dated December 1, 1989, and which do not have Modification 4 implemented, must be removed and modified in accordance with the service bulletin before further flight.

Any EFIS control panel with serial numbers identified in Collins Service Bulletin DCP–7000–31–04, dated December 1, 1989, and which does not have Modification 4 implemented, must be modified in accordance with the service bulletin before installation on an airplane.

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

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

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

All persons affected by this directive who have not already received the

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

Issued in Renton, Washington, on September 27, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-23864 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Chapter I

[Summary Notice No. PR-90-25]

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 October 29, 1990.

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

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

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

Issued in Washington, DC, on September 25, 1990.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26308
Petitioner: Clint Simpson
Regulations affected: 14 CFR 91.167 (b)(2) (previously § 91.23(b)(2))
Description of petition: To change the minimum ceiling requirement from 2,000 feet to 1,000 feet or be changed to read some combination of available instrument flight rules landing minima.
Petitioner's reason for the request: The petitioner believes the change should be made to more appropriate criteria to maintain flight safety and enhance efficiency.

Docket No.: 26330
Petitioner: Frank Goeddeke, Jr.
Regulations affected: 14 CFR 67.13, 67.15 and 67.17
Description of petition: To change, in cases of alcoholism, the period of sustained total abstinence from alcohol required to obtain a medical certificate from 2 years to 90 days.
Petitioner's reason for the request: The petitioner states that pilots who seek early treatment for, and do recover from alcoholism, are routinely and summarily denied airman privileges for much longer periods of time than those pilots who are actually caught drinking and flying. Petitioner feels that safety would be improved if pilots were encouraged to seek early recovery from alcoholism. Further past practice has demonstrated that recovering alcoholics who continue to remain abstinent from alcohol pose no significant threat to safety.

Docket No.: 26256
Petitioner: Richard C. Bartel
Regulations affected: 14 CFR part 1
Description of the petition: This petition amends a petition previously submitted by the petitioner to amend § 1.1 to define the terms "prescribed by the Administrator" and/or "approved by the Administrator. The petitioner now requests that the terms "acceptable" or "accepted" to or by the Administrator and "determined" by the Administrator also be included in the definitions of § 1.1
Petitioner's reason for the request: The petitioner believes the definitions are necessary for clarity.

[FR Doc. 90-23859 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 401

RIN 0960-AC79

Blood Donor Locator Service

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are issuing these regulations to govern the Blood Donor Locator Service, which we will establish and conduct, as required by section 8008 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). Under these regulations, we will furnish to participating States at their request the last known personal mailing address (residence or post office box) of blood donors whose blood donation shows that they are or may be infected with the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome, if the State or an authorized blood donation facility has been unable to locate the donors. If our records or those of the Internal Revenue Service (IRS) contain an adequate personal mailing address for the donor, we will provide it to the State so that the State or the blood donation facility can inform the donor of the possible need for medical care and treatment.

DATES: We will consider your comments if we receive them by December 10, 1990.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

Comments regarding information collection requirements should be sent to:

Attention: SSA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, OMB, NEOB, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, room 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–8471.

SUPPLEMENTARY INFORMATION: Section 8006 of Public Law 100–647, the Technical and Miscellaneous Revenue Act of 1988, amended section 205(c)(2) of the Social Security Act (the Act) and added section 1141. Section 8008 requires the Secretary of Health and Human Services (the Secretary) to establish and conduct a Blood Donor Locator Service (BDLS) under the direction of the Commissioner of Social Security. The purpose of the BDLS is to provide an additional means by which States and authorized blood donation facilities can notify blood donors whose blood donations show that they are or may be infected with HIV which causes acquired immune deficiency syndrome and, therefore, may need medical care and treatment. The statute permits States to require a blood donor to furnish his or her Social Security number to a State agency or to an authorized blood donation facility. With the Social Security number, an authorized blood donation facility may request the State, pursuant to an arrangement with the Secretary, to contact the BDLS to obtain the donor's personal mailing address (residence or post office box). The State agency may also make such a request to the BDLS on its own behalf.

The Social Security Administration (SSA), on behalf of the Secretary, will enter into arrangements with an agency of an interested State under which SSA will accept requests for the last known personal mailing addresses (residence or post office box) of blood donors whose blood donations show that they are or may be infected with HIV. The State agency will be the agency within the State that has the duty or authority under State law relating to the public health, or otherwise has the duty or authority under State law to regulate blood donations.

Sections 1141 (a) and (b) of the Act provide that a State or an authorized blood donation facility within a State may request and receive from the BDLS address information concerning a blood donor who is or may be infected with HIV. Subsection (e) of section 1141 of the Act provides that the Secretary, in carrying out his duties and functions under the statute, shall enter into arrangements with State agencies to accept and to transmit to the Secretary requests for address information and to accept and to transmit such information to the State and to authorized blood donation facilities. We provide in these regulations that SSA, on behalf of the Secretary, will conduct the BDLS by arrangements with a State agency in each State which chooses to participate. Under these arrangements, the State agency will agree to accept requests for address information from authorized blood donation facilities and forward the requests to the BDLS. The State agency with which we will enter into arrangements may also submit a request for address information on its own behalf to the BDLS.

Section 1141(e)(1) of the Act provides that the Secretary shall enter into arrangements with State agencies to accept and to transmit to the Secretary requests for address information under this section and to accept and to transmit such information to authorized persons. We believe this provision provides authority for us to establish the BDLS so that it will only respond to requests for address information from State agencies with which we have entered into arrangements. The BDLS will not respond to requests from any person located in a State with which we have not entered into such arrangements, and the BDLS will not respond directly to blood donor facilities. We believe that this approach will foster the efficient and effective implementation of section 1141. The State agencies with which we will enter into these arrangements will be familiar with other State agencies and with blood donor facilities within their respective States which may qualify as authorized persons that may request address information under the statute. The State agencies with which we will enter into these arrangements will be able to assist the BDLS by verifying the qualifications of a blood donation facility as an authorized person and helping to monitor the compliance of authorized persons with these regulations.

We will process a request from the participating State agency if the State or the authorized blood donation facility cannot locate the donor at the address he or she provided at the time of the blood donation. After we receive an address request from a participating State agency, we will check our records of beneficiaries. If we do not have a current personal mailing address for the blood donor in question, we will forward the request to the IRS, which will check its tax records. Section 8008(c) of Public Law 100–647 also provides that the Secretary of the Treasury must give us taxpayer mailing address information when we need such information to comply with a BDLS request.

The BDLS provisions of the Act require that an authorized blood donation facility must provide for notification procedures and counseling of blood donors with positive antibody HIV tests. The legislative history of section 1141 of the Act indicates that Congress expects blood donation facilities which use the BDLS to make reasonable efforts at notification, but does not expect facilities to use extraordinary means to reach individuals who may have moved out of the area in which the facility is located. The legislative history further indicates that blood donation facilities are required to provide counseling for donors under existing counseling programs, but are not required to establish new programs. H.R. Rep. No. 100–795, 100th Cong., 2d Sess. 620 (1988).

Section 205(c)(2) of the Act was amended by section 8008 of Public Law 100–647 to allow States to require anyone who donates blood within that State to furnish his or her Social Security number to the State or to an authorized blood donation facility. States and blood donation facilities registered with the Food and Drug Administraiton may utilize Social Security numbers for identification of blood donors. The Social Security number will be required information in requests to us for the donor's address.

Section 8008 of Public Law 100–647 also provides for stringent safeguards to protect the confidentiality and security of records of blood donors when address information is requested from the BDLS. These measures apply to States and authorized blood donation facilities that use the BDLS. They provide that State agencies and authorized blood donation facilities which use the BDLS must have a standardized system of records pertaining to BDLS requests, must store blood donors' addresses and related blood donor records in a secure area that is safe from access by unauthorized persons, must restrict access to the records to persons whose duties require access and to whom disclosure may be made, must destroy identifying information after the donor has been notified, and must report to us when requested the procedures used to ensure confidentiality. We list these safeguards in these proposed regulations. We also propose that States and authorized blood donation facilities that use the BDLS must explain the applicable

confidentiality standards and sanctions to personnel who will have access to any records pertaining to BDLS requests.

In addition to the confidentiality and security requirements for States and blood donation facilities, section 8008 of Public Law 100–647 and these regulations state that SSA is required to destroy all identifying information in its records related to the address request after the BDLS has responded to the requesting State agency. Similarly, under section 8008 the IRS must destroy its records related to the request after it has responded to us in those situations where we requested the address from IRS tax records because our records did not contain a current personal mailing address. We also state in these regulations that under section 8008 there are criminal penalties for unauthorized disclosure of information related to a blood donor. These criminal penalties will apply to any official or employee of the Federal Government, a State, or a blood donation facility.

To monitor compliance with the confidentiality and security requirements of the statute and these regulations, we provide in these regulations that we reserve the right to make onsite inspections of the blood donor records of State agencies and blood donation facilities concerning persons with positive HIV results. We also describe other measures we may take to ensure that the safeguards required by the law are being met. Section 1141(d)(5) of the Act requires that an authorized person which receives address information from the BDLS must furnish a report to the Secretary at such time and containing such information as prescribed by the Secretary, describing the procedures established and utilized for ensuring the confidentiality of address information provided by the BDLS and related blood donor records. Under the statute and these regulations, an authorized person, after receiving address information from the BDLS and either notifying or attempting to notify the donor, must destroy the address information and any record, list or compilation it established in connection with the request that indicates the identity of the donor with respect to whom the request for address information was made.

Participation in the BDLS by State agencies and blood donation facilities is voluntary, but participants must agree to comply with the provisions of the statute and these regulations. If the address request of an authorized person does not comply with the statute and these regulations, we will not disclose address information, and the authorized person will have 60 days after receiving our notice of refusal to provide the address information within which to request administrative review. In these regulations, we explain the review process, including the timeframe within which we will process the request for review.

Public Law 100–647 requires the BDLS to furnish the "mailing address" of a blood donor who is or may be infected with HIV, but does not define the term "mailing address". Because of the sensitive nature of the information disclosed through the use of the BDLS, we will consider a donor's "mailing address" to be his or her personal mailing address (residence or post office box). Therefore, we will not release any other address, such as an employment address.

We are deleting the material currently in subpart F of 20 CFR part 401 relating to the disclosure of wage information for the Aid to Families with Dependent Children Program because this material is obsolete. Subpart F implemented section 411 of the Social Security Act, and section 411 was repealed by section 2651 of Public Law 98–369 (1984).

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291, because the costs, if any, are expected to be negligible. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only the release of addresses of certain blood donors. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

Section 401.600(d) of these proposed regulations imposes reporting requirements subject to Office of Management and Budget (OMB) review pursuant to the Paperwork Reduction Act of 1980. As required by section 3504(h) of the Act, we will submit a copy to OMB for its review. Comments regarding these requirements should be sent to the individual whose name appears in the address section of this preamble.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to:

Desk Officer for Social Security, Office of Management and Budget, Paperwork Reduction Project (XXXX-XXXX), Washington, DC 20503.

(Catalog of Federal Domestic Assistance Program—No listing)

List of Subjects in 20 CFR Part 401

Administrative practice and procedure; Aid to families with dependent children, Freedom of information; Medicare; Old-age, Survivors, and disability insurance; Privacy; Supplemental security income.

Dated: September, 17, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: September 20, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subparts B and F of part 401 of 20 CFR chapter III are proposed to be amended as follows:

PART 401—DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

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

Authority: Secs. 205(a), 1102, 1106, and 1141 of the Social Security Act; Sec. 413(b) of the Federal Mine Safety and Health act of 1977; 5 U.S.C. 552 and 552a, 8 U.S.C 1360, 26 U.S.C. 6103, 30 U.S.C. 923, 42 U.S.C. 405(a), 1302, 1306, and 1341.

2. Section 401.205 is revised to read as follows:

§ 401.205 Disclosures required by law.

We disclose information when a law specifically requires it. The social Security Act requires us to disclose information for certain program purposes. These include disclosures to the Office of Inspector General, HHS, the Parent Locator Service, and to States pursuant to an arrangement regarding use of the Blood Donor Locator Service. Also, there are other laws which require that we furnish other agencies information which they need for their programs. These include the Department of Veterans Affairs for its benefit programs, the Immigration and Naturalization Service to carry out its duties regarding aliens, the Railroad Retirement board for its benefit programs, and to Federal, State, and

local agencies administering Aid to Families with Dependent Children, Medicaid, unemployment compensation, food stamps, and other programs.

3. The heading for Subpart F is revised to read as follows:

Subpart F—Disclosures of Addresses by Blood Donor Locator Service

4. The authority citation for subpart F is revised to read as follows:

Authority: Sec. 6008, Pub. L. 100-647; Secs. 205(c)(2), 1102, and 1141 of the Social Security Act; 42 U.S.C. 405(c)(2), 1302, and 1341, and 26 U.S.C. 6103.

5. Section 401.600 is revised to read as follows:

§ 401.600 Blood donor locator service.

(a) *General.* We will enter into arrangements with State agencies under which we will furnish to them at their request the last known personal mailing addresses (residence or post office box) of blood donors whose blood donations show that they are or may be infected with the human immunodeficiency virus which causes acquired immune deficiency syndrome. The State agency or other authorized person, as defined in paragraph (b) of this section, will then inform the donors of the possible need for medical care and treament. The safeguards that must be used by authorized persons as a condition to receiving address information from the Blood Donor Locator Service are in pargraph (g) of this section, and the reuirements for a request for address information are in paragraph (d).

(b) *Definitions.*

State means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

Authorized person means—

(1) Any agency of a State (or of a political subdivision of a State) which has duties or authority under State law relating to the public health or otherwise has the duty or authority under State law to regulate blood donations; and

(2) Any entity engaged in the acceptance of blood donations which is registered by the Food and Drug Administration in connection with the acceptance of such blood donations, and which provides for—

(i) The confidentiality of any address informaton received pursuant to these rules and section 1141 of the Social Security Act and related blood donor records;

(ii) Blood donor notification procedures for individuals with respect to whom such information is requested and a finding has been made that they are or may be infected with the human immunodeficiency virus; and

(iii) Counseling services for such individuals who have been found to have such virus.

Related blood donor records means any record, list, or compilation established in connection with a request for address information which indicates, directly or indirectly, the identity of any individual with respect to whom a request for address information has been made pursuant to these rules.

(c) *Use of Social Security number for identification.* A State or an authorized person in the State may require a blood donor to furnish his or her Social Security number when donating blood. The number may then be used by an authorized person to identify and locate a donor whose blood donation indicates that he or she is or may be infected with the human immunodeficiency virus.

(d) *Request for address of blood donor.* An authorized person which has been unable to locate a blood donor at the address he or she may have given at the time of the blood donation may request assistance from the State agency which has arranged with us to participate in the Blood Donor Locator Service. The request to the Blood Donor Locator Service must—

(1) Be in writing;

(2) Be from a participating State agency either on its own behalf as an authorized person or on behalf of another authorized person;

(3) Indicate that the authorized person meets the confidentiality safeguards of paragraph (g) of this section; and

(4) Include the donor's name and Social Security number, the addresses at which the authorized person attempted without success to contact the donor, the date of the blood donation if available, a statement that the donor has tested positive for the human immunodeficiency virus according to the latest Food and Drug Administration standards or that the history of the subsequent use of the donated blood or blood products indicates that the donor has or may have the human immunodeficiency virus, and the name and address of the requesting blood donation facility.

(e) *SSA response to request for address.* After receiving a request that meets the requirements of paragraph (d) of this section, we will search our records for the donor's latest personal mailing address. If we do not find a current address, we will request that the Internal Revenue Service search its tax records and furnish us any personal mailing address information from its files, as required under section 6103(m)(6) of the Internal Revenue Code. After completing these searches, we will provide to the requesting State agency either the latest mailing address available for the donor or a response stating that we do not have this information. We will then destroy the records or delete all identifying donor information related to the request and maintain only the information that we will need to monitor the compliance of authorized persons with the confidentiality safeguards contained in paragraph (g) of this section.

(f) *SSA refusal to furnish address.* If we determine that an authorized person has not met the requirements of paragraphs (d) and (g) of this section, we will not furnish address information to the State agency. In that case, we will notify the State agency of our determination, explain the reasons for our determination, and explain that the State agency may request administrative review of our determination. The Commissioner of Social Security or a delegate of the Commissioner will conduct this review. The review will be on the record and there will not be an opportunity for an oral hearing. A request for administrative review, which may be submitted only by a State agency, must be in writing. The State agency must send its request for administrative review to the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, MD 21235, within 60 days after receiving our notice refusing to give the donor's address. The request for review must include supporting information or evidence that the requirements of these rules have been met. If we do not furnish address information because an authorized person failed to comply with the confidentiality safeguards of paragraph (g) of this section, the State agency will have an opportunity to submit evidence that the authorized person is now in compliance. If we then determine, based on our review of the request for administrative review and the supporting evidence, that the authorized person meets the requirements of these rules, we will respond to the address request as provided in paragraph (e) of this section. If we determine on administrative review that the requirements have not been met, we will notify the State agency in writing of our decision. We will make our determination within 30 days after receiving the request for administrative review, unless we notify the State agency within this 30-day time period that we will need additional time. Our determination on the request for administrative review will give the

findings of fact, the reasons for the decision, and what actions the State agency should take to ensure that it or the blood donation facility is in compliance with these rules.

(g) *Safeguards to ensure confidentiality of blood donor records.* We will require assurance that authorized persons have established and continue to maintain adequate safeguards to protect the confidentiality of both address information received from the Blood Donor Locator Service and related blood donor records. The authorized person must, to the satisfaction of the Secretary—

(1) Establish and maintain a standardized system of records which includes the reasons for requesting the addresses of blood donors, dates of the requests, and any disclosures of address information;

(2) Store blood donors' addresses received from the Blood Donor Locator Service and all related blood donor records in a secure area or place that is physically safe from access by persons other than those whose duties and responsibilities require access;

(3) Restrict access to these records to authorized employees and officials who need them to perform their official duties related to notifying blood donors who are or may be infected with the human immunodeficiency virus that they may need medical care and treatment;

(4) Advise all personnel who will have access to the records of the confidential nature of the information, the safeguards required to protect the information, and the civil and criminal sanctions for unauthorized use or disclosure of the information;

(5) Destroy the address information received from the Blood Donor Locator Service, as well as any related blood donor records, after notifying or attempting to notify the donor at the address obtained from the Blood Donor Locator Service; and

(6) Upon request, report to us the procedures established and utilized to ensure the confidentiality of address information and related blood donor records. We reserve the right to make onsite inspections and to request such information as we may need to ensure that the safeguards required in this section are being met.

(h) *Unauthorized disclosure.* Any official or employee of the Federal Government, a State, or a blood donation facility who discloses blood donor information, except as provided for in this section or under a provision of law, will be subject to the same criminal penalty as provided in section 7213(a) of the Internal Revenue Code of 1986 for the unauthorized disclosure of tax information.

[FR Doc. 90-23885 Filed 10-9-90; 8:45 am]
BILLING CODE 4190-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3836-1]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa and Pima Nonattainment Areas; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA today is proposing a federal implementation plan (FIP) under section 110(c) of the Clean Air Act (CAA) for the Maricopa (Phoenix) and Pima (Tucson) carbon monoxide (CO) nonattainment areas. EPA is taking this action to comply with the Ninth Circuit Court of Appeals order in *Delaney* v. *EPA*. This court order requires EPA to promulgate plans that utilize all "available" measures to attain the National Ambient Air Quality Standards (NAAQS) for CO "as soon as possible."

DATES: EPA will conduct a public hearing on this notice of proposed rulemaking (NPRM) the week of October 15, 1990. EPA will soon publish a notice for this hearing in newspapers in Tucson and Phoenix. Written comments on the NPRM must be submitted to EPA at the address below by November 9, 1990. The comment period will remain open until approximately November 14, 1990 for submission of rebuttal and supplemental comments relating only to comments raised at the public hearing.

ADDRESSES: Comments on this proposal should be sent to: Regional Administrator, Attention: Air and Toxics Division, Technical Evaluation Section, A-2-1, U.S. Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, California 94103.

The rulemaking docket for this notice, Docket No. 90-AZ-MAPI-1, including the draft technical support document, may be inspected at the following location between 8 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying parts of the docket. U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, Technical Evaluation Section, A-2-1, 1235 Mission Street, San Francisco, California 94103.

Copies of the proposed FIP and the draft technical support document are also available at the County and State offices listed below:

Arizona Department of Environmental Quality, Office of Air Quality, 2005 North Central Avenue, Phoenix, Arizona 85004.

Maricopa Association of Governments, 1820 West Washington, Phoenix, Arizona 85007.

Maricopa County Bureau of Air Pollution Control, 1845 East Roosevelt Street, Phoenix, Arizona 85006.

Pima Association of Governments, Suite 405, Transamerica Building, 177 North Church Street, Tucson, Arizona 85701.

Pima County Department of Environmental Quality, 150 West Congress, Tucson, Arizona 85701.

FOR FURTHER INFORMATION CONTACT: Julia Barrow, Chief, Technical Evaluation Section, A-2-1, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, California 94103, (415) 556-5154, FTS: 556-5154.

SUPPLEMENTARY INFORMATION:

I. Background

For a history of EPA's actions on the Arizona Carbon Monoxide (CO) State Implementation Plan (SIP) up to August 10, 1988, see the proposed approval of the SIP revision for Pima County, 53 FR 14818 (April 26, 1988), and the proposed approval of the SIP and proposal of a federal implementation plan (FIP) for Maricopa County, 53 FR 17378 (May 16, 1988).

A. 1988 SIP Approvals

1. Pima County

On August 10, 1988 (53 FR 30220) EPA fully approved the 1987 CO SIP revision for the Tucson Air Planning Area ("Pima plan") which was developed by the Pima Association of Governments (PAG). In approving the Pima plan, EPA concluded that the control measures and the attainment and maintenance demonstrations in the plan fully met the requirements of section 110 and part D of the Clean Air Act (CAA).

Based on the then most current population and traffic forecasts, the Pima plan demonstrated attainment of the CO NAAQS by early 1990 and maintenance of the standard until after 2000. Both demonstrations relied solely on emission reductions from the federal motor vehicle control program (FMVCP), the State inspection and maintenance (I/M) program without the loaded-mode component, existing traffic flow improvements, and programmed road

improvements. Emission reductions from other measures within the Pima plan (the travel reduction program, transit improvements, ridesharing, etc.) and measures adopted later by the State legislature (loaded-mode I/M testing, and oxygenated fuels program, and a voluntary no-drive-day program) were not factored into either the attainment or maintenance demonstrations but rather considered extra assurance of attainment and maintenance.

The Pima plan contained contingency procedures which required tracking trends in air quality and traffic data, evaluation of the adopted major transportation control measures (TCMs), and identification of any tightening of control measures necessary to sustain progress toward attainment or maintenance. In addition, EPA noted in its approval that the loaded-mode I/M testing, oxygenated fuels program, voluntary no-drive-day program, and travel reduction program would together provide significant additional emission reductions that would compensate for any unanticipated shortfalls in planned emission reductions. The Pima plan did not explicitly address conformity although PAG does annually perform an air quality analysis of its transportation improvement program.

2. Maricopa County

On August 10, 1988 (53 FR 30224), EPA also fully approved the 1987 Maricopa Association of Governments (MAG) Carbon Monoxide Plan and 1988 Addendum ("MAG plan") and withdrew its May 16, 1988 proposal of a FIP for the Maricopa area. In approving the MAG plan, EPA concluded that the control measures and attainment demonstration submitted with the plan fully met the requirements of section 110 and part D of the CAA.

The MAG plan used a combined regional and hot-spot modeling approach to determine the emission reductions needed for attainment. The modeling was performed during 1987 and used the then most current population and traffic forecasts. The modeling indicated that a 22 percent decrease in emissions from the 1991 baseline would provide for attainment within three years of plan approval. For reasons which are discussed in detail in the May 16, 1988 proposal (53 FR 17378), EPA concluded at the time that three years from plan approval was the appropriate planning period for attainment in Maricopa County.

The attainment demonstration in the MAG plan was based on a combination of measures: the FMVCP, an oxygenated fuels program, the State I/M program including a loaded-mode component, a travel reduction program, transit improvements, a ridesharing program, and several other TCMs. In addition to the twelve measures to which it approved an explicit emission reduction credit, EPA also incorporated into the SIP numerous other measures which were adopted by the cities, towns, and the County of Maricopa. These measures consisted of commitments to implement many of the 45 measures identified as potentially available in the MAG plan. Unfortunately, because of the nature of many of these measures and their often very small emission reductions, specific emission reduction estimates were impossible to calculate. See 53 FR 30224, 30229 (August 10, 1988). In its approval notice, EPA concluded that no measures beyond those it was approving into the Maricopa SIP would both be practicable for implementation in Maricopa County and capable of advancing the 1991 attainment date.

The MAG plan as submitted only demonstrated maintenance through 1995. In order to comply with Agency guidance, EPA believed that the plan needed to demonstrate attainment for at least ten years past the date of approval or, effectively, 1998. Using data contained in the plan, EPA was able to determine that, with measures being approved into the SIP, the air quality standards could be maintained in Maricopa for the required ten-year period.

The contingency plan in the MAG plan required that the MAG Air Quality Planning Committee review annually the progress made to reduce CO pollution and if necessary consider either strengthening existing measures or adopting additional measures. EPA noted in its approval that this plan did not fully comply with its SIP guidance requirements for contingency procedures but also noted that the MAG plan contained two measures for which EPA did not give emission reduction credit: a requirement in the oxygenated fuels program for a minimum market share for gasohol and a voluntary no-drive-day program. EPA believed that these two measures would provide sufficient emission reductions to offset any potential emission reduction shortfall. They, therefore, functioned as already-adopted contingency measures and obviated the need for further contingency procedures.

EPA stated in its approval notice that the conformity procedures in the MAG plan were adequate to insure compliance with section 176(c). EPA also stated that it would continue to work with MAG to incorporate into the SIP additional conformity procedures and criteria consistent with all outstanding EPA guidance. See 53 FR 30224, 30235 (August 10, 1988).

B. ACLPI's Petition for Review and the Ninth Circuit's Order

On September 22, 1988, the Arizona Center for Law in the Public Interest (ACLPI) filed a petition for review, *Delaney* v. *EPA*, in the U.S. Court of Appeals for the Ninth Circuit challenging EPA's August 10, 1988 final actions approving the CO SIPs for Maricopa and Pima Counties. In its petition, ACLPI claimed that, in approving the plans, EPA failed to comply with the CAA and with Agency guidance. Specifically, ACLPI argued that (1) EPA acted illegally in approving attainment deadlines far beyond the 1987 date specified by Congress, failed to require the implementation of every available control measure to provide for attainment as quickly as possible, and failed to consider increased vehicle travel projections in evaluating the attainment demonstration in the MAG plan; (2) the MAG plan failed to provide for long-term maintenance of the CO standard; and (3) the MAG plan contained no contingency and conformity provisions to ensure attainment and maintenance of the CO standard.

On March 1, 1990, the Ninth Circuit issued its initial opinion in *Delaney* v. *EPA*, No. 88–7368. The court concluded that, after the passage of the statutory attainment date of December 31, 1987, "the national ambient air quality standards must be attained as soon as possible with every available measure, including those that EPA identified in its criteria for approving 1982 plans" 46 FR 7182, 7186 (January 22, 1981). 898 F.2d. at 691.

In noting that neither the MAG nor the Pima plan adopted most of the 57 measures recommended by MAG and Cambridge Systematics, an EPA consultant, the court concluded that EPA had arbitrarily shifted from the State the burden of demonstrating that the control measures would not advance the attainment date. The court cited an EPA guidance document, 44 FR 20372, 20375 (April 4, 1979), providing that a control measure would be deemed not reasonably available only if it would not advance attainment, would cause substantial widespread and long-term adverse impact, or would take too long to implement. 898 F.2d at 692. The court also relied on additional EPA guidance and cited in particular a passage stating that the plans for certain areas having difficulty projecting attainment by 1987 "must demonstrate that all possible measures will be implemented * * *."

898 F.2d. at 692 (quoting 46 FR 7182, 7188).

In its Delaney opinion, the court also concluded that EPA arbitrarily and capriciously approved the MAG plan in the absence of conformity and contingency provisions required by EPA's January 22, 1981 SIP guidance on approval of 1982 SIPs (46 FR 7182, 7187–8). The court, however, upheld EPA's approval of the provision in the MAG plan providing for maintenance of the standard for ten years into the future.

Because the court's holding on other issues would require EPA to develop a FIP, the court made no determination regarding EPA's failure to consider revised traffic projections. Rather, the court required that the most current projections be considered in developing the new plans.

Finally, the court vacated EPA's August 10, 1988 approvals of the Arizona SIPs and directed EPA to disapprove the Maricopa and Pima Counties' plans and to develop FIPs consistent with its opinion within six months. 898 F.2d at 695. In summarizing, the court stated that the new plans must utilize "all available control measures" to attain the CO ambient air quality standard "as soon as possible." The new plans must also contain contingency and conformity plans in accordance with EPA guidelines and must be based on the most recent traffic projections currently available.

On March 15, 1990, the State of Arizona filed a Motion for Clarification of the court's initial March 1, 1990 opinion. The State sought to clarify that the new plans required by the Opinion could be developed and submitted by the State in lieu of an EPA-developed FIP. Further, the State requested clarification concerning whether EPA (or the State) in developing an approvable plan must propose regulations or promulgate final regulations within six months.

On April 11, 1990, the Ninth Circuit amended its opinion in response to the State's Motion. 898 F.2d 687 (9th Cir. 1990). The court made clear that EPA must promulgate the Arizona FIPs within six months, although the court did allow in a footnote that the State may submit proposal to EPA for consideration in developing the plans.

On March 27, 1990, EPA filed a Petition for Rehearing in the Ninth Circuit arguing that the federal district courts have exclusive jurisdiction to order EPA to carry out non-discretionary duties under the CAA, such as promulgation of a FIP, and that even assuming circuit court jurisdiction to order EPA to promulgate a FIP, the six-month deadline is inconsistent with the CAA. In the Petition, EPA advised the court that it did not read the Delaney opinion as requiring it to implement any measures that either (1) would not advance the attainment date; (2) are not within the power of the federal government to implement, or (3) are not "available" in the sense that they would result in absurdly severe economic and social disruptions, e.g. gas rationing. On May 16, 1990, the court denied EPA's petition for rehearing without comment.

On September 13, 1990, the Solicitor General on behalf of EPA filed a petition with the Supreme Court seeking a writ of *certiorari* to review certain aspects of the judgment the opinion of the Ninth Circuit insofar as it orders the Administrator to promulgate a FIP within a specified time period.

C. 1990 SIP Actions

In a separate notice, EPA is taking two approval actions. The first action is to restore its approval of the control measures for the Maricopa and Pima CO nonattainment areas whose original approval by EPA on August 10, 1988 was vacated by the Ninth Circuit in *Delaney v. EPA*. This action will retain these measures as enforceable portions of the Arizona SIP. The second action is EPA's final approval of two measures for Pima County, an oxygenated fuels program and a travel reduction program, which were proposed for approval on August 10, 1988 (53 FR 30239).

D. EPA's SIP Guidance

EPA has published several notices describing the standards on which it would judge the adequacy of SIPs. See 44 FR 20372 (April 4, 1979) on requirements for 1979 SIP submittals required of all nonattainment areas under Part D of the CAA ("1979 SIP guidance") and 46 FR 7182 (January 22, 1981) on requirements for the 1982 SIP revisions required of all CO and ozone nonattainment areas receiving attainment date extensions to December 31, 1987 ("1982 SIP guidance"). EPA also published on November 24, 1987 (52 FR 45044) proposed guidance for SIPs for areas that failed to attain by 1987. This proposed policy laid out EPA's reasoning on the appropriate attainment dates for such areas after the passage of the last attainment date specified in the Clean Air Act, i.e., December 31, 1987.

Each of these guidance documents covers the major sections of a SIP including the requirements for stationary, mobile and transportation control measures; attainment and reasonable further progress demonstrations; modeling; conformity procedures; and contingency procedures. In approving the Arizona CO SIPs in 1988, EPA believed it was acting consistently with its 1979 and 1982 SIP guidance and with its reading of the CAA in the post-1987 era as outlined in the November 1987 policy proposal. In Delaney, the Ninth Circuit thought otherwise. In its opinion, the court focused on EPA's 1982 SIP guidance; the parts of that guidance which the court highlighted are described in more detail below.

1. Control Strategies

EPA's 1982 SIP guidance set up a hierarchy of control requirements depending on the level of controls needed for attainment and whether attainment could be demonstrated prior to the end of 1987. All 1982 CO SIPs had to contain at a minimum reasonably available control technology (RACT) on all stationary sources emitting over 1,000 tons CO per year potential emissions, and I/M program whose elements met EPA policy, and all reasonably available TCMs.

If an area could not demonstrate attainment by 1987 with just these minimum controls, the state had to identify, evaluate, and adopt additional measures which could be implemented by no later than 1987. Examples of such measures are more stringent RACT on major stationary sources, extension of controls to stationary sources and source categories not then subject to RACT, a broader range of TCMs, and increased coverage and stringency of the I/M program.

Finally, for areas which could not demonstrate attainment by 1987 with all measures that could be implemented by then, the state was required to "analyze the transportation and other measures possible in a longer time frame that * * * would result in attainment as quickly as possible after 1987." (46 FR 7182, 7188) Areas with post-1987 attainment dates were also required to provide more extensive evidence on why any of the TCMs identified in section 108(f) of the CAA were not available given the additional time possible to implement them.

In Delaney, as discussed below, the court extended this requirement to the situation in Arizona. However, there is a great difference between the situation EPA was envisioning when developing its guidance in 1981 and the set of circumstances faced by EPA in Arizona in 1988. The 1982 SIP guidance was intended for states which were writing plans in 1981 for areas which could not demonstrate attainment before the CAA deadline of December 31, 1987 with reasonable measures that could be adopted and implemented within the

five years before 1987. EPA intended states in this situation evaluate other reasonable measures with adoption and implementation schedules longer than five years. The 1982 SIP guidance was never meant to imply that such plans include socially or economically disruptive measures that would provide for attainment after 1987 as quickly as possible.

EPA has decided, independently of today's proposal, however, that to the extent that the 1982 SIP guidance can be interpreted to require every conceivable measure—including gas rationing, widespread source shutdowns, and the like—such an interpretation does not reflect the Agency's original or current intent, and hence should not govern state or federal air quality planning. For that reason, the EPA Administrator signed on September 13, 1990, a policy clarification which revokes the portion of the 1982 SIP guidance that requires implementation of "all possible measures."[1] This policy clarification will soon be published in the **Federal Register.**

2. Contingency Plans

Section 110(a)(2)(B) of the CAA requires that SIPs contain such measures as are necessary to ensure attainment and maintenance of the standards. To meet this CAA requirement, EPA specified in its 1982 SIP guidance that SIPs include a two-part contingency plan:

> The first part * * * [is] a list of planned transportation measures and projects that may adversely affect air quality and that will be delayed, while the SIP is being revised, if expected emission reductions or air quality improvements do not occur. The second part * * * consists of a description of the process that will be used to determine and implement additional transportation measures beneficial to air quality that will compensate for the unanticipated shortfalls in emission reductions. 46 FR 7182, 7187 (January 22, 1981).

The contingency provisions are to be initiated whenever the EPA Administrator determines that a SIP is inadequate to attain the NAAQSs and that additional emission reductions are needed.

3. Conformity Plans

The 1982 SIP guidance also requires a two-part conformity plan. The first part is "administrative and technical procedures and agency responsibilities for ensuring, in response to section 176(c) of the Clean Air Act, that transportation plans, programs, and projects approved by a metropolitan planning organization (MPO) are in conformance with the SIP." (46 FR 7182, 7187) The second part requires that the direct and indirect emissions associated with major federal actions that will take place over the period covered by the SIP are identified and quantified to the extent possible. This last part is intended to ease the making of conformity determinations required by CAA section 176(c) by federal agencies.

4. Requirement for All Reasonably Available TCMs

In reviewing EPA's conclusion that the Arizona plans provided for sufficient control measures, the Ninth Circuit quoted the 1979 SIP guidance:

> [I]f a state adopts less than all [reasonably available control measures] *and demonstrates* (a) that reasonable further progress and attainment of the NAAQS are assured, and (b) that application of all [reasonably available control measures] would not result in attainment any faster, then a plan with less than all [reasonably available control measures] may be approved. 898 F.2d at 692 quoting 44 FR 20375 (emphasis added by the court)

EPA's 1982 SIP guidance divides control requirements among stationary sources, I/M, and transportation measures. The guidance requires implementation of all reasonably available control measures with special requirements for demonstrating that all reasonably available TCMs have been implemented. Reasonably available TCMs are described presumptively as the categories of transportation measures identified in section 108(f) of the CAA. The 1982 guidance also required the states to submit documentation, based on technical analysis, of the basis for not implementing any of the measures identified in section 108(f). For areas that could not demonstrate attainment by the end of 1987, the 1982 SIP guidance required the state to submit more extensive evidence to support the rejection of any section 108(f) measure.

5. Maintenance

EPA's regulations on air quality maintenance plans (40 CFR 51.42) require that such plans extend over at least a 20-year period; however, the EPA administrator, on request or at his own initiative, can shorten the demonstration period to no less than ten years. In determining if a shorter time period is appropriate, the Administrator may consider "all relevant factors" (40 CFR 51.63(a)). In the preamble to these regulations, these "relevant factors" are described as including state resources, other planning programs that may significantly affect air quality, *the reliability of projections*, and the extent of present and potential air quality problems. 41 FR 18386 (May 3, 1976), emphasis added.

EPA noted in its approval of the MAG plan that projections extending beyond ten years become too speculative to be reliable. 53 FR 30224, 30234 (August 10, 1988). This finding is borne out by the fact that population and vehicle miles traveled projections for the Maricopa area have been revised at least twice since February, 1987. The situation is similar in Pima County; the recently revised population projections are substantially less than the levels assumed in the 1987 Pima plan.

A small change in annual growth rates compounds into a large change ten or more years into the future. Planning in areas where estimates of annual growth rates are revised frequently, such as Pima and Maricopa Counties, is especially sensitive to the compounding effect of these small changes. For this reason, EPA believes that projections more than ten years into the future for the Maricopa and Pima nonattainment areas are not reliable. EPA, therefore, believes that a maintenance demonstration for the ten years from plan approval (which in this case will be FIP promulgation) is appropriate.

II. Attainment and Maintenance of the CO NAAQS in Maricopa County

A. Emission Reductions Needed for Attainment

1. Air Quality Modeling

The starting point for determining the level of emission reductions necessary to attain the NAAQS is the establishment of a design concentration. The design concentration (or design value) is the highest ambient CO concentration among the second-highest, running non-overlapping 8-hour CO concentrations recorded at area monitors in the most recent two years. In order for the SIP to demonstrate attainment, the control measures in the SIP must be sufficient to reduce the design value to the level of the CO NAAQS.

Under EPA policy, the design value should be selected from concentrations recorded in Maricopa County over the most recent two years for which data are available; in this case EPA used data from 1988 and 1989. Normally, the approach used to select the design value

[1] Specifically, EPA is deleting: 46 FR 7182, col. 2–3, the section entitled "Attaining NAAQS After 1987"; (2) 46 FR 7185, col. 3, the final sentence beginning "If all measures * * *" through 7186, col. 1, the carryover paragraph ending "effective control measures"; and (3) 46 FR 7188, col. 1, the last full paragraph beginning "If implementation * * *," through col. 3, the carryover paragraph ending "attainment by 1987."

would be a straight forward review of the monitoring data for these two years and identification of the highest second-high 8-hour CO value. This process, however, may not yield the true design value in Maricopa County for several reasons.

The magnitudes of ambient CO concentrations are greatly influenced by meteorology. In the Phoenix region, the meteorology in the past two years has been such that conditions in 1989 yielded higher ambient CO levels than those in 1988 even though CO emission decreased from 1988 to 1989. Also, the microscale monitor on Indian School Road, which traditionally has measured the highest CO concentrations, was temporarily moved or out of service for much of 1988; therefore, CO monitoring data for 1988 is somewhat incomplete. Finally, the Maricopa oxygenated fuels program began in October, 1989. This program, which produced substantial CO emission reductions, makes Co concentrations monitored previous to October, 1989 not readily comparable to concentrations measured after that date.

As seen in Table 1, these factors result in the highest second-high concentration over the last two years occurring at a neighborhood-scale monitoring site during the period before the oxygenated fuels program began. Basing a control strategy on the conditions of January 17, 1989, which produced the ostensible design concentration, will not necessarily result in attainment of the CO NAAQS under all conditions, since the lower concentrations recorded in the last quarter of 1989 are not readily comparable with the data from previous quarters. Therefore, a method of making these concentrations comparable must be established to ensure that control strategies are identified which are sufficient to attain the NAAQS.

TABLE1.—CO CONCENTRATIONS AT THE HIGHEST NEIGHBORHOOD AND MICRO-SCALE SITES IN MARICOPA COUNTY IN 1988 AND 1989

	1988 high ppm	1988 second ppm	1989 high ppm (date)	1989 second ppm (date)
Neighborhood	12.4	11.0	13.9 (1/1)	12.6(1/17)
Micro-Scale	12.1	12.0	13.1 (2/25)	[1] 12.2(12/14)

[1] After implementation of the oxygenated fuels program

One approach to compare values before and after the start of the oxygenated fuels program is to normalize the ambient CO concentrations recorded in the last quarter of 1989 to remove the effect of the oxygenated fuels program. This normalization is done by determining the fractional reduction in CO emissions caused by the oxygenated fuels program and then adjusting the ambient CO concentration by this proportion. The effect of the oxygenated fuels program on CO emissions is calcualted using EPA's MOBILE4 mobile source emission factor model. The result of normalizing the fourth quarter, 1989 monitoring data is shown in Table 2. The highest second-high concentration becomes 13.3 ppm, after normalization, which corresponds to the un-normalized value of 11.2 ppm.

TABLE 2.—ACTUAL AND NORMALIZED HIGH CO CONCENTRATIONS MARICOPA COUNTY, 1989 (PPM)

1st quarter			4th quarter			
	1st act	2nd act	1st act	1st nrm	2nd act	2nd nrm
Neighborhood	13.9	12.6	11.0	13.1	10.6	12.6
Micro-Scale	13.1	.....	[1] 12.2	14.5	11.2	[2] 13.3

Act = Actual, Nrm = Normalized
[1] Design concentration based on actual concentrations
[2] Design concentration based on normalized concentrations.

Similarly, the design value could be considered the ambient CO concentration which would result in the second-highest emission reduction requirement. This approach yields the same design value as the first approach, 11.2 ppm, which normlizes to 13.3 ppm. Therefore, 11.2 ppm is the appropriate design value for an attainment analysis.

EPA modeling guidance for CO analyses is primarily focused on the modeling of hot-spots, i.e., highly-localized areas of high CO concentrations. Modeling hot-spots entails the use of a line-source model to simulate the impacts of nearby congested roadways and intersections on ambient CO levels. If it is determined that high ambient CO concentrations are more of an area-wide phenomenon, then an appropriate area-wide model needs to be used in conjunction with the hot-spot analyses.

The air quality analysis in the 1987 MAG plan indicated that high ambient CO concentrations are the result of an area-wide buildup of emissions, with a relatively small contribution from the localized road conditions. As a result, the modeling approach in the MAG plan used the Urban Airshed Model (UAM) to model the area-wide emissions and a hot-spot model, CALINE-4 (modified to meet EPA guidance) to model the localized impact of roadways.

Given the very short time frame available to EPA to prepare this proposal, it was not possible to complete a new UAM and hot-spot analysis. Instead, rollback analysis, modified to account for the results of the previous UAM analysis, was used to estimate the emission reduction needed to attain the CO NAAQS in Maricopa County.

There are two basic conditions that must be met for a rollback analysis to be valid. The first is that there be no substantial changes in the distribution of emissions that affect the design value from the modeling base year until the attainment date. There are a number of new freeway routes opening to traffic in Maricopa County in the next few years; however, their primary effect will be to increase average vehicle speeds rather

then to change the distribution of the emissions.

The second condition for a rollback analysis to be valid is that the design value is the actual highest second-high concentration in the area. The modeling done for the 1987 MAG plan indicated that an area southeast of the micro-scale monitor at Indian School Road would likely experience slightly higher area-wide CO concentrations than those recorded at the monitor under the meteorological conditions modeled. Currently, there is no analysis to indicate that the meteorological conditions on the selected design day are significanty different than those in the preveious UAM analysis. Therefore, the assumption is made that the area-wide component of the ambient CO concentrations will be proportionally the same as in the previous analysis. This assumption implies a further adjustment to the design concentration. This adjustment results in a normalized concentration of 15.3, which corresponds to a concentration of 12.9 when the current oxygenated fuels program is considered.

EPA guidance allows for the use of a rollback analysis if the federal motor vehicle control program (FMVCP) alone will bring the area into attainment. Fuels programs, such as the two EPA is proposing in this notice, have the same kind of effect on the emission inventory as the FMVCP in that emission changes are uniform over the vehicle fleet. In this case the rollback analysis, modified by previous dispersion modeling results, yields a good, but potentially conservative, approximation to what new dispersion modeling would yield and, therefore, provides an adequate technical analysis for this proposal.

In order to provide an upgraded technical base for this rulemaking, EPA is now working on a new dispersion modeling analysis for the Maricopa area. This modeling approach will use the Urban Airshed Model (UAM) in combination with a hot-spot model and is similar to the approach used for the 1987 MAG plan. Once the final results from this modeling are available, EPA intends to issue a suppplementary proposal to today's notice. This supplementary notice would describe the result of the modeling analysis and propose any changes to the control strategy that the new modeling may show are appropriate.

2. Emission Reduction Shortfalls in Future Years

The basic assumption in a rollback analysis is that ambient CO concentrations vary linearly with CO emissions; therefore, the emission reduction neded for attainment is directly proportional to the ratio of the design value and the standard. Calculating the reduction needed to bring the design value down to the standard provides the proportional reduction in emission levels needed to attain in the base year, that is, the year the design value was recorded. To determine emission reductions needed in future years, one must first project the design concentration to future years.

There are two sets of variables that can affect the determination of future ambient air quality levels. The first set is meteorological variables such as temperature, wind speed, and inversion height. The careful selection of the design day (that day on which the design value was recorded) in part insures that the meteorological parameters most likely to result in exceedances are chosen.

The second set of variables affects the calculation of mobile source emissions. This set includes the rate at which older cars are retired from the vehicle fleet ("fleet turnover"), the operational characteristics of the I/M program, VMT levels, the average vehicle speeds, and fuel characteristics (RVP level and oxygen content). the effects of fleet turnover, the I/M program vehicle speeds, and fuel characteristics on vehicle tailpipe CO emission rates are included in EPA's MOBILE4 emission factor model. The effect of increased VMT is taken into account when total mobile source CO emissions are calculated.

To project a future year ambient concentration, the design value is factored by the expected change in total CO emissions between the base and future years. The variables affecting mobile sources emissions are adjusted for the future year conditions. Using estimates of future speeds and VMT provided by the State of Arizona, EPA has projected baseline ambient concentrations for several future years assuming that no further controls are implemented. Table 3 shows these projections.

TABLE 3.—PROJECTED BASELINE CO CONCENTRATION IN MARICOPA COUNTY

January 1, Year	VMT [1] (x 10^6)	Speed (mph)	Total emissions [2] (Mg)	CO concentration (ppm)
1990	18.6	20.8	316	13
1991	19.2	23.9	261	11
1992	19.7	23.8	252	10
1993	20.3	23.6	249	10
1996	22.1	26.1	220	9
2001	26.5	23.6	223	9

[1] Total VMT between 3 p.m. and 5 a.m.
[2] Total emissions between 3 p.m. and 5 a.m. Assumes 2.3 percent oxygenated fuel, 11.2 psi RVP, and 12% of the vehicle fleet are out-of-state/out-of-area and not subject to an I/M program. The emission levels do not reflect emission reductions from the travel reduction program.

The information in Table 3 indicates that the CO NAAQS will not be attained in the Maricopa area until some time after 1993, and probably not until late 1994/early 1995 under the existing control program. To advance attainment, additional emission reductions are needed. Table 4 shows these needed emission reductions from the baseline in future years.

TABLE 4.—CO EMISSION REDUCTIONS FROM BASELINE NEEDED FOR ATTAINMENT

January 1, Year	CO concentration (ppm)	CO reduction needed for attainment (percent)
1990	13	30
1991	11	16
1992	10	13
1993	10	12
1996	9	N/A
2001	9	N/A

The design value is a monitored value and therefore reflects the impact of all control measures in place the day the design value was recorded. In Maricopa County in mid-December, 1989 the oxygenated fuels program was operating at 2.3 percent oxygen, average gasoline volatility was 11.2 psi, a majority of the TCMs which EPA credited in the 1987 MAG plan were in place, and the voluntary no-drive-day program, the Clean Air Campaign, was in full swing. The design value reflects the impact of all these programs and, because they are based on the design value, future year projections already account for the impact of these measures. Unless these measures are strengthened, additional emission reduction credits from them cannot be used to close the gap to attainment.

There are only three measures for which EPA granted emission reduction credit in its 1988 SIP approval which are not implicitly included in the design value or future year projections: The travel reduction program (TRP), freeway high occupancy vehicle (HOV) lanes, and freeway operationally flow improvements. The TRP had just begun receiving travel reduction plans from the very largest employers (i.e., greater than 500-employees) in late 1989; the majority of employers had not yet been required to submit plans. It is, therefore, unlikely that any measurable emission reductions were being realized by the TRP in mid-December, 1989. The latter two measures are not reflected because they either had not yet been constructed or not opened to traffic in December, 1989. Emission reductions from these three measures can, therefore, be credited towards attainment.

3. Proposed Action on Maricopa's Voluntary No-Drive-Day Program

As part of its action on the 1987 MAG plan, EPA approved a voluntary-no-drive day program, "The Clean Air Campaign," but did not approve an emission reduction credit stating that it needed several years of data to determine the appropriate credit for the program. The Clean Air Campaign has now been in operation for four years and will shortly begin its fifth year. Traffic data, bus passenger counts, and market research surveys indicated that the program has been successful in reducing vehicle miles traveled. MAG has requested that EPA consider granting the program an emission reduction credit in the SIP. EPA agrees that it may now be appropriate to consider granting credit.

The data on the program's effectiveness indicate that a numerical credit could be granted. It is not, however, completely clear, because of variations in the data, what credit to grant. To determine the appropriate credit, EPA will work with MAG, ADEQ, and the Regional Public Transportation Authority (which operates the Clean Air Campaign). Once an appropriate value has been determined, EPA would propose to amend the Maricopa SIP to reflect this credit.

It should be noted that EPA has already relied upon the Clean Air Campaign in its attainment and maintenance demonstrations. The design value used to determine the needed emission reductions comes from a period when the program was operating and thus intrinsically includes the effect of the Campaign.

B. Analysis of "Available" Measures

1. Definition of "Available"

In *Delaney* v. *EPA* the court ordered EPA to "utilize all available measures to attain the ambient air quality standard for carbon monoxide as soon as possible." In its recent proposal of a FIP for the Los Angeles area, EPA interpreted the court test to require a demonstration of attainment as expeditiously as practicable utilizing all measures available to the federal government that are capable of advancing the attainment date, short of those producing absurd results, such as severe socioeconomic disruptions. 55 FR 36458, 36503 (September 5, 1990. The reader is referred to this discussion which applies generally to today's proposal. A District Court in California recently interpreted the Delaney test in a similar manner, concluding that Delaney simply restates the statutory test requiring attainment as expeditiously as practicable. See *Citizens For A Better Environment, et al.* v. *Deukmejian, et al.*, N. D. Calif. No C89–2064, August 28, 1990, slip op. at 21.

In order to apply the Delaney test to Arizona, EPA must screen the universe of possible measures for the candidate measures which it could effectively implement in Maricopa county. Next, EPA must select from this set of candidate measures, the subset of measures which are necessary to attain as soon as possible. EPA would consider this resulting subset to be the "all available measures" required by Delaney.

EPA has developed a list of six criteria, discussed below, on which it would judge whether a measure is a candidate for availability. These criteria are derived from either Clean Air Act requirements or long-standing EPA policy.

While EPA believes the requirements of Delaney apply to states, it should be understood that the following analysis is meant to apply only in the limited instance of this CO FIP for Maricopa County and only to determine the availability of measures to EPA not to the State of Arizona or to other states. In contrast to EPA's limited authority as an executive-branch agency, the concept of "states" as used in the Clean Air Act embodies both the state's executive and legislative functions and therefore includes the authority not only to regulate but also to establish new legal authority and to tax in order to fund necessary programs. As a result, application of the Delaney test by the states would yield a broader range of available measures.

Criteria for Selecting Candidate Measures—a. Legal Authority. In order to consider it a candidate measure, EPA must have the legal authority under the Clean Air Act to promulgate, implement, and enforce the measure and must not be pre-empted from promulgating, implementing, or enforcing the measure by other federal statutes, regulations, or court orders. EPA's grant of authority under the CAA is broad, see section 301(a)(1); however, it is constrained in specific instances by the Act itself, see e.g., section 110(a)(5)(A)(i) and 110(c)(2)(B).

b. Resources. Both CAA sections 110(a)(2)(F) and 172(b)(7) require SIPs to assure that adequate personnel and funding are available to carry out provisions of the SIP. EPA believes that this same requirement applies to it when it promulgates a FIP under section

110(c). EPA discussed generally the resource constraints associated with federal implementation of transportation control measures in its recent proposal of a FIP for Los Angeles. See 55 FR 36458, 36517.

EPA is limited in its ability to divert pesonnel and funds to implement and enforce a FIP in Maricopa County, Pima County, or anywhere else. There are currently over 140 areas in the United States that are nonattainment for one or more of the six criteria pollutants. EPA's statutory duty to assure attainment of NAAQS in these areas and maintenance of the standards in other areas is not alleviated because of its FIP obligations. Equally, EPA's statutory duties in regulating non-criteria pollutants are also not eliminated.[2]

Many state and local air pollution control programs are dependent on funds provided by EPA through contracts and the CAA section 105 grant program. State and local agencies use these funds to hire personnel, monitor air quality, issue permits, and develop and enforce rules and regulations. A sudden withdrawal of these funds would leave many States and local agencies without adequate resources to operate their air programs.

The projected fiscal year 1991 budget allocates $207.3 million for contracts and grants (including section 105 grants) and 1,658 work years to the EPA air programs nationally.[3] The Maricopa CO nonattainment area has an estimated 1987 population of 2.0 million or roughly 1.5 percent of the 138 million people who live in nonattainment areas in the United States. Based on these figures, one could simplistically calculate that EPA could divert 1.5 percent or $3.11 million [4] and 25 work years to implement and enforce a FIP in Maricopa County.

This calculation, of course, ignores the considerable resources EPA must invest in non-criteria pollutant programs and that many areas violate more than one NAAQS and EPA must oversee separate SIPs for each of these pollutants. This calculation also ignores the fact that pollution levels vary greatly among nonattainment areas and that the allocation of funds and personnel needs to consider the relative severity of attainment problems. With these caveats, the calculation does provide an upper limit on the resources EPA could potentially divert to the Maricopa FIP; therefore, any measure or combination of measures which would require resources above this level, would not be considered a candidate measure.

One potential method to provide resources for implementing and enforcing FIP measures is to impose fees on the regulated sources. Although EPA may have the authority to impose permit fees on sources, such fees would be deposited into the U.S. Treasury's general fund and would require a congressional appropriation to make them available to EPA. In essence then, EPA would be put to the extra expense of collecting fees but could not count on using them; therefore, fees are not currently a workable option for implementing and enforcing FIP measures.

c. Technical Feasibility. As the term is used here, technical feasibility means that the technology for mobile source controls or the infrastructure for TCMs is currently available or can be made available *and* that implementation of the measure would materially reduce CO emissions in Maricopa County during the ten-year period covered by the FIP. The TCMs in CAA section 108(f) are, by definition, generally considered to be technically feasible. However, the actual technical feasibility of each TCM must be considered in light of the current and future transportation system in Maricopa County to determine if the measure could be implemented and would in fact reduce CO emissions. TCMs which cannot be implemented within ten years or would be ineffective if implemented would not be considered as candidate measures.

Technical feasibility for mobile source controls depends on the type of control contemplated. For measures for which the technology has been demonstrated—most I/M program enhancements, gasoline volatility limits, and oxygenated fuels—EPA will use its mobile source emissions model, MOBILE4, with Arizona-specific inputs to determine the emission reductions and their time tables for each measure. For measures involving new emission standards, retrofitting controls, or conversion of vehicles to alternative fuels, EPA will first determine the state of the necessary technology and then, if the technology is feasible, the potential emission reductions in Maricopa County. Measures for which the technology is infeasible or which cannot provide emission reductions in the ten-year period covered by the FIP would not be considered candidate measures.

d. Economic or Social Impacts. While EPA believes that areas should impose all reasonably available measures which will result in attainment as expeditiously as practicable, it does not believe that attainment needs to be brought about immediately by draconian measures. To this effect, EPA stated in its August 10, 1988 notice approving the MAG plan:

> If EPA were to adopt [the] position that post-1987 planning should provide for attainment at the soonest time, many post-1987 nonattainment areas would have to resort to draconian measures with drastic social and economic impacts—such as plant closings, gasoline rationing and mandatory no-drive-day restrictions—simply because such measures are physically available to bring about attainment. EPA does not believe that Congress, if it had addressed the post-1987 nonattainment situation now being faced, would have required such a result, even after passage of the [CAA] Part D dates [i.e., 1982 or 1987]. EPA believes that Congress would instead have regarded the "as expeditiously as practicable" required to be still in place. . . . (53 FR 30224, 30233)

The Ninth Circuit order in Delaney requires EPA to utilize all available control measures to attain the [CO NAAQS] as soon as possible. EPA does not read this requirement to include measures with severe economic and social impacts. In its Petition for Rehearing on Delaney, EPA advised the Ninth Circuit that its does not read the opinion as requiring it to implement any measures that would among other things are not "available" in the sense that they would result in absurdly severe economic and social disruptions. Although the court in denying EPA's petition said nothing about this interpretation, it is consistent with the U.S. District Court's interpretation of Delaney in *Citizens For A Better Environment, et al.* v *Deukmejian, et al.*, N.D. Calif. No C89–2064, August 28, 1990, slip op. For this reason, EPA did not even consider or analyze for availability measures with absurd socioeconomic impacts, such as gas rationing.

Congress in fact in now addressing the post-1987 attainment issue in proposed amendments to the Clean Air Act. Although Congress continues to view the nation's failure to attain air quality standards with great concern,

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[2] For criteria pollutants, these duties include review and setting of national ambient air quality standards; development of control technology guidelines; development of guidance on emission inventories, modeling, monitoring, etc.; development and enforcement of mobile source control programs and fuel standards; oversight of the prevention of significant deterioration program; management of the section 105 grants program; review and action on SIP revisions; enforcement of SIP measures; etc. For non-criteria pollutants, EPA must maintain programs, for example, to establish and enforce emission standards for hazardous air pollutants and to protect visibility.

[3] These figures do not include funds for the radiation program or research and development. These figures also do not consider any cuts which may become necessary under the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings), Pub. L. 99–177.

[4] EPA has already allocated $2.06 million in section 105 gants to Arizona Agencies in FY 1991.

both proposed amendments (H.R. 3030 and S. 1630) would extend attainment dates rather than require immediate attainment with draconian measures. Therefore, EPA believes that it need not consider as a candidate measure, any measure with severe economic or social impacts.

e. *Environmental or Public Safety Impacts.* The purpose of the Clean Air Act is "to protect and enhance the quality of the Nation's air resources so as *to promote public health and welfare* * * *" CAA section 101(b)(1), emphasis added. It would be counterproductive if, in protecting public health through clearing the air, EPA were to create or exacerbate conditions that endangered public health or safety.

In its major regulatory rulemakings, EPA has carefully weighed any potential adverse environmental and public safety impacts against the benefits from its actions. EPA will extend the same careful consideration to analysis of candidate control measures. EPA would, therefore, not consider as a candidate measure any measure if its resulting degradation of the environment and decline in public safety outweigh its air quality benefits.

f. *Pre-emption of State Regulations.* EPA does not believe that federal regulation is inherently superior to state or local regulation. In most situations, the Clean Air Act gives preference to state and local adoption of air quality plans and grants EPA authority to promulgate plans only when it is clear the state has failed to adopt adequate ones. EPA, therefore, will not consider a measure as a candidate measures where it is apparent that the State of Arizona or local governments have effectively adopted, implemented, and enforced the measure to the same degree that a federal regulation is likely to achieve.

Criterion for Determining "As Soon As Possible" The second part of the process for establishing which measures are available is to determine if a candidate measure will result in attainment "as soon as possible." EPA interprets this test to mean that only those candidate measures which will result in the earliest attainment date practicable must be considered available. A measure cannot result in an earlier attainment date unless it can be implemented and achieve emission reductions (i.e., become effective) prior to the projected attainment date. EPA, therefore, will not consider any candidate measure as available unless its expeditious implementation would reduce emissions prior to the projected date of attainment.

2. Measures Subject to Screening

EPA has developed a list of 55 measures it is screening for availability in Maricopa County.[5] These measures are listed in the Appendix to this notice. In developing this list, EPA selected measures from a number of sources.

In the Delaney opinion, the Court cites three sets of potentially available controls. These are the 45 measures recommended in the MAG plan, the twelve TCMs identified as potentially effective for the Maricopa area by an EPA contractor, Cambridge Systematics, Inc. (CSI) [6], and the eighteen TCMs in CAA section 108(f). These lists overlap to a great extent. For example, all twelve CSI measures are among MAG's forty-five, and eleven are section 108(f) TCMs. Even with this extensive overlap, measures from these three sources make up the bulk of the fifty-five measures on EPA's list.

EPA also identified two other sources of potential measures. MAG considered and/or analyzed a number of measures which were not among the forty-five recommended. These measures are included in EPA's list. In addition, EPA has recently proposed a CO and ozone FIP for the South Coast (Los Angeles) Air Basin, 55 FR 36458 (September 5, 1990). This FIP proposal contains several CO measures including two with potential application to the Maricopa area: a wintertime gasoline volatility limit and a mandatory no-drive-day program.[7] These two measures are also included in EPA's list.

3. Initial Results of Screening

Given the limited time which EPA had to prepare today's proposal, a complete review of each of the 55 measures for each of the six criteria and its potential implementation and effectiveness dates was impossible. However, each of the measures was reviewed for candidacy based on the first three criteria discussed above: legal authority, resources required for implementation and enforcement, and technical feasibility. Where EPA found a measure to be a candidate under these three criteria, it went on to analyze the measure under the remaining three criteria. The results of this screening are tabulated in the Appendix to this notice. More detailed information for each measure is given in the draft technical support document.

Through its screening, EPA identified sixteen candidate measures. These measures are listed in Table 5 along with their most likely effectiveness date. The effectiveness date means the date on which the measure would begin to achieve measurable emission reductions in Maricopa County. This date is not always the implementation date, that is, the date on which the measure first becomes enforceable. For measures which take months to build to their full effectiveness, I/M program enhancements for example, the effectiveness date can be much later than the implementation date.

EPA found that it lacked legal authority or resources to implement most of the 55 measures and found that several measures were not technical feasible in Maricopa County. Very few measures required review on the last three criteria for candidacy. Appendix A indicates the reasons EPA determined that each measures was or was not a candidate measure. EPA requests comments on its findings for these measures.

TABLE 5.—CANDIDATE MEASURES AND POTENTIAL EFFECTIVENESS DATES

Measure	Potential effectiveness date
Fuel/Vehicle Measures	
43. Wintertime volatility limit	October 1, 1991.
44. Higher average gasoline oxygen level.	October 1, 1991.
52. Conversion of vehicle fleets to alternative fuels.	After October 1, 1993.
54. Retrofit of pre-1975 vehicles with catalytic convertors.	After October 1, 1993.
I/M Program Enhancements	After January 1, 1992.
47. Elimination I/M waivers	
49. Expansion of the I/M program county-wide.	
50. Increased stringency of the I/M program.	
TRP Enhancements [1]	After October 1, 1992.
24. More stringent travel reduction program (TRP).	
25. Financial incentives to employees in lieu of parking spaces.	
26. Preferential parking for car/vanpools.	
27. Free transit passes to employees.	
28. Alternative workhours/weeks	
29. Telecommuting	

[5] EPA is not screening measures for Pima County because, as described later, it is proposing to find that no additional measures are needed to attain as soon as possible and maintain the CO NAAQS in the County.

[6] Cambridge Systematics, Inc. "Improved Air Quality in Maricopa and Pima Counties—The Applicability of Transportation Measures." Prepared for the U.S. EPA, Region IX. November, 1986.

[7] The notice for this FIP also discussed a third CO measures, cold-temperature CO tailpipe emission standards. On September 11, 1990, the Administrator signed a notice proposing this measure nationally. As a national rulemaking, the measure will automatically apply to Arizona; therefore, the impact of the cold-temperature emission standards has been assumed in the maintenance demonstrations for both Pima and Maricopa County.

TABLE 5.—CANDIDATE MEASURES AND POTENTIAL EFFECTIVENESS DATES—Continued

Measure	Potential effectiveness date
30. Teleconferencing	
31. Encourage bicycle usage	
32. Encourage pedestrian travel	

[1] These measures would most likely be implemented as a combination of a higher trip reduction goal (i.e. greater than the 10 percent reduction in signle-occupant-vehicle trips which is the current maximum requirement in the existing Maricopa TRP) and a requirement that these measures be considered in every employer trip reduction plan.

After arriving at the list of candidate measures, EPA next determined which of these sixteen candidate measures would result in attainment as soon as possible and would therefore be considered available under Delaney. To do this, EPA evaluated the impact of implementing the two measures with the earliest effectiveness dates: A 2.7 percent oxygenated fuels program and a 10 psi volatility limit. As is discussed later in this notice, these two measures are sufficient when combined with existing SIP measures to advance attainment in Maricopa County from late 1994/early 1995 to December 31, 1991. This December 31, 1991 attainment date is before the potential effectiveness date of any of the other fourteen candidate measures, that is, none of these fourteen measures could become effective prior to the projected date of attainment and therefore their implementation could not advance attainment.

Based on its screening of an extensive list of possible control measures and its evaluation of the emission reductions needed for attainment and maintenance in Maricopa County, EPA is today proposing an oxygenated fuels program at an average oxygen content of 2.7 percent and a wintertime gasoline volatility limit of 10 psi (with a 1 psi exemption for 3.5 percent oxygen and above ethanol blends). These measures combined with existing SIP measures will result in attainment of the CO NAAQS in Maricopa County by December 31, 1991 and maintenance until after 2001. EPA is also proposing today to make the finding under *Delaney* that these two measures constitute all available measures to attain the CO standard as soon as possible in Maricopa County and that there are no other possible measures at EPA's disposal whose implementation would result in attainment any sooner than December 31, 1991.

C. Proposed Federal Measures

1. Oxygenated Fuel Program

Introduction. Oxygenated fuels is becoming a widely accepted control strategy for reducing CO emission from motor vehicles in a timely and cost effective manner. Several programs, such as those in Maricopa and Pima Counties, have been successfully implemented by State and local governments around the country, with the required oxygen content of gasoline ranging from 1.8 to 2.6 percent by weight. (The Maricopa program is described in detail later.) In the future, other areas of the country may have similar programs. As part of the proposed Clean Air Act amendments, the U.S. Congress has been reviewing the merits of requiring gasoline with 2.7 to 3.1 percent oxygen content in numerous CO nonattainment areas. Also, on September 5, 1990, EPA proposed a FIP for the South Coast (Los Angeles) Air Basin that included a 2.7 percent oxygen content requirement for gasoline (55 FR 36458). Because of the recognized benefits of oxygenated fuels and because the infrastructure for such a program already exists in Phoenix, EPA is proposing to enhance the current program for the Maricopa County nonattainment area by requiring a higher oxygen content than is currently mandated under Arizona statute. Specifically, today's proposal would establish a 2.7 percent oxygen content standard in lieu of the State's 2.3 percent requirement.

EPA is unable to unilaterally revise Arizona's oxygen content minimum, which is prescribed by State statute; therefore, EPA is proposing to promulgate a complete regulation and to implement an enforcement program itself. While not preferred by EPA, this will have the legal effect of pre-empting State enforcement under its own statute. Nonetheless, Arizona may prevent this from happening if the State statute is amended to be identical to the FIP program or otherwise establish a program of equal effectiveness, either of which would allow EPA to withdraw the federal oxygenated fuels requirement. EPA encourages the State of Arizona to explore such action prior to the implementation date of the federal program.

The Basics of Oxygenated Fuels. Oxygenated gasoline causes a motor vehicle engine to run with a slightly leaner overall fuel/air mixture thereby reducing the amount of CO generated during the combustion process. An oxygenated fuels program takes advantage of this phenomenon by requiring higher than normal levels of oxygen in gasoline during the period of the year when exceedances of the ambient air quality standard for CO are most likely to occur. Such oxygen concentrations can only be achieved by adding chemical compounds to gasoline that contain oxygen and are miscible in gasoline. The most suitable, available, and economical compounds for this purpose are aliphatic alcohols and ethers, generally referred to as oxygenating compounds or oxygenates.

Presently, the types and permissible amounts of oxygenating compounds in unleaded gasoline are regulated by EPA under section 211(f) of the CAA. EPA's current "substantially similar" requirements prohibit unleaded gasoline from containing more than 2.0 percent oxygen by weight. This prohibition may be waived by the Administrator upon specific request by a manufacturer, or a waiver is automatically granted if EPA fails to deny such a request within 180 days of receipt. Leaded gasoline is not subject to these regulations.

Several waivers have been granted, with 3.7 percent oxygen by weight being the maximum permissible legal concentration at this time. The most commonly used oxygenating compounds are methyl tertiary butyl ether (MTBE) and ethanol (ethyl alcohol). The maximum oxygen content using these compounds is 2.7 and 3.5 percent for MTBE and ethanol blends, respectively. (The maximum legal concentration for ethanol in gasoline is 3.7 percent but practical considerations generally limit in-use blends to 3.5 percent.)

It is also possible that additional oxygenated fuels may be available in the future. For example, EPA is currently reviewing a request by the Oxygenated Fuels Association to change the substantially similar rule, mentioned above, from 2.0 up to 2.7 percent oxygen. This would allow much higher oxygen concentrations without the need to obtain a special waiver for each oxygenate. It would also provide greater flexibility in blending fuels up to 2.7 percent because of the possibility that more than one oxygenate of choice could be used in a single gasoline blend. Also, a new compound called ethyl tertiary butyl ether (ETBE) shows promise as an oxygenate. This ether, which is produced with ethanol as a feed stock, seems to offer some advantages over other blending agents such as low volatility and high octane content. EPA believes it is advantageous for consumers to have a choice of oxygenated fuels and is encouraged that several oxygenates appear suitable for use in oxygenated fuels programs.

The benefit of any oxygenated fuel in reducing CO emissions is based on a complex set of interactions involving the properties of the base gasoline, the type and quantity of the oxygenating compounds, the resulting combustion process within the motor vehicle engine, and the vehicle's emission control system. Although still under study, EPA summarized much of the available information on this topic and presented methodologies for evaluating emission effects on various fuels in "Guidance on Estimating Motor Vehicle Emissions Reductions from the Use of Alternative Fuels and Fuels Blends." That document is available for review in the rulemaking docket. A few of the more salient effects of oxygenated fuels that are important in understanding today's proposal are briefly summarized below.

Basically, the ability of an oxygenated fuel to reduce CO emissions increases as the oxygen content is increased. Also, within certain constraints, all oxygenating compounds appear to have the same CO reduction potential at a given oxygen content. Therefore, the ability to reduce CO emissions is generally related to the oxygen content of the fuel and not the type of oxygenate. However, some oxygenates can directly or indirectly affect other fuel properties, which in turn may affect the CO reduction potential of the final blend.

Of primary interest here are changes in gasoline volatility, i.e., the tendency of gasoline to evaporate at various temperatures. One widely used measure of this effect is Reid Vapor Pressure (RVP). While all oxygenates show some tendency to increase fuel volatility under certain conditions, from a practical perspective, it is a special concern only for alcohol-based blends. It also appears more relevant to ethanol blends, because this compound is the most commonly used alcohol for this purpose, and it has been granted a special exemption from meeting the Federal summertime RVP standards. See 55 FR 23658 (June 11, 1990).

If an oxygenated fuel has a higher volatility than the baseline gasoline, its CO reduction will be less than a comparably oxygenated fuel (i.e., fuel with the same oxygen content) with a volatility equal to the base gasoline. The RVP boost associated with ethanol blends is not linear with alcohol content. Instead, any alcohol level above 2 percent by volume tends to have the same absolute effect on RVP. The average effect with ethanol is about 0.8 pounds per square inch (psi). The volatility boost of alcohol-based oxygenating compounds can be compensated for by using special low RVP blending stock or by otherwise accounting for this effect at the refinery.

The Current Oxygenated Fuels Program in Arizona. In 1988, both EPA and the State of Arizona were actively evaluating oxygenated fuels programs for the Maricopa County nonattainment area. As discussed in the May 16, 1988 **Federal Register** notice (53 FR 17378), EPA's involvement was prompted by a court order to implement a FIP in Phoenix. After careful study, EPA proposed to require an oxygen content of 2.57 to 2.79 percent by weight in all gasoline marketed within the Maricopa County nonattainment area. Subsequent to that proposal, the Arizona State Legislature enacted a state-run oxygenated fuels program, which along with other control measures, was approved by EPA as a SIP revision on August 10, 1988 (53 FR 30224). As part of that approval, EPA withdrew the proposed FIP.

The current State oxygenated fuels program began in late 1989. Specifically, the program required that all gasolines in the Maricopa County nonattainment area contain a minimum of 2.3 percent oxygen by weight from October 1, 1989 through March 31, 1990, and during the same period for all subsequent years. In addition, during these months ethanol blends were granted a 1 psi RVP exemption from otherwise applicable State volatility standards.

During the first year of the State's program, about 20 percent of the gasoline marketed in the control area was blended with ethanol. Nearly all of this fuel contained the minimum oxygen content, with a very small fraction being blended at 3.5 percent. The ethanol-based gasolines were blended on-site at the Phoenix terminal. The remaining fuel (i.e., about 80 percent) was blended at the minimum required concentration with MTBE. Most of the MTBE-based gasolines were also apparently blended on-site. At least some portion of the MTBE-blended gasoline was reportedly transported from refineries in the Los Angeles area via pipeline to Phoenix. The current State program appears to be effective and well administered.

Oxygenated Fuels Program Selection—a. Required Oxygen Content. In today's action, EPA's goal is to propose a control program tht will bring about attainment of the CO NAAQS in Maricopa County by as soon as possible. EPA's preliminary air quality modeling results for this area indicate that under the State's current air pollution control program, the ambient standard will not be attained until late 1994/early 1995. At the same time, EPA's analysis of available measures shows that the attainment date can be advanced to 1991 by adopting a somewhat more stringent oxygenated fuels program as an increment to the existing State program. EPA has identified an oxygen content of 2.7 percent by weight as providing the requisite emission reduction, in conjunction with the wintertime gasoline volatilty controls discussed in the next section. Therefore, EPA is proposing 2.7 percent as the required minimum level of oxygen for gasoline marketed in the Maricopa nonattainment area. Nonetheless, comments are requested on the desirability and technical feasibility of oxygen contents below this level, as well as up to 3.1 percent by weight.

The choice of 2.7 percent may have certain other advantages beyond providing for attainment. The recently proposed South Coast FIP would also require the same (2.7 percent) oxygen content for gasoline marketed in the Los Angeles area. To the extent that refiners can supply both markets with comparable products, production efficiencies (e.g., economies of scale) could potentially reduce the costs associated with both proposals. A section later in this notice contains information on the costs of today's action.

b. Program Options and Issues. In addition to identifying the requisite oxygen content, it is necessary to decide on the design or implementation of the program. In deciding among the alternatives, EPA finds that the predominate considerations in making this decision are similar to those faced by EPA in designing the 1988 FIP proposal. Therefore, EPA's preferred approach to implementing the current FIP oxygenated fuels program is largely patterned after this earlier proposed rulemaking.

i. *Basic Program Designs.* There are two basic options for the overall design on an oxygenated fuels program: 1) establish a 2.7 percent minimum oxygen concentration for all gasoline; or 2) establish an average concentration of 2.7 percent that must be met by gasoline suppliers. Each option is described below and EPA's preferred option for the proposal is identified.

The first option, setting a single minimum specification, is currently used in all existing oxygenated fuels programs, including the State of Arizona. This option offers several advantages, especially at the lower oxygen content requirements of the present programs. Among these are: (1) The regulatory requirements are

straightforward for the affected industry; (2) there is a minimum of consumer confusion over the level of oxygenate being marketed; and (3) enforcement is greatly simplified. Regarding this last point, compliance could be directly monitored through sampling and testing of gasoline at all points in the distribution system, rather than relying on oversight of a self-reporting system. The disadvantage of this option is that it limits the marketing flexibility of fuel suppliers. It also may reduce competition between various oxygenating compounds. These effects could result in higher than necessary costs. These disadvantages appear to become more prevalent as the minimum oxygen content increases.

The second option, establishing an averaging program, is similar to the type of program used by EPA in the gasoline lead phasedown program. With this program, gasoline suppliers must, at a minimum achieve the sales-weighted average value over a specified time period. This can be done by always selling fuel with an oxygen content at or above the requisite value or by adjusting the quantities and types of fuel sold over the averaging period to attain the requisite value.

Although not actually required to achieve the desired air quality results at the oxygen content standard being proposed, an averaging program has certain benefits. The principal advantage of this program design is that it entails a minimum of regulatory intrusion into the marketplace. It also appears to retain the maximum degree of marketing flexibility and competition between blending agents. The advantageous aspects of this approach can be further enhanced by allowing suppliers to trade "oxygen credit" among themselves, with a supplier of relatively low oxygen fuels being able to purchase such credits from a supplier of relatively high-oxygen fuel. Finally, in the event that the final rule for this action were to include a minimum oxygen content above 2.7 percent, certain oxygenating compounds such as MTBE would be essentially locked out of the market without an averaging mechanism. Under current law, MTBE blends over 2.7 percent oxygen by weight are currently not allowed in unleaded gasoline.

The primary disadvantage of this option is the associated recordkeeping and reporting burden for gasoline suppliers. A significant amount of additional data is required under this program design for suppliers to track their average oxygen concentrations, to allow for trading of oxygen credits, and to provide a mechanism for program enforcement. Even with such reporting and recordkeeping requirements, however, program enforcement will be of a different nature than in the current program and may be difficult. Generally, the infrastructure and gasoline marketing patterns in Phoenix are favorable to successful enforcement of an averaging program, in that the links to outside sources of supply are quite limited.

In weighing the apparent advantages and disadvantages of the two basic program options in the context of the relatively high oxygen content requirement, EPA believes that providing suppliers with an averaging and trading scheme is desirable. Therefore, EPA proposes to establish a minimum 2.7 percent oxygen requirement, with an optional averaging and trading program.

ii. *Volatility Exemption for Ethanol Blends (3.5 percent or higher oxygen content).* As discussed previously, various oxygenated fuels may exhibit different clean air potentials. Current oxygenated fuels made with ether-based compounds as the blending agent yield equivalent CO reductions, by EPA estimates, for each percent oxygen they contain. This is not necessarily the case, however, for oxygenated fuels made with alcohol-based compounds such as ethanol.

These latter blends can increase the volatility of the gasoline. This natural volatility increase was recognized by EPA in its national summertime RVP regulations, which included a 1 psi exemption from the otherwise applicable volatility standards for ethanol blends of 9 percent ethanol by volume (3.5 percent or more oxygen by weight). The State of Arizona has also recognized this effect by granting a similar exemption for ethanol blends as part of its oxygenated fuels program. The higher RVP of ethanol blends acts in the opposite direction of the oxygen content in reducing CO emissions. An 11 psi, 3.5 percent oxygen ethanol blend, for example, might give only the same CO reduction as a 10 psi, 3.1 percent oxygen MTBE blend. However, the 11 psi ethanol fuel at this level of oxygen would provide a larger percentage reduction from its 11 psi non-oxygenated baseline fuel than would the 10 psi ether blend from its 10 psi baseline. The only way to limit or avoid the CO offset is to use a low-volatility gasoline as the blending stock so that the resulting fuel is no more volatile that the non-oxygenated gasoline, or account for the effect at the refinery using other methods. Due to economic and technical considerations, this is likely to occur in Phoenix only if a regulatory constraint forced such fuels to be made with low-volatility gasoline as the blending stock.

The relative difference in the air quality benefits between ethanol and other blending agents must be accounted for in the program design to: (1) Ensure the required emission reduction is attained, and (2) properly value oxygen credits that may be generated and sold by ethanol blenders to other suppliers. There are three basic options for addressing this issue. Each is discussed below.

The first option is to not exempt 3.5 percent oxygen ethanol blends from the wintertime RVP standards being proposed elsewhere in today's notice thereby avoiding the volatility increase completely. This approach appears to be the most stringent and provides the greatest air quality benefits of the options considered. However, competition between oxygenates may be substantially reduced, because of the potential difficulty and cost associated with the required use of a special low-RVP base gasoline for ethanol blending at the Phoenix terminal. It is also inconsistent with current practice in the Maricopa area. State law presently provides ethanol blends with a 1 psi RVP allowance from the otherwise applicable volatility standards.

The second option is to provide an exemption from the proposed RVP standards and account for the relative difference in air quality benefits of the various oxygenated gasolines by expressing the "actual" oxygen content of each fuel in terms of its "equivalent" oxygen content. The equivalent oxygen content is then used in determining compliance with the program. This approach was proposed by EPA in the 1988 FIP proposed rulemaking. Although this properly values the oxygen regardless of blending agent, it does so at the expense of adding a degree of complexity to the program. The conversion factor used in the equivalence determination is sensitive to the mix of motor vehicles (different technologies respond differently to oxygenated fuels) and to temperature conditions. Therefore, the equivalence of any ethanol blend may be different for each year and may have to be based on "worst case" temperatures.

The third option is to allow the RVP exemption for 3.5 percent oxygen ethanol blends while establishing tradeable credits based on the actual oxygen content of the fuel. The primary disadvantage of this approach is that a significant air quality loss could occur if the market share of 3.5 percent oxygen

ethanol blends is large and ethanol blenders sale their excess oxygen credits to MTBE blenders (or low-level ehtanol blenders with no RVP exemption) that in turn reduce the actual oxygen content of their products accordingly.

EPA's analysis shows that an ethanol blend of 3.5 percent oxygen by weight with an expected average volatility increase of about 0.8 psi RVP would result in slightly lower CO emissions than a 10 psi MTBE blend of 2.7 percent oxygen by weight at the design day temperature of 53 degrees fahrenheit or below. For higher temperatures, the effect is the same or slighly worse. Yet the blender of the 10.8 psi ethanol blend would, under this option, be entitled to sell the equivalent of a full 0.8 psi oxygen credit. However, EPA does not contemplate a high ethanol blend market share in the Phoenix area under the oxygenated fuels program.

Based on the above considerations, EPA is proposing to implement the third option, i.e., allow a 1 psi exemption from the wintertime RVP standards for ethanol blends of 3.5 percent oxygen by weight.[8]

This discussion has focused on ethanol because it appears to be the only alcohol likely to be used to in the Maricopa County nonattainment area oxygenated fuels program. The issues are somewhat similiar with regard to other alcohol-based oxygenated fuels. Therefore, EPA requests comments on the likelihood that other alcohol blends may be offered for sale in this area, and the need and desirability of including them in one of the volatility options described above.

Description of the Oxygenated Fuels Program. EPA is proposing to implement an oxygenated fuels program requiring 2.7 percent oxygen content by weight in gasoline, an exemption from the wintertime volatility standards of 1 psi RVP for certain ethanol blends, and an optional averaging and trading scheme. EPA has endeavored to make the proposed regulatory text for this program as complete as possible. Nonetheless, additional regulatory details may be required than are contained in this notice. To the extent necessary, EPA will provide additional implementing details in the final rule and propose others as may be necessary for public comment in a subsequent rulemaking notice. The specific program elements are described in more detail below.

a. Program Duration. The mandatory compliance period for the current oxygenated fuels program begins on October 1 of each calendar year and ends on March 31 of the subsequent calendar year. This same period was also suggested by EPA in the 1988 FIP proposal and is being reproposed as part of today's action.

During this compliance period, all gasoline first introduced into commerce within the control area (including gasoline deliveries to public or private refueling facilities) must meet the requirements of the oxygenated fuels program as prescribed by regulation. Any other regulatory requirements that may specifically apply to refueling entities (e.g., labeling) must also be adhered to during this period.

b. Geographic Scope. The requirements of the oxygenated fuels program would apply to all gasoline first introduced into commerce within the boundaries of the Maricopa County carbon monoxide nonattainment area as prescribed in the Federal Register by EPA on March 3, 1978 (43 FR 8964). The area encompasses 22 cities and towns including the City of Phoenix and portions of unincorporated area with Maricopa County.

C. Oxygen Content Specification. The proposed oxygen content standard is 2.7 percent by weight. Persons subject to this standard may choose either of two compliance options. The first option requires that each batch of gasoline contain at least 2.7 percent oxygen, except for certain ethanol blends as discussed below. The second option requires that the oxygen content of all fuel sold by each regulated party during the specified compliance period average 2.7 percent. Oxygen credits could be traded and used to comply with the averaging requirement.

Ethanol blends may be subject to an alternative oxygen content specification. To qualify for the proposed 1 psi RVP exemption, ethanol blenders would have to meet a minimum oxygen content of approximately 3.5 percent oxygen by weight (i.e., a minimum of 9 percent ethanol by volume). Credits generated through such blending activities could be used or traded under the optional averaging scheme. Of course, ethanol blenders choosing to comply with the otherwise applicable winter volatility standards would not be subject to this alternative oxygen content specification. Each of the compliance options are discussed in more detail below.

Comments are requested on the feasibility of blending MTBE to the required oxygen content, while remaining in compliance with the maximum allowable concentrations for these gasoline blends under the associated section 211(f) waiver provisions.

d. Effective Date. In practical terms, the oxygenated fuels program should start on the earliest possible date that will not disrupt the supply of gasoline or cause unreasonable price increases. Within this context, longer leadtimes reduce the risk of such adverse effects. Then again, an oxygenated fuels program already exists in the Phoenix area, and the FIP will require a reasonably modest incremental change in oxygen content from 2.3 percent to 2.7 percent. This suggests that a near-term implementation date may be possible.

The longest leadtime requirement appears associated with the possibility of any physical constraints on supplying gasoline. The proposed FIP will increase the amount of oxygenate blended into gasoline, which may translate into more storage tank capacity or more frequent oxygenate deliveries at the Phoenix fuel terminal. Presently, EPA lacks detailed information on whether such constraints exist. To the extent they do, EPA noted in the 1988 FIP proposal that one year should be sufficient to add any required facilities to the Phoenix terminal. Assuming a final rule on today's proposal is published in November, 1990, an effective date of October 1, 1991 would be feasible.

In the absence of more obvious technical constraints, an earlier effective date may be possible. Here some of the primary considerations involve the near-term availability of oxygenates (e.g., MTBE and ethanol) without unreasonable price increases. Also important is how rapidly suppliers wishing to participate in the averaging and trading scheme could do so after a final rule is published. Complicating this latter issue is the possibility that a supplemental rulemaking may be necessary to provide additional regulatory details as discussed above.

Given the current uncertainties involved at this time, EPA proposes an effective date of October 1, 1990. Comments are specifically requested on the desirability and feasibility of an earlier state date or the need for additional time.

e. Regulated Parties and Activities. Regulatory requirements would apply to all parties in the gasoline and oxygenate distribution networks in the Maricopa

[8] In order to qualify for the 1 psi RVP exemption, fuel would have to contain at least 9 percent ethanol by volume. A minimum ethanol content is being specified to assure that fuel containing only trace amounts of alcohol does not qualify for this treatment. The 9 percent minimum ethanol content is based on the 10 percent maximum ethanol content allowed by section 211(f) gasohol waiver with some allowance for blending variations. These proposed marketing requirements would also aid enforcement.

County nonattainment area during the control season. Four specific types of regulatory requirements are proposed:

i. *Registration.* All persons in the control area gasoline distribution network would be required to submit a registration form to EPA no later than one month before the start of the first control season. For the first control season only, parties subject to the regulatory standard, as defined below, would be required to provide information on how they intend to comply with such standard. Other parties (e.g., most retailers) would have to submit generally less specific information on their planned role in distributing, transporting, selling, or dispensing oxygenated fuel during the first control season. In subsequent control seasons, the above requirements apply only for new regulated parties entering the market. In addition, persons selling or supplying oxygenates (e.g., alcohols and ethers in pure, diluted, denatured, or additive-improved form) to be used within the control area would be required to register.

(ii) *Regulatory Standard.* The 2.7 percent oxygen content standard would apply to all persons who first introduce gasoline into commerce within the Maricopa County nonattainment area. This would include persons who first sell, supply, offer for sale, or offer for supply gasoline within such area (e.g., distributors). The standard would also apply to persons who produce gasoline (e.g., refiners) or who alter its quality and/or oxygen content (e.g., alcohol blenders), and then; sell or supply such product, within the control area. Finally, the standard would apply to any person who "imports" product into the control area for direct sale or supply (e.g., a party who transports or causes to be transported gasoline by truck from outside the control area to a retail station or wholesale purchaser-consumer within the area).

iii. *Reporting and Recordkeeping.* All persons subject to the oxygen content standard would be required to submit monthly reports containing information on their compliance with the standard. Persons transporting gasoline into the control area (e.g., pipelines) and those selling or supplying oxygenates within the control area would also be required to submit monthly reports on such activities. Persons subject to reporting requirements would have to maintain adequate records to support the information contained in their reports. Other persons in the control area gasoline distribution network would be required to maintain specified records on their activities during the control period and make them available for EPA review, but would not be required to submit monthly reports.

iv. *Labeling.* Retailers and wholesale purchaser-consumers (parties purchasing gasoline in bulk for their own ultimate use) would be required to label pump stands from which gasoline is dispensed with the type of oxygenate used in the gasoline. Invoices and similar documents which accompany the shipment of gasoline in the control area would also have to be labeled as to the oxygenate type and content. Comments are requested on the need for additional pump label details such as the specific oxygen content of the fuel.

These and other regulatory requirements are discussed in more detail below.

f. Registration. As noted above, all persons in the gasoline distribution network in the control area would be required to register with EPA at least one month prior to the starting date of each control season. Persons subject to registration would include refiners, pipeline and terminal operators, distributors, resellers, carriers, retailers and wholesale purchaser-consumers. Prior to the first control season only, such persons would have to supply basic information on their facilities and on their activities during the previous one-year period. Persons subject to registration but not subject to the oxygen content standard (e.g., most retailers) would be required to submit information on their plans regarding oxygenated fuel during the first control season.

Persons subject to the oxygen content standard would be required to provide information on how they intend to comply with the standard during the first control season. Such parties would have two compliance options. Under the first option, each batch of gasoline sold, supplied, or offered for sale or supply during the control season would have to have a minimum oxygen content of 2.7 percent by weight. Under the second option, all gasoline sold or supplied during each monthly compliance period would be required to have an average oxygen content of 2.7 percent. Monthly compliance periods would be on a calendar month basis. In meeting this monthly average standard, regulated parties would be allowed to trade oxygen credits during the monthly compliance period (as discussed more fully below).

Parties who elect the second compliance option would be required to submit a statement indicating their agreement that any violation of the monthly average standard would be treated as violations committed on each and every day of the averaging period (e.g. if the monthly averaging period is December 1 to December 31, a violation of the standard for this period constitutes 31 days of violation). Parties selecting the second option would also have to submit detailed information on their planned product mix during the first control period (e.g., X percent of product will contain 11 percent MTBE with 2.0 percent oxygen content, and Y percent will contain 10 percent ethanol with 3.7 percent actual oxygen content) and on how any shortfall in meeting the average standard will be met through the purchase of oxygen credits or a change in product mix.

It is EPA's intent that generally only one party in the distribution network would be responsible for the compliance of any particular quantity of gasoline with the oxygen content standard. Problems may arise, however, where a second party alters the oxygen content of a quantity of gasoline first introduced into commerce within the control area by another party (e.g., a carrier adds ethanol to a truck load of finished gasoline purchased from a distributor). EPA requests comments on the best means to prevent such "double reporting".

Persons who intend to sell or supply oxygenates that are used within the control area during the coming control season would also be required to register with EPA. They would be required to submit detailed information on their planned activities within the control area, including location of storage and dispensing facilities, type(s) of oxygenate(s) to be sold or supplied, and the names and addresses of known customers within the control area.

All parties will be required to revise their registration forms within 15 days of a significant change in operations. Significant changes requiring revision of registration would include any changes in location or ownership of a facility, commencing or ceasing use of a particular oxygenate, a significant change in planned product mix or in use of oxygen credits, and other circumstances to be specified in the regulations.

g. Sampling and Testing. The sampling methodologies are identical to those listed in the Agency's gasoline volatility control program. See 40 CFR part 80 appendix D. Methodologies include the ASTM sampling methodologies for gasoline products and a service station nozzle sampling procedure.

The ASTM methodologies are used by EPA in samplinbg gasoline and

oxygenated fuels at facilities such as refineries, blending facilities, pipelines, bulk terminals, and bulk plants. These sampling procedures include bottle sampling, tap sampling, and manual line sampling. The nozzle sampling procedure is used at service stations and similar dispensing facilities (e.g., fleets).

h. Alternative Compliance through Averaging and Trading. As noted above, persons subject to the oxygen content standard would have the option of meeting this standard on a monthly average basis provided certain registration requirements were met. Under this option, compliance would be based on a weighted average of the oxygen content of all gasoline sold or supplied within the control area during a monthly period. The following procedures are proposed for the determination of such monthly average:

1. The oxygen content (by weight) of each discrete quantity of gasoline in the possession of the regulated party (e.g., each storage tank at a bulk terminal) at the beginning of each compliance period would be sampled and tested according to the procedures described in this notice.

2. The oxygen content of gasoline would also be tested each time there is a change in its quantity and/or quality that would tend to affect its oxygen content. This would require testing upon addition of any quantity of gasoline to a storage tank, but not upon removal of product for sale. It would also require testing upon the addition of any amount of oxygenate(s) to the gasoline.[9]

3. The amount of gasoline sold or supplied within the control area between the dates and times of oxygen content tests would be recorded.[10]

4. At the end of the compliance period, the quantities of gasoline recorded per (3) above would be multiplied by the relevant oxygen content. The resulting "total oxygen" amounts would then be added together and divided by the total amount of gasoline sold or supplied during the compliance period to determine the monthly average oxygen content.

In the case of in-line or in-truck blending of oxygenates, the oxygen content of each discrete quantity of final blended product (e.g., a truck load) would have to be determined and included in the monthly average calculations. Similarly, when gasoline is "imported" from outside the control area for direct sale or supply (e.g., a tank truck load brought from Los Angeles directly to a service station Phoenix) the oxygen content of each such discrete quantity of product must be determined and included in monthly average calculations.

The following example illustrates how this averaging mechanism would work. Assume that Distributor A receives gasoline via pipeline from outside the Phoenix control area, stores the product in storage tanks at its Phoenix terminal, and sells the product to retail stations within the control area.

On Day 1 of the compliance period Distributor A tests the oxygen content of product in its storage tanks and finds the following results:

Tank X (leaded regular)—2.9 percent; Tank Y (unleaded regular)—2.0 percent; and Tank Z (unleaded premium)—2.0 percent. Distributor A receives other shipments of product in each grade from the pipeline on Day 16 of the compliance period and tests each tank promptly with the following oxygen content results: Tank X—3.0 percent; Tank Y—2.2 percent; and Tank Z—0 percent. No other shipments were received during the compliance period. Compliance is calculated as follows, using the gallonage of gasoline sold during relevant periods:

A. Days 1 to 16 (until testing): [Oxygen contents below are expressed as decimals, e.g. 2.9 percent=0.029].

Tank	Oxygen content		Gallonage		Total oxygen
X	0.029	X	25,000	=	725
Y	0.020	X	55,000	=	1,100
Z	0.020	X	20,000	=	400
Total			100,000		2,225

B. Days 16 (after testing) to 30:

Tank	Oxygen content		Gallonage		Total oxygen
X	0.030	X	30,000	=	900
Y	0.022	X	60,000	=	1,200
Z	0.0	X	25,000	=	0
Total			115,000		2,100

C. Monthly Average:

Days	Total equivalent oxygen	Total gallonage		Total equivalent oxygen content
1–16	2,225	100,000		
16–30	2,100	115,000		
Total	4,325	215,000	=	0.0201

In this simple example, Distributor A's monthly average oxygen content would be 2.01 percent. In order to meet the standard of 2.7 percent, he would have to purchase (or otherwise obtain) oxygen credits from another regulated party.

Under the proposal, oxygen credits would be allowed to be sold or traded among regulated parties. Oxygen credits would be earned by parties to the extent that the average oxygen content of gasoline sold or supplied during a monthly compliance period exceeds 2.7 percent. Oxygen credits could only be traded and used during the compliance period in which they are earned. Oxygen credits are calcuated by first computing the total oxygen content of the regulated party's monthly gallonage. The product of the party's monthly gallonage and 0.027 (2.7 percent) is then subtracted from the party's monthly total oxygen content, and the difference is the amount of oxygen credits available for sale or trade (if the difference is zero or a negative number, the party has no oxygen credits available for sale or trade.)

The trading mechanism is illustrated by the following example. Assume Distributor B complies with all sampling and testing requirements and determines that all gasoline sold or supplied during monthly compliance period has a uniform oxygen content of 3.29 percent.

The amount of product sold/supplied during the compliance period is 260,000 gallons. Distributor B's total oxygen content for this period is 8554, determined by multiplying its gallonage (260,000) by its average oxygen content (0.0329). In order to meet the 2.7 percent regulatory standard, its total oxygen content must be 7020 (260,000 × 0.027). Thus, Distributor B has 1534 oxygen credits (8554–7020) available for sale or trade during the compliance period. If 1480 of these oxygen credits were traded or sold by Distributor B to Distributor A in the above example, Distributor A could then demonstrate compliance with the 2.7 percent standard by adding these credits to the total oxygen content of his product (4325) and dividing the sum (5805) by his gallonage (215,00), resulting in an average monthly oxygen content (with trading) of 0.027 (2.7 percent).

i. Labeling. The proposed regulations would require the labeling of pumps from which gasoline is dispensed at retail outlets and wholesale purchaser-consumer facilities during the control season. The pump label, at a minimum, would have to include the type of oxygenate which is contained in the fuel being dispensed from that pump. Comment is requested on the desirability of also requiring some form

[9] EPA requests comments on other changes to gasoline quantity that should (or should not) trigger the testing requirement.

[10] EPA is considering a requirement that the oxygen content of gasoline be known and provided to the purchaser (or person supplied) prior to sale or supply, and requests comments on such a requirement. This would facilitate compliance with labeling and other regulatory requirements.

of content label (e.g., actual oxygen content by weight to the nearest 0.1 percent, or the minimum/maximum percent oxygen content by weight). Such labeling would allow consumers to know what type of oxygenate they are purchasing and provide them with flexibility in choosing a product most compatible with the operation of their vehicles. Labeling could also aid enforcement by allowing EPA to monitor whether parties are selling product in accordance with their registration statements. It could also provide a partial cross-check on compliance with the regulatory standard, if adequate numbers of inspections can be carried out. The proposed regulations would also require that invoices and other gasoline delivery documents be similarly labelled. Such documents would have to be retained by regulated parties for at least two years and be available for inspection by EPA personnel or contractors during that period.

j. Reporting and Recordkeeping. All persons subject to the oxygen content standard would be required to submit monthly reports containing compliance information. Reports would be due no later than 15 days after the close of each compliance period. Parties who have selected the option of meeting the standard on a "per batch" basis would be required to submit test results and other information relevant to determining compliance (e.g., gallonage, introduced into commerce in the control area during the month, and type and quantity of purchased oxygenates).

Parties who have selected the option of meeting the standard on a monthly average basis (with or without trading) would be required to submit more detailed information because of the greater complexities of determining compliance. Information to be submitted would include data on product received by the party (e.g., date, source, type, gallonage), test results, and sale/supply of product by the party (e.g., date, type, gallonage, person to whom sold/supplied, and oxygen content). The party would also be required to calculate the monthly average oxygen content of its product based on such information and according to the procedure outlined above.

Parties engaged in trading oxygen credits during a monthly compliance period would be required to supply additional information in their monthly reports. Such information would include the name and address of the other party in each trade and the quantity of oxygen credits traded. The party selling or otherwise transferring oxygen credits would have to demonstrate how such credits were calculated. The party buying or otherwise receiving oxygen credits would be required to calculate its compliance with the regulatory standard through the use of these credits. Both parties to an oxygen credit trade would have to submit supporting documentation adequate to demonstrate the agreement of the other party to the trade and to transfer the credits during the compliance period for which the trade is reported (e.g., a contract signed by both parties no later than the last day of the compliance period). EPA will not recognize a purported trade as valid unless both parties report and adequately document it. As in the lead phasedown program, the requirement that credits be traded by the end of the compliance period is based on EPA's view of trading as a planning tool rather than a means to cure violations. Comments on any special hardships this would create are requested. Only parties subject to the monthly average compliance option would be allowed to trade oxygen credits.

Persons who sold or supplied oxygenates for use within the control area during a compliance period would also be required to submit monthly reports to EPA. These reports would have to include information on the type of oxygenate sold (e.g., ethanol), date of sale, and the party to whom sold. Such reports would provide a partial cross-check on reports submitted by regulated parties.

Persons who transport gasoline into the control area but who are not subject to the regulatory standard (e.g., pipelines) would also be required to submit monthly reports to EPA. These reports would have to include information on the type (e.g., unleaded regular) and gallonage of gasoline transported during each compliance period, the party and location (and the specific tank, if known) to which transported, and the type (and concentration, if known) of oxygenate(s) contained in the gasoline transported. Such reports would provide a partial crosscheck on reports submitted by persons subject to the regulatory standard.

All parties subject to monthly reporting requirements would also be required to maintain adequate records (including oxygen content test results) to support the information contained in their reports. Such records would have to be retained for at least a two-year period.

For all reports, EPA would have the authority to determine whether any report should be recognized as meeting regulatory requirements.

Other persons who must register (e.g., retailers who do not transport or cause to be transported gasoline from outside the control area) are not subject to monthly reporting. However, as noted above, all parties in the gasoline distribution network would be required to retain (and make available for EPA inspection) invoices and other gasoline delivery documents for a two-year period. Comments are requested on the need for other recordkeeping requirements for such parties.

k. Violations and Defenses. The regulations will specify what constitutes violations of the regulatory requirements. Such violations are proposed to include:

1. Failure to submit a registration statement by the date due;
2. Failure to submit a revised registration statement (when required to do so) by the date due;
3. Submittal or an incomplete or incorrect initial or revised registration statement;
4. Failure to sample or test gasoline in accordance with prescribed regulatory methodologies;
5. Failure to sample or test gasoline when required to do so;
6. Selling, supplying, offering for sale, offering for supply or otherwise first introducing into commerce within the contorl area gasoline whose oxygen content does not comply with the regulatory standard after any allowable averaging and trading calculations (by a party subject to such standard);
7. Failure to properly label a retail outlet or wholesale purchaser-consumer pump stand;
8. Failure to properly label an invoice or other gasoline delivery document;
9. Failure to submit a required monthly report by the date due;
10. Submittal of an incomplete or incorrect monthly report;
11. Failure to maintain required records for the applicable time period;
12. Transfer of oxygen credits which have not been created in accordance with regulatory requirements;
13. Use of improperly created or transferred oxygen credits to demonstrate compliance with regulatory requirements;
14. Transfer of oxygen credits after the end of the monthly compliance period in which they are created; and
15. Failure to comply with any other regulatory requirements.

EPA believes that the large majority of violations listed above are within the power of regulated parties to control and thus should not be subject to

specific regulatory defenses. The regulations do not provide a defense for exceedances of the regulatory oxygen content standard, since the availability of monthly averaging and oxygen credit trading provides a great deal of flexibility to regulated parties in meeting this standard.

Certain violations, however, may not be fully within the control of a regulated party. This group may include violations of pump and document labeling requiremetns where a party has reason to believe fuel provided to him by another party complies with the label. It may also include the use of transferred oxygen credits where the using party does not know (or could not reasonably be expected to know) that the credits were not lawfully generated. EPA requests comments on what defenses (if any) should be provided for these types of violations.

1. *Federally Assumed Enforcement.* Federal enforcement of air quality implementation plans generally commences with issuance of a notice of violation (NOV) to the violator and the state under section 113(a)(1) of the CAA. If the violation extends beyond the 30th day after the date of the NOV, EPA may issue a compliance order to bring a civil action under section 113(b) of the CAA. Section 113(b) provides for temporary or permanent injunctive relief, or a civil penalty of up to $25,000 per day of violation, or both.

The CAA also provides for "federally assumed enforcement. Section 113(a)(2) provides that whenever "the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State." If EPA finds that such failure extends beyond the 30th day after notification, EPA is required to issue a public notice of such finding. Beginning with the date of such public notice, EPA may issue compliance orders to, or bring civil actions against, violators without prior issuance of individual NOV's under section 113(a)(1).

EPA is concerned that the requirements of section 113(a)(1) of the CAA, in combination with proposed program design elements, may limit enforcement of the proposed federal oxygenated fuels program. The combination of a seasonal control program, a monthly averaging compliance demonstration alternative, report submittal and processing times, and the requirements that individual NOV's be issued to violators and that violations extend beyond the 30th day after NOV issuance before compliance orders can be issued or civil actions brought may mean that only violations which occur early in the control season and extend beyond the 30th day after the NOV (and if the 30th day is also within the control season) would be subject to effective enforcement action. In normal SIP enforcement EPA's enforcement authority under section 113(a)(1) operates in conjunction with a state enforcement program that generally is not subject to requirements concerning NOVs. However, in this case the state appears to have no authority to enfore EPA's oxygenated fuels program.

Furthermore, EPA believes that the conditions for "federally assumed enforcement" under section 113(a)(2) of the Act will in all likelihood exist in the Maricopa area. EPA is not aware of any plans by the State of Arizona to enforce any FIP regulations nor is it apparent what legal authority the State could use even if it wanted to do so. In the absence of State enforcement EPA anticipates that widespread violations of the FIP provisions will occur, particularly if federal enforcement is based only on the section 113(a)(1) individual NOV requirements.

EPA therefore intends to carefully scrutinize compliance reports during the first few months of the oxygenate fuels program. If EPA sees violations that are so widespread as to appear to result from the absence of any state enforcement program, it will promptly notify the state as required by section 113(a)(2). If such violations are continuing 30 days later, EPA will give public notice that it is initiating a period of federally assumed enforcement. EPA will then enforce the requirements of the oxygenated fuels program directly against violators without prior issuance of NOVs (and hence without the 30-day post—NOV waiting period) as provided by section 113(a)(2).

This period if federally assumed enforcement will continue until such time as the state satisfies EPA that it will enforce the oxygenated fuels program. EPA does not anticipate that the state will be able to do this since it apparently has no authority to enforce a federal program that is not supported by any state legislation.

m. Oxygenation Measurements. The proposed alcohol content laboratory testing method is the same as the ASTM Designation D 4815–88 method which utilizes gas chromatography for the determination of C1 to C4 Alcohols and MTBE in gasoline. This method is proposed as a new Appendix B to 40 CFR part 52, subpart D. Under this method, an internal standard, tertiary amyl alcohol, is added to the sample which is then introduced into a gas chromatograph equipped with two columns and a column switching valve. The sample first passes onto a polar TCEP column which elutes lighter hydrocarbons to vent and retains the oxygenated and heavier hydrocarbons. After methylcyclopentane, but before MTBE elutes from the polar column, the valve is switched to backflush the oxgenates onto a WCOT non-polar column. The alcohols and MTBE elute from the non-polar column in boiling point order, before elution of any hydrocarbon constituents. After benzene elutes from the non-polar column, the column switching valve is switched back to its original position to backflush the heavy hydrocarbons. The eluted components are detected by a flame ionization or thermal conductivity detector. The detector response, proportional to the component concentration, is recorded; the peak areas are measured; and the concentration of each component is calculated with reference to the internal standard.

Table 6 shows the oxygen contents by mass of the most common oxygen containing compounds that have either been approved in EPA waivers or are considered substantially similar to gasoline at concentrations less than 2.0 percent oxygen.

TABLE 6.—OXYGEN CONTENTS OF COMMON COMPOUNDS IN GASOLINE

Oxygenate	Molecular formula	Oxygen mass fraction
Methanol	CH_4O	0.4993
Ethanol	C_2H_6O	0.3473
Propanols	C_3H_8O	0.2662
Butanols	$C_4H_{10}O$	0.2158
Pentanols or MTBE	$C_5H_{12}O$	0.1815
Hexanols or TAME [1]	$C_6H_{14}O$	0.1566
Ethyl tertiary-butyl ether	$C_{62}H_{14}O$	0.1569

[1] Tertiary amyl methyl ether.

As an example, suppose the GC analysis of a leaded gasoline sample finds an ethanol mass concentration of 9.85 percent and an MTBE mass concentration of 1.10 percent. The fuel oxygen content would then be:

Fuel oxygen content
$=(0.985)\times(0.3473)\times(0.0110)\times(0.1815)$
$=0.0362$
$=3.62$ mass percent oxygen

2. Wintertime Gasoline RVP Limit

Description of Volatility Control Program. In vehicles equipped with evaporative controls, high-volatility fuel can result in higher CO tailpipe emissions. When the hydrocarbons adsorbed on the carbon in the evaporative canister are purged to the

engine for combustion, the enrichment of the fuel/air mixture can result in increased carbon monoxide. This increase in CO emissions can be alleviated by controlling the volatility of gasoline. A gasoline's volatility is measured as Reid vapor pressure (RVP), the higher a fuel's RVP the greater the tendency of the fuel to evaporate.

Under Arizona state law wintertime RVP levels are controlled to the recommended American Society of Testing and Materials levels: October, 10 psi; November, 11.5 psi; December, January, and February, 13.5 psi; March, 11.5 psi. January, 1990 Motor Vehicle Manufacturers Association fuel survey data give a sales-weighted, in-use, wintertime RVP value of 11.2 psi for Phoenix which EPA has assumed when determining the additional emission reductions needed for attainment.

After review of drivability and safety issues, EPA believes that an RVP level as low as 10.0 psi is feasible for the winter months in the Maricopa region. EPA is, therefore, proposing to limit to RVP of gasoline sold in the Maricopa CO nonattainment area to a maximum of 10.0 psi for each period of October 1 through March 31 beginning October 1, 1991.

On June 11, 1990 (55 FR 23658) EPA promulgated the second phase of a two-phase program for national, summertime gasoline volatility control. Under EPA's final rulemaking for Phase II RVP control, the temporary 1.0 psi summertime RVP allowance provided in the Phase I program for gasoline containing 9 to 10 percent ethanol was made permanent for the reasons discussed in the June 11, 1990 notice. For the same reasons, EPA is today proposing to provide a similar 1.0 psi allowance for ethanol blends during the wintertime volatility control season in the Maricopa nonattainment area. This exemption issue discussed more fully in the section on the oxygenated fuels.

Finally, EPA proposes to use the same enforcement scheme for this program as for its national Phase II volatility control program. See 55 FR 23658 (June 11, 1990). It should be noted that the enforcement regulations promulgated for the Phase I national RVP program have been changed for the Phase II program such that EPA will take enforcement action only when RVP is measured at more than 0.3 psi above the applicable standard, provided that the responsible party measured the RVP at or below the standard. This policy takes into account the 0.3 psi average reproducibility of the RVP test method.

Comments are specifically requested in three areas related to volatility control. The first area concerns the likelihood of any potential technical constraint that may make it difficult to supply Phoenix with the requisite 10.0 psi RVP fuel one year earlier than has been proposed for California's South Coast Air Basin. (Phoenix currently is supplied via pipeline from refiners in the Los Angeles area.)

The second area involves the potential use of low volatility gasoline that is destined for the Phoenix terminal, in colder attainment areas (e.g., Flagstaff with a record winter low temperature of –23 degrees Fahrenheit). Under certain ambient conditions, low volatility fuels may have adverse effects on driveability and safety. The Agency's preliminary analysis suggests no special concerns in this area are warranted. At least one major supplier has marketed 10.0 psi gasoline in Phoenix during January 1989–1990, with several others marketing fuels from 10.2–10.5 psi.

The third area involves the range of temperatures at which exceedances of the CO ambient standard occur in the Phoenix area, relative to the emission reductions that are needed for full attainment. EPA's attainment demonstration uses an ambient temperature of 53 degrees Fahrenheit. However, significant exceedances also occur around 40 degrees and 70 degrees. The benefits of RVP control increase at higher temperatures, but decrease at lower temperatures. Comments are requested on the adequacy of the control measures at lower temperatures.

3. Cost of the Proposed Control Measures

EPA estimates that the increase from 2.3 to 2.7 percent oxygen content will result in a 0.8 cents per gallon increase in the price of gasoline. The estimate is based on a 5.0 cents per gallon increase in the price of gasoline for a 2.7 percent oxygen-content program in an area with no existing oxygenated fuels program used in the Council of Economic Advisors' analysis of oxygenated fuels program in the new Clean Air Act. Using an alternative analysis based on spot market prices of MTBE and gasoline as of August 29, 1990, the price increase would be 0.66 cent per gallon. Based on expected 1991 gasoline consumption during the oxygenated fuels season of 475.3 million gallons in the Maricopa County non-attainment area, the incremental cost of the program during the first year should be $3.8 million. Factors which might lower this cost in the future include the expansion in the production of MTBE and a trend toward more cost-efficient refinery blending of oxygenates.

EPA estimates that the limit on gasoline volatility would cost about 0.27 cents per gallon for each 1 psi reduction in RVP. This number takes into account both the increase in the cost of producing lower RVP gasoline and the savings in fuel economy associated with this fuel. Based on an average RVP of 11.2 psi observed during the 1989/90 oxygenated fuels season, the net increase in the price of gasoline as a result of the RVP control program would be 0.324 cents per gallon. Using the Maricopa County gasoline consumption figure given above, the incremental cost of the RVP control program during the first year should be $1.5 million.

4. Federal Pre-Emption of Arizona's Oxygenated Fuels and RVP Control Programs

EPA understands that by implementing the aforementioned oxygenated fuels and volatility programs it is creating standards which are more stringent than the existing State standards. Under CAA, section 116, "* * * if an emission standard or limitation is in effect under an applicable implementation plan * * *, [a] state or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section." The existing State standards will become "less stringent" than the federal standards and EPA therefore recognizes that the proposed Arizona federal implementation plan will have the effect of pre-empting existing State regulations.

EPA wishes to make it clear that it will honor any State regulations which, when approved by the State legislature, adopt any of the new federal standards so long as the State regulations are not "less stringent" than those in the federal plan. Once new State standards have been established, EPA welcomes the return of State and local enforcement.

EPA welcomes any comments on any of these issues.

D. Attainment and Maintenance Demonstrations

The two measures being proposed today, a 10-psi RVP limit and an increase in the oxygen content of fuels from 2.3 percent to 2.7 percent, combined the existing SIP measures including the trip reduction program (TRP), will provide sufficient emission reductions to reduce the ambient CO concentration in Maricopa County to the level of the NAAQS by December 31, 1991. No other measures are available to produce additional emission reductions in Maricopa County prior to that date.

As discussed previously the design value upon which this analysis is based

is an adjusted monitored value and therefore reflects the impact of all control measures in place the day the design value was recorded. In Maricopa County in mid-December, 1989, the oxygenated fuels program was operating at 2.3 percent oxygen, the majority of the TCMs which EPA credited in the 1987 MAG plan were in place, and the voluntary no drive day program, the Clean Air Campaign, was in full swing. Because the design value reflects the impact of all these programs, the attainment demonstration implicitly includes the benefits of these programs.

There are only three measures for which EPA granted emission reduction credit in its 1988 Maricopa SIP approval that can still be explicitly included in this attainment demonstration: the TRP (starting in 1990), HOV lanes, and freeway flow improvements (both starting in 1995). For simplicity, the attainment demonstration in Table 7 considers only the TRP. HOV lanes and freeway flow improvements will, therefore, provide an additional margin of reductions after 1995 to ensure maintenance.

The estimate of the emission reductions necessary to achieve attainment is somewhtat imprecise due to the nature of the modified rollback analysis. The current ambient impact analysis built in reasonable, conservative assumptions about the extent to which ambient concentration may be higher than those recorded at the existing monitoring sites. More refined analysis may prove these assumptions wrong, which could imply the need for further emission reductions or for less emission reductions than proposed in today's notice.

TABLE 7—PROJECTED CONTROLLED CO EMISSIONS AND CONCENTRATIONS IN MARICOPA COUNTY

Date	Total controlled emissions [1] (Mg)	CO concentration (ppm)
December, 1989	316	13
December, 1990	241	10
December, 1991	233	9
December, 1992	230	9
December, 1995	193	8
December, 2001	202	8

[1] Total emissions between 3 p.m. and 5 a.m. Increasing emissions after 1995 reflect increased VMT and congestion.

Table 7 indicates that emissions levels and ambient concentrations continue to go down in Maricopa County until sometime after 1995, then start increasing as growth in vehicle traffic and congestion overcome the emission reductions from fleet turnover. Ambient concentrations, however, remain under the standard until at least 2001.

Under EPA regulation and policy, an approvable implementaiton plan must demonstrate maintenance for the ten-year period after plan approval. For this plan, the approval date will be in November, 1990; therefore, maintenance must be demonstrated until November, 2000. As shown in Table 7, the proposed 10 psi RVP limit and 2.7 percent oxygenated fuels program, combined with reductions from the travel reduction program and other SIP measures, are sufficient to demonstrate maintenance for the required ten years.

III. Attainment and Maintenance of the CO NAAQS in Pima County

A. Demonstration of Attainment

The 1987 Pima plan projected attainment of the CO NAAQS in early 1990 and maintenance through 2000 relying solely on emission reductions from the federal motor vehicle control program (FMVCP), the State I/M program without the loaded-mode component, then existing traffic flow improvements, and programmed road improvements. The Pima plan did not rely for either attainment or maintenance upon any of the additional measures being proposed in the plan or later adopted by the State legislature.

New population forecasts for the Pima area have recently been completed and are predicting substantially less population both in 1990 and future years than was assumed in the 1987 Pima plan. Lower population figures mean that vehicle miles traveled (VMT), vehicle trips, and thus CO emission levels are also lower than those assumed in the attainment and maintenance demonstrations in the PAG plan.

There are three EPA-approved CO monitoring sites in Pima County: 151 West Congress Street, 22nd Street at Craycroft Road, and 22nd Street at Alvernon Way. Data from these monitoring sites show only three exceedances of the 8-hour CO NAAQS in the past five years, none of which are considered violations of the standards.[11] The monitoring data can be found in the draft technical support document (TSD) for this notice.

To add to its ambient air quality database for the 1987 Pima plan, PAG established a number of special-purpose monitoring sites at intersections with higher average daily traffic counts than the intersections with permanent monitors. It was the special purpose monitoring site at Broadway at Craycroft Road which yielded the CO value upon which PAG built its attainment and maintenance demonstrations.

Since the special-purpose monitoring in the winter of 1986/87, the Pima County Department of Environmental Quality (PCDEQ) has established permanent monitoring stations at Broadway at Craycroft Road and Cherry Avenue at Glenn Street. While these stations do not yet report data into EPA's air quality information system, AIRS (Aerometric Information Retrieval System), PCDEQ has requested site numbers and will soon be adding them to AIRS. EPA has received from PCDEQ monitoring data from these two sites for the past year. This data, which is available in the TSD for this rulemaking, shows no exceedances of the CO standard.

The attainment demonstration in the Pima plan is conservative not only because it did not rely on the full range of adopted control measures but also because it was based on what are now known to be too-high population and VMT estimates. This conservatism argues strongly that the plan accurately predicted attainment would occur in or before early 1990. Ambient air quality data for the past several years also supports this prediction. Therefore EPA is concluding today that sufficient emission reductions have already been achieved in Pima County to assure that current CO emission levels are below those needed to attain the CO NAAQS and that no additional control measures are needed to ensure attainment.

B. Demonstration of Maintenance

EPA performed hot-spot modeling to determine if sufficient measures were in place to ensure maintenance in Pima County for the required ten-year period after plan approval, i.e., until December, 2000. EPA used its guideline hot-spot model, CAL3QHC, to model conditions in 2000 at two intersection with high average daily vehicle counts: Broadway at Craycroft Road and 22nd Street at Alvernon Way. Mobile source emissions were determined through MOBILE4 assuming the current Arizona I/M program including loaded-mode testing

[11] EPA defines the 8-hour CO NAAQS as 10 milligrams CO per cubic meter (9 ppm)—maximum 8-hour concentration not be exceeded more than once per year. See 40 CFR 50.8(a). This definition means the first time CO concentrations exceed 9 ppm is considered an exceedance and the second and subsequent times are considered violations. Violations are determined for each monitor separately. For Pima, the Congress Street monitor recorded an exceedance in 1988 and the 22nd and Alvernon monitor recorded an exceedance in 1985 and again in 1988. Because there was no more than one exceedance at each monitor in any one year, none of the exceedances is considered a violation.

and an oxygenated fuels program at 1.8 percent oxygen.

The hot-spot modeling showed that ambient CO concentrations at these two intersections in late 2000 should be well below the CO NAAQS even under "worst-case" meteorological conditions. More detailed information on this modeling can be found in the draft TSD for this notice.

C. Finding on Need for Federal Measures

EPA is concluding today that sufficient emission reductions have already been achieved in Pima County to ensure that current emission levels are below those needed to attain the CO NAAQS. Under the Delaney test described earlier in this notice, EPA can find no measures available to it that will result in attainment sooner and, therefore, is not proposing any measures for Pima County.

EPA has long interpreted section 172(b)(2) of the CAA to require implementation of only those reasonably available control measures necessary to provide for attainment by the applicable attainment date. This is because it would be unreasonable to require states to implement measures that, although technically available, would not materially advance an area's attainment date. See 44 FR 20372, 20375 (April 4, 1979). It would be equally unreasonable to require states to implement measures that are not needed to maintain an ambient air quality standard simply because the measures are considered reasonably available. This logic extends to EPA's promulgation of implementation plans under CAA section 110(c).

While arguably there are available measures that can reduce emissions in Pima County in the future, EPA has demonstrated above that there are already sufficient measures approved in the Pima SIP to ensure maintenance for the required ten-year period. EPA, therefore, is proposing to find that no additional control measures are necessary for maintenance in Pima County.

IV. Contingency Provisions

A. Current Contingency Provisions in the Arizona SIPs

As discussed earlier, EPA's guidance requires SIPs to contain a two-part contingency plan which includes a list of transportation projects that would be delayed while an inadequate SIP is being revised and a process to adopt measures to compensate for unanticipated emission reduction shortfalls. Both parts of this two-part plan are triggered when the EPA Administrator determines that a SIP is inadequate. See 46 FR 7187, 7192 (January 22, 1981).

The 1987 MAG plan included as Measure 46 a contingency plan which requires the MAG Air Quality Policy Committee to review on an annual basis the progress made to reduce carbon monoxide pollution and, if necessary, consider strengthening existing measures and adopting additional measures (see MAG plan, July 1987). The MAG plan included commitments to support the contingency plan from seventeen towns and cities in Maricopa County. The MAG plan did not include any further specifics on how and when additional transportation measures would be adopted nor did it include a list of transportation projects that would be delayed.

The Pima plan also did not include much detail in its contingency procedures. The plan's contingency procedures required tracking of air quality and traffic trends, an evaluation of adopted transportation measures, and the identification of any necessary tightening of measures. A list of transportation projects subject to delay, however, was not included.

In approving the SIPs, EPA found that each plan contained two measures beyond those necessary to demonstrate attainment and maintenance that functioned as already-adopted contingency measures. In *Delaney*, the court found in the case of Maricopa that the the two measures were of such speculative benefit that they did not equate with the 1982 SIP guidance requirement for contingency plans. In ordering new plans for Pima and Maricopa, the court specifically required contingency procedures in accordance with EPA guidelines.

B. Discussion of the Proposed Procedures

To ensure that the contingency procedures in the Maricopa and Pima implementation plans comply with Agency guidance, EPA is today proposing contingency procedures that will ensure that any emission reduction shortfalls which may occur during the ten-year period covered by these FIPs are identified and corrected. For Pima, EPA has determined that emission levels are already below those needed to attain the CO standard. The federal measures being proposed today by EPA, along with existing SIP measures, should provide sufficient emission reductions for attainment in Maricopa County by December 31, 1991. As a result, most of the 10-year period covered by these FIPs will be a maintenance period, that is, a period when no violations of the CO NAAQS would be expected to occur.

EPA, therefore, is proposing that the initial trigger for its contingency process be a certified violation of the CO NAAQS occurring after December 31, 1991 in Maricopa County or after November 26, 1990 (the date of final promulgation of this proposal) in Pima County. A certified violation not caused by an exceptional even [12] would then trigger a determination by EPA of whether additional control measures are necessary to assure attainment and maintenance of the CO standard. Upon a finding by EPA that additional measures are necessary, the process to identify, propsoe, and promulgate such measures would be triggered as would the requirement to delay highway projects.

There are two primary reasons why an implementation plan can fail to attain or maintain an air quality standard. The first reason is that actual emissions levels may exceed those projected in the implementation plan because either control measures have not been implemented or are not as effective as anticipated and/or growth in emissions is greater than predicted in the implementation plan. The second reason is that although emission levels may be at or below the level projected for attainment in the implementation plan, this projected attainment level is not adequate to assure attainment and maintenance (e.g., the modeling in the existing implementation plan failed to correctly predict the attainment level).

If EPA finds that unanticipated growth or failure of measures to be implemented or achieve expected emission reductions are the primary cause of the violation, EPA would first estimate the magnitude of the emissions shortfall. Next EPA would determine if additional control measures are needed to correct the shortfall. Conditions may be that the existing control strategy would correct the shortfall in the period prior to the time EPA could promulgate and implement additional measures. Only if additional measures are needed would the process to identify, propose, and promulgate additional measures and the delay of transportation projects be triggered.

On the other hand, if EPA determines that emission levels are at or below those projected for attainment, a new determination of the attainment level is needed. In this case, EPA would need to

[12] As defined in EPA's "The Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events", EPA-450/4-86-007, July 1987.

perform new air quality modeling before it could determine the shortfall in emission reductions. Once the modeling was completed, EPA could then identify what, if any, additional measures are needed to correct the shortfall.

The process that EPA is proposing to identify additional transportation measures parallels that used to identify measures in today's notice. EPA would conduct a systematic evaluation of each measure listed in the Appendix to this notice and of any other measures it might identify by using the definition of "available" described above to determine which measures should be selected for promulgation.

The time needed for EPA to certify a NAAQS violation, determine if additional control measures are needed, analyze additional measures, and complete the rulemaking and public comment process is, in total, approximately fourteen to sixteen months.

C. Proposed Contingency Procedures

1. Finding of CO NAAQS Violation

After December 31, 1991 for the Maricopa CO nonattainment area or November 26, 1990 in the Pima CO nonattainment area, should the nonattainment area experience a violation of the CO NAAQS during a CO season (October 1 through March 31) at a monitoring site that is part of an EPA-certified monitoring system, EPA would first verify the monitoring data. Upon verification that the violation was not due to an exceptional event as defined in "The Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events," EPA–450/4–86–007, July 1987, EPA would publish a finding in the **Federal Register** that the area has exceeded the CO NAAQS and, therefore, the implementation plan may be inadequate. Such a finding would be made within two months of the end of the quarter in which the violation occurred. In making the finding, EPA would solicit information from the appropriate agencies and the public to determine the cause of the violation and potential corrective actions.

2. Determination of the Need for Additional Measures

After making a finding that a CO violation has occurred, EPA would determine the cause of the violation by determining the implementation status of the plan control strategy and by comparing the current emissions inventory to the plan projections.

(a) If incomplete or non-implementation of plan measures or unanticipated growth have increased emissions above the level needed to maintain the standards, within two months EPA would determine the shortfall in CO emission reductions and whether additional control measures are necessary to correct this shortfall after to the time EPA could reasonably promulgate these additional measures. Should EPA find that additional control measures are necessary, it would then publish the finding in the **Federal Register** and would initiate the delay of transportation projects. Should it find that no additional measures are needed, EPA would conclude the contingency process by publishing this finding in the **Federal Register.**

(b) If emission levels are found to be at or below those needed for maintenance, EPA would perform the air quality modeling necessary to determine a new attainment level. Within four months, EPA would determine the shortfall in CO emission reductions and whether additional control measures are necessary to correct this shortfall after to the time EPA could reasonably promulgate these additional measures. Should EPA find that additional control measures are necessary, it would publish its finding in the **Federal Register** and would initiate the delay of transportation projects. Should it find that no additional measures are needed, EPA would conclude the contingency process by publishing this finding in the **Federal Register.**

3. Project Delay

Notification by EPA in the **Federal Register** that additional control measures are necessary to maintain the CO NAAQS in either Maricopa County or Pima County would trigger the requirement to delay projects on the list of projects with potentially adverse air quality impacts appearing below. Under Department of Transportation (DOT) regulations at 23 CFR 770.9(e)(2), the Federal Highway Administration (FHWA) would not authorize construction of any project contained on the contingency list.

4. Proposal of Additional Measures (NPRM)

Within four months of a determination that additional control measures are needed, EPA would issue a NPRM proposing all additional measures available to EPA which could correct the emission reduction shortfall. The measures would be chosen from the list appearing in the Appendix to this notice and from other measures that may be identified in the future. Each measure would be examined for availability based upon the criteria put forth earlier in this notice.

5. Promulgation of Additional Measures (NFRM)

Within six months of the NPRM and in consideration of comments received, EPA would issue a NFRM promulgating all additional measures available to EPA which could correct the emission reduction shortfall. Publication of this NFRM would lift the requirement to delay transportation projects.

D. List of Highway Projects Subject to Delay

Given below are the proposed lists of transportation projects in Maricopa and Pima Counties that may adversely affect air quality and would be delayed under the contingency process if EPA finds that additional control measures are necessary to ensure maintenance of the CO NAAQS. Projects on these lists are drawn from each County's Transportation Improvement Program (TIP) for FY 1989/90–1993/94.

To select projects for listing, EPA used two guides to determine whether a project should or should not be listed. The first guide was the language in its 1982 SIP guidance that projects that may have adverse air quality impacts should be listed. EPA interprets this to mean that it need not list projects that do not by their nature have adverse air quality impacts, e.g., landscaping projects, right-of-way acquisitions, and design and engineering studies.

The second guide was the language relating to highway funding sanctions in section 176(a) of the CAA. Section 176(a) prohibits the Secretary of Transportation from approving "any projects or award[ing] any grants under title 23, United States Code, other than for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance" when the EPA Administrator makes certain findings. Based on this language, EPA is proposing to exempt from delay projects that do not receive funding or approval under title 23, U.S.C., safety projects, transit projects, and TCMs in the SIP.

In total, these proposed exemptions are:

(a) Road rehabilitation projects which do not increase capacity, landscaping projects, right-of-way acquisitions, design and engineering studies, and other projects which do not by their nature adversely impact air quality;

(b) projects not requiring any federal action, approval, or funding under title 23 U.S.C.;

(c) safety projects as defined in "EPA/FHWA Region IX Procedures to

Implement Section 176(a)" (December 12, 1980);

(d) projects that implement TCMs in the 1988 SIP or the proposed PM10 plans;

(e) Transit projects;

(f) Aviation projects;[13] and

EPA seeks comment on the appropriateness of these exemptions.

(g) Projects outside of the CO nonattainment area as defined for Maricopa in 43 FR 8964 (March 3, 1978) and for Pima in 51 FR 27843 (August 4, 1986).

Projects which are proposed for listing are primarily capacity-enhancing projects scheduled for construction in federal fiscal year (FY) 1992 and later in Maricopa and FY 1991 and later in Pima.[14] While it can be argued that capacity-enhancing projects by reducing congestion may reduce emissions and therefore benefit air quality in the short-term, EPA is concerned that these projects may also induce additional vehicle travel and thus increase emissions and harm air quality in the long-term.

EPA solicits comments on the listed projects including whether any additional projects should be listed or whether any listed projects should be removed. Such comments should include information on the impact of the project on air quality or, if appropriate, the exempt status of the project.

1. List of Projects Subject to Delay—Pima County

Project numbers are from the 1989/90–1993/94 Pima County Transportation Improvement Program, Pima Association of Governments, July, 1989.

Project	Project description
H26	Moore Rd: Sandario Rd to I-10 Frontage Road, grade, drain, pave two 12-foot lanes (1.75 miles)
H44	Orange Grove Rd: I-10 to Thornydale Rd., construct new 6-lane with median (0.3 miles)
H84	I-10: West Miracle Mile to Speedway, construct frontage roads and ramps (2.0 miles)
H136	I-10: East Frontage Road: St. Marys to Congress, construct, east frontage road (0.7 miles)
H138	I-10: Orange Grove Road to Prince Road widen to 6 lanes (2.0 miles)
H139	I-10: Speedway to St. Marys, construct frontage roads and ramps (0.5 miles)
H140	I-10: West Frontage Road: Ina to Miracle Mile, new frontage road, bridges (6.5 miles)

[13] Aviation projects are proposed for exemption because they are not approved or funded under title 23, U.S.C.

[14] Because EPA's contingency program could not be triggered prior to December 31, 1991 in Maricopa (during federal FY 1992) and November 26, 1990 in Pima (during federal FY 1991), projects schedule before these dates are also effectively exempted.

2. List of Projects Subject to Delay—Maricopa County

Project numbers are from the 1989/90–1993–94 Maricopa County Transportation Improvement Program, Maricopa Association of Governments, September 27, 1989.

Project	Project description
209	I-10 Maricopa Fwy, S.R. 360, interchange reconstruction/mainline widening (1.0 mile)
211	I-10 Maricopa Fwy, Queen Creek Grade Separation, interchange construction (0.2 mile)
255	I-10 Maricopa Fwy, Baseline Rd, widening roadway and interchange, (0.7 mile)
292	I-10 Maricopa Fwy, Baseline Rd to Chandler Blvd, addition of median lanes (5.2 miles)
294	I-17 Black Canyon Fwy, Camelback Rd interchange, Grand Canal, widening, signage, and right-of-way (0.10 mile)
400	Lindsay Road, Guadalupe Rd/Western Canal, reconstruct to 4 lanes (0.5 miles)
555/569	Maricopa Road, I-10 to Pinal County Line reconstruction from 2 to 4 lanes (5.2 miles)
559	Queen Creek Road, Maricopa Rd to Price Rd., construction of 4 lanes (3.2 miles)

V. Conformity Provisions

A. Current Guidance on SIP Conformity Provisions

In its Delaney order, the Ninth Circuit directed EPA to promulgate FIPs for Maricopa and Pima Counties which contained conformity plans in accordance with EPA guidelines. The court cites in its opinion EPA's 1982 SIP guidance which requires SIPs to contain two elements to assure conformity:

(1) Administrative and technical procedures and agency responsibilities for ensuring in response to section 176(c) of the Clean Air Act, that transportation plans, programs, and projects approved by a metropolitan planning organization (MPO) are in conformance with the SIP. 46 FR 7182, 7187; and

(2) Identif[ication], *to the extent possible*, of the direct and indirect emissions associated with major federal actions, * * * that will take place during the period covered by the SIP. 46 FR 7182, 7188 (emphasis added).

The requirement for conformity plans in SIPs is drawn from the general condition in CAA section 176(c) that "[n]o metropolitan planning organization * * * shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under section 110." Section 176(c) also prohibits any federal department, agency, or instrumentality from taking supportive actions on any activity that does not conform to a plan approved or promulgated under section 110.

On April 1, 1980 (45 FR 21590), EPA published an advance notice of proposed rulemaking (ANPRM) to request comments on several courses of action which the Agency was then considering to ensure the conformity of federal actions. These courses of action were methods of assuring that other federal agencies had conformity processes in place and that appropriate state and local air quality agencies were consulted before conformity determinations were made. As part of this ANPRM, EPA listed eight items which it believed a federal department should verify in a formal conformity determination.[15] The ANPRM did not specifically address MPO conformity procedures; however, the parallel between federal agency and MPO responsibilities under section 176(c) would imply that the suggestions for federal agencies in the ANPRM are also appropriate for MPOs.

Both the House (H.R. 3030) and Senate (S. 1630) versions of the proposed Clean Air Act amendments currently under debate in Congress have more detailed conformity requirements than the 1977 CAA amendments. Both bills define conformity and, while they vary slightly, the definitions have the same basic concepts in common. Under the proposed amendments conformity means conformity to an implementation plan's purpose eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards and assuring that federal activities will not, considering any growth likely to result from them, cause or contribute to a failure to attain any standard in any area or delay timely attainment of any standard or any required interim emission reductions.

The bills also in common retain the requirement that MPOs not approve any project, program, or plan which does not conform to the applicable implementation plan. Both require annual conformity determinations on every transportation plan and program.

[15] These items are: (1) All necessary state and federal air quality permits have been obtained for the activity, or if a state variance has been issued, it is in conformity with the requirements of the Clean Air Act; (2) all population projections provided in the supporting data base for the action are consistent with the population projections used in the SIP; (3) the stationary, area and mobile source emission growth rates that are provided in the supporting data base for the action are consistent with the emission growth rates used in the SIP; (4) the increased emissions resulting from the action do not conflict with the emission reduction requirements of the SIP; (5) the increased emissions resulting from the action do not exceed the Prevention of Significant Deterioration increments for the area; (6) the increased emissions resulting from the action do not contribute to the violation of any NAAQS; (7) the action is consistent with the TCMs that are provided for in the SIP; and (8) the action complies with all other special provisions and requirements of the SIP. 45 FR 21590, 21593 (April 1, 1980).

Both bills provide criteria, although somewhat different, for meeting project-level conformity requirements. Both bills also instruct the EPA Administrator to promulgate criteria and procedures for demonstrating and assuring conformity and require states to include conformity criteria and procedures in all CO and ozone SIPs. Copies of the proposed House and Senate conformity sections can be found in the docket for this proposal.

In developing the conformity procedures it is proposing today, EPA considered not only its 1982 SIP guidance and 1980 ANPRM but also the direction Congress is taking in amending the CAA conformity requirements. It should be noted that the ANPRM was merely an advance notice on conformity procedures and that EPA did not follow up with a formal proposal and final rule although the methods were incorporated into its 1982 SIP guidance cited by the Ninth Circuit in its Delany order. Thus, the procedures proposed under today's notice apply only to Arizona to respond to the Ninth Circuit's order. At such time as the amendments to the CAA are passed, EPA will issue national criteria on conformity following standard procedures to respond to any new requirements contained in the amendments.

B. EPA's Proposed Conformity Procedures

1. Breadth of Application

Today's proposed conformity regulation is intended to amend only the Maricopa and Pima portions of the Arizona CO SIP. This action is being proposed in order to establish procedures to be used by MPOs when they approve transportation plans, programs, and projects. Therefore, the proposed regulation is to apply only to MPOs in the Pima and Maricopa CO nonattainment areas or, more specifically, the Pima Association of governments (PAG) and the Maricopa Association of Governments (MAG) in their capacity as MPOs. The proposed procedures are to be used by MAG and PAG when they make a conformity finding prior to approving any transportation plan, program, or project. In keeping with EPA's 1982 SIP guidance which requires procedures only for transportation plans, programs, and projects, these procedures are not intended to apply to other non-transportation-related federal activities which these MPOs may approve.[16] The scope of these proposed procedures is also limited to determinations of conformity for carbon monoxide.

The key transportation plans and programs developed by MPOs are the regional transportation plan (RTP) and the transportation improvement program (TIP) including the annual (biennial) element.

MPOs generally do not take approval actions on individual projects; however, to complete its obligation to fill the gap in the SIP for conformity procedures for "plans, programs, and projects" as required by both CAA section 176(c) and its own 1982 SIP guidance, EPA is proposing conformity procedures for individual projects consistent with its guidance and the pending Clean Air Act amendments.

2. Conformity Procedures for Transportation Plans and Programs

The proposed regulations would require that the same conformity procedure be followed for transportation improvement programs as for transportation plans. The proposed procedures would need to be applied separately to each plan and program approved by the MPO. In outline, the proposed conformity procedures would require that MPOs document certain information from the applicable implementation plan and the transportaiton plan/program and make certain findings regarding the plan/program based on this documented information. "Applicable implementation plan" or "applicable plan" as the terms are used throughout this proposed regulation, mean the Pima and Maricopa portions of the Arizona Carbon Monoxide SIP as it has been approved or promulgated by EPA and includes the data used by EPA to project attainment and/or maintenance of the CO NAAQS for Maricopa and Pima Counties.

To allow for public review and comment on the MPOs' conformity findings, preliminary documentation and findings on conformity should be made available to the public when draft plans and programs are issued. The MPOs should also assure that the Arizona Department of Environmental Quality (ADEQ) and PCDEQ or Maricopa County Bureau of Air Pollution Control, as well as EPA, are given the opportunity to comment on the preliminary documentation and findings. The MPO should respond to all public comments prior to finalizing its conformity determination.

Documentation Requirements. The proposed procedures would require the MPO to first document, for the period covered by the applicable implementation plan, basic planning assumptions that are intrinsic to transportation plans and programs: Population estimates, number of vehicle miles traveled (VMT), number of vehicle trips (VT), and congestion levels. Reductions in congestion along with the potential trip-inducing effect of increased capacity should be considered by the MPO when evaluating the impact of the plan/program.

Next, the MPO would be required to document, for each major TCM in the applicable implementation plan, the TCM's implementation schedule and expected effectiveness in reducing CO emissions from the applicable plan the the TCM's current implementation status and, if feasible, its current effectiveness. The MPO would also have to identify, for each major TCM in the applicable plan, any actions in the plan/program which would have either beneficial or adverse impacts on the TCM's implementation or effectiveness.

The MPO would also need to determine the emission levels expected from implementation of the plan/program during the period of time covered by the applicable plan and compare them to levels projected in the applicable plan. The same EPA-approved emission factor model used in the applicable plan should be used to determine emission levels under the transportation plan/program. Where the impact of TCMs are included in calculating these emission levels, their effectiveness should reflect their actual effectiveness rather than their effectiveness assumed in the plan.

Finally, the MPO would be required to determine using air quality modeling the ambient CO levels, both regional and micro-scale, which would result from implementation of the plan/program during the period covered by the applicable plan. In determining micro-scale CO impacts, EPA would not expect the MPO to model every intersection or link in the plan/program but rather exercise its judgment to determine where projects within the plan/program may exacerbate CO concentrations. Factors the MPO could use to make this judgment include current and projected background CO concentrations at or near the projects, VMT and VT intended to be served by the projects, and the level of service before and after the project. In modeling ambient concentrations, the MPO should

[16] Although EPA's proposed regulation only applies to MPO's approval of transportation plans, programs, and projects, this does not remove the requirement in CAA section 176(c) that federal departments, agencies, and instrumentalities must determine conformity of their actions or that MPOs must determine the conformity of any non-transportation project that they may approve.

use EPA-approved models and techniques.

Require Findings. Prior to finding the plan/program conforming, the MPO would be required to make and document three findings:

(1) That the implementation of the transportation plan/program will provide for the implementation of TCMS is the applicable plan on the schedule set forth in the applicable plan.

(2) That the plan/program does not increase emissions regionally or locally during the period covered by the applicable plan so as to delay attainment or any plan-required interim emission reduction or interfere with maintenance of the CO standards, and

(3) That the plan/program does not cause or contribute to a violation of the CO NAAQS anywhere within the nonattainment area during the period covered by the applicable plan.

The first finding is premised on the fact that many TCMs are funded and implemented through the transportation planning process. Without assurances that TCMs are being planned and programmed as scheduled in the applicable plan and that other transportation activities support these TCMs, timely and effective implementation of TCMs would be difficult to achieve. The U.S. Department of Transportation (U.S. DOT) has long considered timely programming and implementation of TCMs in transportation plans and program as evidence of conformity (see 23 CFR 770.9). Requiring this finding is also consistent with EPA's 1980 ANPRM and both the House and Senate proposed revisions to section 176(c).

The second finding is derived from the primary purpose of a implementation plan: reducing emissions sufficiently to demonstrate expeditious attainment and long-term maintenance of the NAAQS. Where a transportation plan/program results in emissions above the levels expected in the implementation plan, the plan/program is in direct conflict with the implementation plan and cannot conform. For CO, both local and regional emission levels are important to demonstrating attainment and maintenance; therefore, the MPOs' need to show as part of the conformity findings that emission levels resulting from implementation of the plan/program will not increase emissions during the period covered by the applicable plan, either regional or locally, above the levels predicted in the applicable plan. Requiring this finding is consistent with EPA's 1980 ANPRM and the definition of conformity in both proposed revisions to the CAA.

The final finding is derived from the primary goal of an implementation plan: the protection of public health by eliminating violations of the NAAQS. Again, where a transportation plan/program causes or contributes to violations of the NAAQS, the plan/program is in direct conflict with the implementation plan and cannot conform. For the purpose of this finding, "cause" means resulting in an exceedance of the CO NAAQS in an area which previously did not have ambient CO concentrations above the standard and "contribute" means resulting in measurably higher average 8-hour ambient CO concentrations over the NAAQS or an increased number of hours with ambient concentrations over the NAAQS in an area which currently experiences CO levels above the standard. Requiring this finding is again consistent with EPA's 1980 ANPRM and the definition of conformity in both proposed revisions to the CAA.

This last finding would require the showing that the plan or program does not cause or contribute to a violation anywhere within the nonattainment area. "Anywhere within the nonattainment area" is especially important with carbon monoxide because transportation projects can cause or contribute to CO violations on a local scale even as they improve CO emission levels and ambient concentrations on a regional scale.

Under section 176(c), MPOs are prohibited from approving plans, programs, or projects which do not conform to an implementation plan approved or promulgated under CAA section 110. Where an MPO could not make each of the findings under these proposed conformity procedures, it could not approve a plan, program, or project until it was modified so as to conform. Modifications could include elimination of the projects that cause the non-conformance, modifications to such projects, modifications to other projects in the TIP sufficient to offset emissions or ambient concentration increases from projects causing the non-conformance, or expeditious implementation of sufficient additional control measures to eliminate excess emissions or reduce ambient concentrations to the levels anticipated in the applicable implementation plan.

3. Plan/Program Amendments

As with all plans, transportation plans and programs are subject to changes as new or better information becomes available. The proposed conformity procedures would require that the MPO ensure, before approving any plan/program amendment, that the amendment would not substantially change the previously documented information and would not change the findings made with respect to the original plan/program.

4. Transportation Projects

The proposed procedures for project-level conformity review would apply only when: a project is not in a conforming TIP, the project's design or scope has changed from that described in the TIP; or the project descriptions at the RTP or TIP level are inadequate to determine emissions or ambient concentrations. Experience with the Southern California Association of Governments' conformity procedures has shown that project descriptions in the TIP are sometimes inadequate to determine the design and scope of a project; therefore, the Arizona MPOs are encouraged to provide more detailed descriptions of projects in their TIPs so that the conformity finding on the plan/program would be sufficient for the project.

The proposed regulation would exempt certain specific types of projects from project-level conformity review even if they are not in a conforming TIP. Exempt projects include projects outside the nonattainment area, TCMs, and specific safety projects.

Like the procedures outlined previously for plans/programs, the proposed regulation would require that the MPO document certain information on the project and make certain findings about the project. The proposed documentaion and findings are identical to those required for plans/programs except now focused on the impact of the individual project.

C. The Impact of the Proposed Regulation on MPOs

These proposed procedures would not place a new requirement on the MPOs in Arizona. The Clean Air Act and existing U.S. DOT regulations have long required MPOs to certify conformity of their plans and programs. The purpose of this proposed regulation is to provide the explicit procedures and specific findings necessary for making a conformity determination with an applicable implementation plan as required by EPA's 1982 SIP guidance and the Ninth Circuit opinion in *Delaney*.

Both PAG and MAG currently make conformity findings on their TIPs. As part of its 1990–94 TIP, PAG calculated the emission impact of each of the TIP projects. In its TIP, MAG identified and listed each project that implements a SIP TCM. In addition, both MPOs perform air quality analyses of their regional

transportation plans. For example, as part of the system analysis for the 1990 Freeway/Expressway Plan Update, MAG undertook an extensive air quality analysis of the eight transportation planning alternatives under consideration.

EPA recognizes that the proposed procedures would require more extensive analysis than that which the MPOs currently perform. This year, EPA Region 9 is earmarking funds in the CAA section 105 grant program for local and state transportation/air quality planning including the development of conformity procedures. While MAG and PAG are not direct grantee agencies under the section 105 program, they are eligible to receive EPA funds passed through their local air pollution control agencies or ADEQ. On request, EPA Region 9 will consider changes to the program objective for transportation/air quality planning to provide additional funds to assist the MPOs in carrying out this proposed regulation. This funding, however, is not intended to replace current funding sources used by the MPOs to do air quality analyses on TIPs, transportation plans, or projects. In order to determine the appropriate level of additional funding, EPA requests comments from both PAG and MAG on the resources needed by them to undertake these procedures.

D. Identification of Federal Facilities

Neither the 1987 Pima plan nor the 1987 MAG plan explicitly identified potential federal activities or the emissions associated with them as EPA's 1982 SIP guidance required. To fill this gap, EPA has attempted to identify potential future federal activities in the Maricopa and Pima area during the ten-year period covered by the FIP. Because of time constraints, EPA can only identify potential federal activities in this proposal. The final notice will, to the extent feasible, quantify the emissions associated with these activities.

Information on future federal activities is difficult to attain because few agencies maintain readily available county-level summaries of their activities and none had developed long-range plans (beyond 1995) for their activities in the two counties. The most extensive federal activity identified in both Pima and Maricopa Counties is the approval and funding of transportaion projects (including highway, transit, and aviation projects) by the U.S. Department of Transportation. Many of the federal activities identified are minor and will have little to no impact on CO levels.

The purpose of identify federal activities in the SIP is to ease the making of conformity determinations by the appropriate federal agency. The identification of a project below does not subject the project to any funding or approval sanctions.

1. List of Federal Activities for Pima County

Federal agency	Federal activity
Dept. of Agriculture Forest Service.	Construction of trailhead parking area and Abbey Road cut-off wall in Coronado National Forest (planned, no date scheduled)
Dept. of Transportation.	Repairs/improvements of existing highways/arterials (24 projects, FY 90/94)
	Construction of new highways/arterials (17 projects, FY 90/94)
	Repairs/improvements of existing transit facilities (2 projects, FY 90/94)
	Construction of new transit facilities (5 projects, FY 90/94)
	Repairs/improvements of existing airports (8 projects, FY 90/94)
	Construction of new airport facilities (6 projects, FY 90/94)
	Land Acquisition (3 projects, FY 90/94)

2. List of Federal Activities for Maricopa County

Federal agency	Federal activity
Dept. of Defense Army Corp of Engineers.	Construction of AZ Canal Diversion Channel (current)
Armed Forces	Rebuilding for Fort Wachuka in Serria Vista (Planned, 1991)
Dept. of Housing and Urban Development.	Construction of an elderly nursing home in Phoenix (current)
Dept. of Interior Bureau of Reclamation.	Construction of a canal from Lake Havasu to Tucson and Phoenix; repairs to three dams: Coolidge, Waddell, and Roosevelt (current)
Dept. of Transportation.	Repairs/improvements of existing highways/arterials (152 projects, FY 90/94)
	Repairs/improvements of existing transit facilities (407 projects, FY 90/94)
	Construction of new transit facilities (4 projects, FY 90/94)
	Repairs/improvements of existing airports (19 projects, FY 90/94)
	Land Acquisition (7 projects, FY 90/94)
EPA	Construction of a new wastewater treatment plant and expansion of four existing plants (current)

VI. Delegation or Substitution of FIP Measures

The Administrator of the Environmental Protection Agency has the authority to delegate implementation and enforcement of a FIP measure to a State agency, to a regional agency in Arizona or to a local government within its jurisdictional boundaries. Prior to any delegation, the Administrator would have to determine that the agency or jurisdiction requesting the delegation has legal authority to implement and enforce the measures and has committed the necessary staffing and resources to implement and enforce them. EPA would encourage agencies who meet these criteria to apply for delegation.

Following promulgation of the FIP for Maricopa and Pima Counties, the State of Arizona may wish to submit to EPA procedures and/or regulations to substitute for part or all of the federal plan. Such procedures and/or regulations would need to comply with all applicable CAA requirements and EPA guidance but would not need to follow the implementation and enforcement schemes proposed today by EPA. The State would also need to show that any regulation(s) intended to replace a federal measure would achieve, in total, at least the equivalent emission reductions on the same or faster schedule than the FIP measure.

There are at least two reasons why the State of Arizona may wish to submit an implemntation plan which fully complies with all CAA requirements and EPA guidance beyond the desire to remove the onerousness of a federal plan. One reason is that the pending disapproval of the Pima and Maricopa portions of the Arizona CO SIP will automatically trigger the construction ban in CAA section 110(a)(2)(I) on major new sources or major modifications of sources of CO. This construction ban can only be lifted when EPA approves a state-submitted implementation plan that meets the applicable requirements of Part D of the CAA. The other reason is that, under the language of the Clean Air Act, as long as Arizona fails to submit an approvable SIP or fails to make reasonable efforts to submit an approvable SIP, the nonattainment areas remain potentially subject to other sanctions under the CAA, including highway fund restrictions under section 176(a) and wastewater treatment grant restrictions under section 316(b).

Arizona State and local officials have already stated in meetings with EPA that they wish to correct the deficiencies in the SIP noted by the Ninth Circuit. Arizona State and local agencies including ADEQ, PAG, and MAG have been helpful in providing information needed by EPA to prepare this proposal. EPA will continue to work with these agencies in finalizing this proposal and in developing corrective SIPs.

VII. Administrative Designation and Regulatory Analysis

The Administrator has determined that this proposal does not constitute a major proposed regulation, as defined in section 1(b) of Executive Order 12291. Specifically, the proposed rules will cost

less than $100 million annually, will cause no major price increases, and should not have a significant adverse effect on competition, productivity, or investment. Accordingly, no regulatory impact analysis is necessary. However, the Agency has prepared a draft technical support document (TSD) that contains additional technical information supporting the FIP proposal as described in today's **Federal Register**.

The draft TSD has been placed in the public docket and is available for review in Maricopa and Pima Counties at the locations referenced in the beginning of today's notice. In addition, interested parties may obtain single copies from the public contact listed at the beginning of this notice.

This proposed regulation also was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 1291. Any written comments from OMB and EPA response to those comments have been placed in the public docket for this rulemaking.

VIII. Impact on Small Entities

Section 605 of the Regulatory Flexibility Act requires that the Administrator certify that regulations do not have a significant impact on a substantial number of small entities. I certify that this proposed regulation will not have such an effect for three primary reasons. First, many of the entities affected by the proposed rule are not "small." Refiners, large distributors, and service stations owned by major oil companies or large independent companies (accounting for about 25 percent of public refueling facilities) do not constitute small entities. Second, the geographic scope of the proposed regulations as they may affect small entities is limited to a portion of Maricopa County, Arizona. Third, compliance with the oxygenated fuels program and RVP limit generally will not have a significant impact on a substantial number of small entities because of the limited capital investment required. Fourth, and finally, there are no significant reporting requirements for service stations under the averaging scheme of the proposed alternative fuels program and none at all for the RVP limit. Nonetheless, EPA requests comments on the economic effects of this proposed rulemaking on small businesses in the Phoenix area.

IX. Reporting and Recordkeeping Requirements

The information collection provisions relating to this proposal have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA and a copy may be obtained from the Information Policy Branch (PM–223); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460 or by calling (202) 382–2740. Comments on the ICR may be submitted to EPA at the above address and should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7462.

Dated: September 20, 1990.

William K. Reilly,

Administrator.

Appendix A—Preliminary Results of Candidate Screening

Measure	Legal auth	Res	Tech feas.	Pot cand.	Comment
1. Short-range transit improvements	?	N	Y	N	
. Long-range transit improvements	?	N	Y	N	
3. Exclusive bus lanes on arterials and freeways	?	N	?	N	
4. Park and ride lots	?	N	?	N	
5. HOV lanes on freeways	?	N	Y	N	
6. HOV lanes on arterials	?	N	?	N	
7. Freeway ramp metering with HOV bypass	?	N	Y	N	
8. Freeway surveillance, ramp metering, & signage	?	N	Y	N	State already implementing.
9. Signal synchronization	?	N	Y	N	
10. Reversible lanes on arterial	?	N	?	N	
11. One-way streets	?	N	?	N	
12. Intersection improvement	?	N	Y	N	
13. On-street parking restrictions	?	N	?	N	
14. Bus pullouts in curbs	?	N	N	N	
15. Bicycle travel and support facilities	?	N	Y	N	
16. Pedestrian pathways and support facilities	?	N	Y	N	
17. Auto free zones	?	N	?	N	
18. Toll roads	?	N	?	N	
19. Measures to reduce idling at drive-up facilities	Y	?	N	N	
20. Mitigation of freeway construction impacts	Y	Y	N	N	Legal authority for federally-funded facilities only.
21. Expanded regional ridesharing program	Y	N	Y	N	See Note 1.
22. Voluntary no-drive-day programs (VNND)	Y	N	Y	N	See Note 1.
23. Areawide public awareness programs	Y	N	Y	N	Program incorporated into VNDD program.
24. More stringent travel reduction program (TRP)	Y	Y	Y	Y	
25. Financial incentives to employees in lieu of parking spaces	Y	Y	Y	Y	Imp. as part of TRP.
26. Preferential parking for car/vanpools	Y	Y	Y	Y	Imp. as part of TRP.
27. Free transit passes to employees	Y	Y	Y	Y	Imp. as part of TRP.
28. Alternative workhours/weeks	Y	Y	Y	Y	Imp. as part of TRP.
29. Telecommuting	Y	Y	Y	Y	Imp. as part of TRP.
30. Teleconferencing	Y	Y	Y	Y	Imp. as part of TRP.
31. Encourage bicycle usage	Y	Y	Y	Y	Imp. as part of TRP.
32. Encourage pedestrian travel	Y	Y	Y	Y	Imp. as part of TRP.
33. Parking fees	N	n/a	Y	N	Prohibited by CAA 110(c)(2)(B).
34. Winter daylight savings time	N	n/a	Y	N	Regulated by DOT.

Measure	Legal auth	Res	Tech feas.	Pot cand.	Comment
35. Evaluation and mitigation of air quality impacts on new development (indirect source review)					
—general development	?	N	Y	N	Prohibited by CAA (110(a)(5)(A).
—federal facilities	Y	?	N	N	Negligible reductions.
36. Land use patterns which support transit	N	?	Y	N	
37. Relocation of major traffic generators from highly congested areas	?	Y	?	N	Severe economic impacts for effected sources.
38. Mandatory no-drive-day programs	Y	N	Y	N	
39. Truck restrictions during peak periods (arterial and/or freeway)	Y/?	N	Y	N	
40. Increased enforcement of traffic, parking, and air pollution regulations	Y/N	Y	N	N	Note 2.
41. Increased gasoline tax	?	N	Y	N	
42. Increased vehicle registration fees	?	N	Y	N	
43. Wintertime RVP limit	Y	Y	Y	Y	
44. Higher average gasoline oxygen level	Y	Y	Y	Y	
45. Expansion of the oxygenated fuels program county-wide	Y	Y	N	N	Effectively occurs already, additional red unlikely.
46. Expansion of the oxygenated fuels program statewide	Y	?	N	N	
47. Elimination I/M waivers	Y	Y	Y	Y	Note 3.
48. Expansion of the I/M program statewide	Y	N	Y	N	
49. Expansion of the I/M program county-wide	Y	Y	Y	Y	Note 3.
50 Increased stringency of the I/M program	Y	Y	Y	Y	Note 3.
51. Composite in-use emission standard	N	Y	Y	N	Note 4.
52. Conversion of vehicle fleets to alternative fuels	Y	Y	Y	Y	
53. Conversion of buses to alternative fuels/electricity	Y	Y	N	N	Duplicats state program, additional red. unlikely.
54. Retrofit of pre-1975 vehicles with catalytic converters	Y	Y	Y	Y	
55. Purchase and removal of pre-1980 vehicles	Y	N	Y	N	

Y = Yes N = No n/a = not applicable ? = unclear

Note 1. Implementation would be by granting additional funds to the existing State programs. Given the low level of funding available to EPA for these measures, the marginal increase in effectiveness of these programs would be negligible.

Note 2. EPA has no legal authority to enforce local measures, such as traffic and parking regulations, which are not in the SIP. Most CO air pollution regulations are considered as separate items on this list.

Note 3. EPA can prohibit the State from registering certain vehicles which do not pass the I/M program.

Note 4. EPA would only have legal authority for this measure if it promulgated and implemented the similar measure which it proposed for the South Coast (Los Angeles) Air Basin, 55 FR 36458 (September 5, 1990).

For the reasons set forth in the preamble, subpart D, part 52, Subchapter C, Chapter I of Title 40, Code of Federal Regulations, is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart D—Arizona

2. New §§ 52.136, 52.137, and 52.138 are proposed to be added to read as follows:

§ 52.136 Oxygenated fuels program.

(a) *Regulatory standard.* No person shall first introduce into commerce within the Maricopa CO nonattainment area ("control area") during the period October 1, 1991, to March 31, 1992, and each period of October 1 to March 31 thereafter ("control period") gasoline whose oxygen content is less that 2.7% (by weight), as determined pursuant to paragraphs (b) and (c) of this section.

(b) *Sampling, testing, and oxygen content calculations.* (1) For the purpose of determining compliance with the standards listed in paragraphs (a) and (h) of this section, the oxygen content of gasoline shall be determined by:

(i) Use of one of the sampling methodologies specified in Appendix A of this subpart to obtain a representative sample of the gasoline to be tested;

(ii) Use of the testing methodologies specified in Appendix B of this subpart to determine the mass concentration of each oxygenate in the gasoline sampled; and

(iii) Calculation of the oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen mass concentration of the oxygenate set forth in paragraph (b)(2) of this section.

(2) For purposes of this section, the oxygen mass concentrations of oxygenates are the following:

Oxygenate	Oxygen mass
Methanol	0.4993
Ethanol	.3473
Propenols	.2662
Butanols	.2158
Pentanols	.1815
Methyl Tertiary-Butyl Ether (MTBE)	.1815
Haxanols	.1566
Tertiary Amyl Methyl Ether (TAME)	.1566
Ethyl Tertiary-Butyl Ether	.1569

(3) *Examples*—(i) *Example 1.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in Appendix A of this subpart and tested by use of the test methodologies set forth in Appendix B of this subpart. The gas chromatograph analysis indicates that the gasoline sampled contains an ethanol mass concentration of 9.85% (0.0985). The oxygen contents of the gasoline sampled is calculated as follows:

Oxygen Content—
=(Ethanol Mass concentration in Gasoline Sample) × (Oxygen Mass Concentration of Ethanol)
=(0.0985) × (0.3473)
=0.0342
=3.42%

(ii) *Example 2.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in Appendix A of this subpart and tested by use of the methodologies set forth in Appendix B of this subpart. The gas chromatograph analysis indicates that the gasoline sampled contains a methanol mass concentration of 4.50% (0.0450) and an ethanol mass concentration of 2.25% (0.0225). The oxygen content of the gasoline sample is calculated as follows:
Oxygen Content—

=(Methanol Mass concentration in Gasoline Sample) × (Oxygen Mass Concentration of Methanol) + (Ethanol Mass Concentration in Gasoline Sample) × (Oxygen Mass Concentration of Ethanol)
=(0.0450) × (0.4993) + (0.0225) × (0.3473)
=0.0225 + 0.0078
=0.0303
=3.03%

(c) *Alternative Compliance Options.* (1) Each person subject to the standard specified in paragraph (a) of this section shall comply with such standard by means of the method set forth in either paragraph (c)(2) or (c)(3) of this section. Such person shall select the method he will use to determine compliance by means of the registration statement submitted pursuant to paragraph (d) of this section. A person subject to such standard who fails to submit a timely and complete registration statement as required by paragraph (d) of this section shall be deemed to have selected the compliance method set forth in paragraph (c)(2) of this section.

(2) As one alternative means of demonstrating compliance with the standard specified in paragraph (a) of this section, all gasoline first introduced into commerce by a person within the control area during the control period shall have an oxygen content of at least 2.7% (by weight), as determined by calculating the oxygen content of each discrete quantity of such gasoline according to the procedures set forth in paragraph (b) of this section.

(3)(i) As the second alternative means of demonstrating compliance with the standard specified in paragraph (a) of this section, all gasoline first introduced into commerce by a person within the control area during each calendar month of the control period shall have an average oxygen content of at least 2.7% (by weight).

(ii) The average oxygen content of gasoline first introduced into commerce by a person during a calendar month shall be calculated as follows:

(A) The oxygen content of each discrete quantity of gasoline in the possession of such person at the beginning of the calendar month shall be calculated according to the procedures set forth in paragraph (b) of this section.

(B) The oxygen content of each discrete quantity of gasoline in the possession of such person shall also be calculated according to the procedures set forth in paragraph (b) of this section each time during the calendar month that there is a change in its quantity and/or its characteristics that would tend to affect its oxygen content. Such changes shall include, but not be limited to, the addition of any quantity of gasoline or of any quantity of an oxygenate to gasoline in the possession of such person.

(C) The number of gallons of gasoline first introduced into commerce within the control area during the calendar month at each oxygen content level determined according to paragraph (c)(3)(ii)(A) or (B) of this section shall be multiplied by such content to determine the total oxygen content of each such quantity of gasoline.

(D) The total oxygen content of all gasoline first introduced into commerce within the control area during the calendar month shall be determined by adding together the total oxygen content amounts determined in paragraph (c)(3)(ii)(C) of this section.

(E) The total oxygen content determined in paragraph (c)(3)(ii)(D) of this section be added to any oxygen credits lawfully transferred to such person pursuant to paragraph (c)(3)(iii) of this section.

(F) The total oxygen content determined in paragraph (c)(3)(ii)(E) of this section shall be divided by the total number of gallons of gasoline first introduced into commerce within the control area during the calendar month, resulting in the average oxygen content of such gasoline.

(iii) A person subject to the standard specified in paragraph (a) of this section who elects to demonstrate compliance under paragraph (c)(3) of this section may create oxygen credits, and may transfer such credits to another person for use in demonstrating compliance under this paragraph, in accordance with the following requirements:

(A) The amount of oxygen credits created by a person shall be equal to the difference between:

(*1*) The total oxygen content of all gasoline first introduced into commerce within the control area during the calendar month by such person, as determined according to paragraph (c)(3)(ii) (A) through (D) of this section; and

(*2*) The total oxygen content required by paragraph (a) of this section, determined by multiplying the number of gallons of such gasoline by 0.027.

(B) No transfer or use of oxygen credits shall be made by any person later than the final day of the calendar month in which such credits are created.

(d) *Registration* [Reserved]

(e) *Labeling.* (1) Each gasoline pump stand from which gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility in the control area shall be affixed during the control period with a legible and conspicuous label which states the type(s) of oxygenate contained in such gasoline. If the gasoline being dispensed from a pump stand does not contain any oxygenate, the pump stand shall be so labeled.

(2) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies the shipment of gasoline within the control area during the control period shall contain a legible and conspicuous statement which states the type(s) of oxygenate contained in such gasoline and the oxygen content of such gasoline (percentage by weight). If the gasoline being shipped does not contain any oxygenate, the document accompanying the shipment shall be so labeled. Such documents shall be retained by distributors, resellers, carriers, retailers and wholesale purchaser-consumers for at least two years, and shall be available for inspection by the Administrator or his authorized representative during such period.

(f) *Reporting and Recordkeeping* [Reserved].

(g) *Prohibited Acts* [Reserved].

(h) *Definitions* [Reserved].

Appendix A to § 52.136—Sampling Procedures

EPA's sampling procedures are detailed in Appendix D of 40 CFR part 80.

Appendix B to § 52.136—Testing Procedures

Method—ASTM Standard Test Method for Determination of C_1 to C_4 Alcohols and MTBE in Gasoline by Gas Chromatography

1. Scope

1.1 This test method covers a precedure for determination of methanol, ethanol, isopropanol, n-propanol, isobutanol, sec-butanol, tert-butanol, n-butanol, and methy tertiary butyl ether (MTBE) in gasoline by gas chromatography.

1.2 Individual alcohols and MTBE are determined from 1.0 to 10 volume %.

1.3 SI (metric) units of measurement are preferred and used throughout this standard. Alternative units, in common usage, are also provided to improve the clarity and aid the user of this test method.

1.4 This standard may involve hazardous materials, operations, and equipment. This standard does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability or regulatory limitations prior to use.

2. Referenced Documents

2.1 ASTM Standards:

D4057 Practice for Manual Sampling of Petroleum and Petroleum Product
D4307 Practice for Preparation of Liquid Blends for Use as Analytical Standards
D4626 Practice for Calculation of Gas Chromatographic Response Factors
E260 Practice for Packed Column Gas Chromatographic Procedures

E355 Practice for Gas Chromatography Terms and Relationships

3. Descriptions of Terms Specific to This Standard

3.1 MTBE—methyl tertiary butyl ether.

3.2 Low Volume Connector—a special union for connecting two lengths of tubing 1.6 mm inside diameter and smaller. Sometimes this is referred to as a zero dead volume union.

3.3 Oxygenates—used to designate fuel blending components containing oxygen, either in the form of alcohol or ether.

3.4 Split Ratio—a term used in gas chromatography using capillary columns. The split ratio is the ratio of the total flow of the carrier gas to the sample inlet versus the flow of carrier gas to the capillary column. Typical values range from 10:1 to 500:1 depending upon the amount of sample injected and the type of capillary column used.

3.5 WCOT—abbreviation for a type of capillary column used in gas chromatography that is wall-coated open tubular.

This type of column is prepared by coating the inside of the capillary with a thin film of stationary phase.

3.6 TCEP-1,2,3,-tris-2-cyanoethoxypropane—a gas chromatographic liquid phase.

4. Summary of Test Method

4.1 An internal standard, tertiary amyl alcohol, is added to the sample which is then introduced into a gas chromatograph equipped with two columns and a column switching valve. The sample first passes onto a polar TCEP column which elutes lighter hydrocarbons to vent and retains the oxygenated and heavier hydrocarbons. After methylcyclopentane, but before MTBE elutes from the polar column, the valve is switched to backflush the oxygenates onto a WCOT non-polar column. The alcohols and MTBE elute from the non-polar column in boiling point order, before elution of any major hydrocarbon constituents. After benzene elutes from the non-polar column, the column switching valve is switched back to its original position to backflush the heavy hydrocarbons. The eluted components are detected by a flame ionization or thermal conductivity detector. The detector response, proportional to the component concentration, is recorded; the peak areas are measured; and the concentration of each component is calculated with reference to the internal standard.

5. Significance and Use

5.1 Alcohols and other oxygenates may be added to gasoline to increase the octane number. Type and concentration of various oxygenates are specified and regulated to ensure acceptable commercial gasoline quality. Drivability, vapor pressure, phase separation, and evaporative emissions are some of the concerns associated with oxygenated fuels.

5.2 This test method is applicable to both quality control in the production of gasoline and for the determination of deliberate or extraneous oxygenate additions or contamination.

6. Apparatus

6.1 Chromatograph:

6.1.1 A gas chromatographic instrument which can be operated at the conditions given in Table 1, and has a column switching and backflushing system. Carrier gas flow controllers shall be capable of precise control where the required flow rates are low (Table 1).

TABLE 1—CHROMATOGRAPHIC OPERATING CONDITIONS

Temperatures	Flows, mL/min	Other parameters carrier gas helium
Column Oven, °C 60	To injector 75	Sample size, µL 3.
Injector, °C 200	Column 5	Split ratio, 15:1.
Detector-TCD, °C 200	Auxiliary 3	Backflush, min 0.2–0.3.
—FID, °C 250	Makeup 18	Valve reset time, 8–10 min.
Valve, °C 60		Total analysis time, 18–20 min.

Pressure control devices and gages shall be capable of precise control for the typical pressures required.

6.1.2 Detector—A thermal conductivity detector or flame ionization detector, may be used. The system shall have sufficient sensitivity and stability to obtain a recorder deflection of at least 2 mm at a signal-to-noise ratio of at least 5 to 1 for 0.005 volume % concentration of an oxygenate.

6.1.3 Switching and Backflushing Valve—A valve, to be located within the gas chromatographic column oven, capable of performing the functions described in section 11.0 and illustrated in Fig. 1. The valve shall be of low volume design and not contribute significantly to chromatographic deterioration.

6.1.3.1 Valco Model No. CM-VSV-10-HT, 1.6-mm (1/16-in.) fittings. This particular valve was used in the majority of the analyses used for the development of Section 15.

6.1.3.2 Valco Model No. C10W, 0.8-mm (1/32-in.) fittings. This valve is recommended for use with columns of 0.32-mm inside diameter and smaller.

6.1.4 Although not mandatory, an automatic valve switching device is strongly recommended to ensure repeatable switching times. Such a device should be synchronized with injection and data collection times. If no such device is available, a stopwatch, started at the time of injection, should be used to indicate the proper valve switching time.

6.1.5 Injection System—The chromatograph should be equipped with a splitting-type inlet device. Split injection is necessary to maintain the actual chromatographed sample size within the limits of column and detector optimum efficiency and linearity.

6.1.6 Sample Introduction—Any system capable of introducing a representative sample into the split inlet device. Microlitre syringes, automatic syringe injectors, and liquid sampling valves have been used successfully.

6.2 Data Presentation or Calculation, or Both:

6.2.1 Recorder—A recording potentiometer or equivalent with a full-scale deflection of 5 mV or less. Full-scale response time should be 1 s or less with sufficient sensitivity and stability to meet the requirements of 6.1.2.

6.2.2 Integrator or Computer—Devices capable of meeting the requirements of 6.1.2, and providing graphic and digital presentation of the chromatographic data are recommended for use. Means shall be provided for determining the detector response. Peak heights or areas can be measured by computer, electronic integration or manual techniques.

6.3 Columns, two as follows:

6.3.1. Polor column—This column performs a preseparation of the oxygenates from volatile hydrocarbons in the same boiling point range. The oxygenates and remaining hydrocarbons are backflushed onto the non-polar column in section 6.3.2. Any column with equivalent or better chromatographic efficiency and selectivity to that described in 6.3.1.1 can be used. The column shall perform at the same temperatures as required for the column in 6.3.2.

6.3.1.1 TCEP Micro-Packed Column, 560 mm (22 in.) by 1.6-mm (1/16-in.) outside diameter by 0.38-mm (0.015-in.) inside diameter stainless steel tube packed with 0.14 to 0.15 g of 20% (mass/mass) TCEP on 80/100 mesh Chromosorb P(AW). This column was used in the cooperative study to provide the Precision and Bias data referred to in Section 15.

6.3.2 Non-polar (Analytical) Column—Any column with equivalent or better chromatographic efficiency and selectivity to that described in 6.3.2.1 can be used.

6.3.2.1 WCOT Methyl Silicone Column, 30m (1181 in.) long by 0.53 mm (0.021-in.) inside diameter fused silica WCOT column with a 2.6 um film thickness of cross-linked methyl siloxane. This column was used, in the cooperative study to provide the Precision and Bias data referred to in Section 15.

7. Reagents and Materials

7.1 Carrier Gas—Carrier gas appropriate to the type of detector used. Helium has been used successfully. The minimum purity of the carrier gas used must be 99.95 mol %.

7.2 Standards for Calibration and Identification—Standards of all components to be analyzed and the internal standard are required for establishing identification by retention time as well as calibration for quantitative measurements. These materials shall be of known purity and free of the other components to be analyzed.

Note 1: Warning—These materials are flammable and may be harmful or fatal if ingested or inhaled.

7.3 Preparation of Calibration Blends—For best results, these components must be added to a stock gasoline or petroleum naphtha, free of oxygenates (Warning—See Note 2). Refer to Test Method D 4307 for preparation of liquid blends. The preparation of several different blends, at different concentration levels covering the scope of the method, is recommended. These will be used to establish the linearity of the component response.

Note 2: Warning—Extremely flammable. Vapors harmful if inhaled.

7.4 Methylene Chloride—Used for column preparation. Reagent grade, free of non-volatile residue.

Note 3: Warning—Harmful if inhaled. High concentrations may cause unconsciousness or death.

8. Preparation of Column Packings

8.1 TCEP Column Packing:

8.1.1 Any satisfactory method, used in the practice of the art that will produce a column capable of retaining the C_1 to C_4 alcohols and MTBE from components of the same boiling point range in a gasoline sample. The following procedure has been used successfully.

8.1.2 Completely dissolve 10 g of TCEP in 100 mL of methylene chloride. Next add 40 g of 80/100 mesh Chromosorb P(AW) to the TCEP solution. Quickly transfer this mixture to a drying dish, in a fume hood, without scraping any of the residual packing from the sides of the container. Constantly, but gently, stir the packing until all of the solvent has evaporated. This column packing can be used immediately to prepare the TCEP column.

9. Preparation of Micro-packed TCEP Column

9.1 Wash a straight 560 mm length of 1.6-mm outside diameter (0.38-mm inside diameter) stainless steel tubing with methanol and dry with compressed nitrogen.

9.2 Insert 6 to 12 strands of silvered wire a small mesh screen or stainless steel frit inside one end of the tube. Slowly add 0.14 to 0.15 g of packing material to the column and gently vibrate to settle the packing inside the column. When strands of wire are used to retain packing material inside the column, leave 6.0 mm (0.25 in.) of space at the top of the column.

9.3 Column Conditioning—Both the TCEP and WCOT columns are to be briefly conditioned before use. Connect the columns to the valve (see 11.1) in the chromatographic oven. Adjust the carrier gas flows as in 11.3 and place the valve in the RESET position. After several miniutes, increase the column oven temperature to 120 °C and maintain these conditions for 5 to 10 min. Cool the columns below 60 °C before shutting off the carrier flow.

10. Sampling

10.1 Gasoline samples to be analyzed by this test method shall be sampled using procedures outlined in Practice D 4057.

11. Preparation of Apparatus and Establishment of Conditions

11.1 Assembly—Connect the WCOT column to the valve system using low volume connectors and narrow bore tubing. It is important to minimize the volume of the chromatographic system that comes in contact with the sample, otherwise peak broadening will occur.

11.2 Adjust the operating conditions to those listed in Table 1, but do not turn on the detector circuits. Check the system for leaks before proceeding further.

11.3 Flow Rate Adjustment:

11.3.1 Attach a flow measuring device to the column vent with the valve in the RESET position and the pressure to the injection port to give 5.0 mL/min flow (14 psig). Soap bubble flow meters are suitable.

11.3.2 Attach a flow measuring device to the split injector vent and adjust the flow from the split vent using the A flow controller to give a flow of 70 mL/min. Recheck the column vent flow set in 11.3.1 and adjust if necessary.

11.3.3 Switch the valve to the BACKFLUSH position and adjust the variable restrictor to give the same column vent flow set in 11.3.1 This is necessary to minimize flow changes when the valve is switched.

11.3.4 Switch the valve to the inject position RESET and adjust the B flow controller to give a flow of 3.0 to 3.2 mL/min at the detector exit. When required for the particular instrumentation used, add makeup flow or TCD switching flow to give a total of 21 mL/min at the detector exit.

11.4 When a thermal conductivity detector is used, turn on the filament current and allow the detector to equilibrate. When a flame ionization detector is used, set the hydrogen and air flows and ignite the flame.

11.5 Determine the Time to Blackflush—The time to backflush will vary slightly for each column system and must be determined experimentally as follows. The start time of the integrator and valve timer must be synchronized with the injection to accurately reproduce the backflush time.

11.5.1 Initially assume a valve BACKFLUSH time of 0.23 min. With the valve RESET, inject 3uL of a blend containing at least 0.5% or greater oxygenates (7.3), and simultaneously begin timing the analysis. At 0.23 min, rotate the valve to the BACKFLUSH position and leave it there until the complete elution of benzene is realized. Note this time as the RESET time, which is the time at which the valve is returned to the RESET position. When all of the remaining hydrocarbons are backflushed the signal will return to a stable baseline and the system is ready for another analysis.

11.5.2 It is necessary to optimize the valve BACKFLUSH time by analyzing a standard blend containing oxygenates. The correct BACKFLUSH time is detrmined experimentally by using valve switching times between 0.2 and 0.3 min. When the valve is switched too soon, C_5 and lighter hydrocarbons are backflushed and are co-eluted in the C_4 alcohol section of the chromatogram. When the valve BACKFLUSH is switched too late, part of or all of the MTBE component is vented resulting in an incorrect MTBE measurement.

12.Calibration and Standardization

12.1 Identification—Determine the retention time of each component by injecting small amounts either separately or in known mixtures or by comparing the relative retention times with those in Table 2.

12.2 Standardization—The area under each peak in the chromatogram is considered a quantitative measure of the corresponding compound. Measure the peak area of each oxygenate and of the internal standard by either manual method or electronic integrator. Calculate the relative volume response factor of each oxygenate, relative to the internal standard, according to Test Method D 4626.

13. Procedure

13.1 Preparation of Sample—Precisely add a quantity of the internal standard to an accurately measured quantity of sample. concentrations of 1 to 5 volume % have been used successfully.

13.2 Chromatographic Analysis—Introduce a representative aliquot of the sample, containing internal standard, into the chromatograph using the same technique as used for the calibration analyses. An injection volume of 3 uL with a 15:1 split ratio has been used successfully.

13.3 Interpretation of Chromatogram—Compare the results of sample analyses to those of calibration analyses to determine identification of oygenates present.

TABLE 2—RETENTION CHARACTERISTICS FOR TCEP/WCOT COLUMN SET CONDITIONS AS IN TABLE 1

Component	Retention time, min	Relative [1]
Methanol	3.21	0.44
Ethanol	3.58	.50
Isopropanol	3.95	.56
tert-Butanol	4.31	.61
n-Propanol	4.75	.68
MTBE	5.29	.76
sec-Butanol	5.63	.82
Isobutanol	6.33	.93
n-Butanol	7.55	1.10
Benzene	7.88	1.17

[1] Relative retention time (t-Amyl Alcohol = 1.00).

14. Calculation

14.1 After identifying the various oxygenates, measure the area of each oxygenate peak and that of the internal standard. Calculate the volume percent of oxygenate as follows:

$$V_i = \frac{V_s X P A_T X 100}{P A_s X S_T X V_o}$$

where:

V_i = volume percent of oxygenate to be determined,

V_S = volume of internal standard (tert-amyl alcohol) added,
V_G = volume of gasoline sample taken,
PA_I = peak area of the oxygenate to be determined,
PA_S = peak area of the internal standard (tert-amyl alcohol), and
S_I = relative volume response factor of each component (relative to the internal standard).

14.2 Report the volume percent of each oxygenate.

15. Precision and Bias

15.1 Precision—The precision of this test method as determined by the statistical examination of the interlaboratory test results is as follows:

15.1.1 Repeatability—The difference between successive results obtained by the same operator with the same apparatus under constant operating conditions on identical test material would, in the long run, in the normal and correct operation of the test method exceed the following values only in one case in twenty (see Table 3).

Methanol $0.086 \times (V+0.070)$.
Ethanol $0.083 \times (V+0.000)$.
Isopropanol $0.052 \times (V+0.150)$.
n-Propanol $0.040 \times (V+0.026)$.
Isobutanol $0.064 \times (V+0.086)$
sec-Butanol $0.014 \times \sqrt{V}$
tert-Butanol $0.052 \times (V 0.388)$
n-Butanol $0.043 \times (V + 0.020)$
MTBE $0.104 \times (V + 0.028)$

where V is the mean volume percent.

TABLE 3—PRECISION INTERVALS—DETERMINED FROM COOPERATIVE STUDY DATA SUMMARIZED IN SECTION 15

Components	Volume (percent)							
	0.20	0.50	1.00	2.00	3.00	4.00	5.00	6.00
Repeatability								
Methanol	0.02	0.05	0.09	0.18	0.26	0.35	0.44	0.52
Ethanol	0.02	0.04	0.08	0.17	0.25	0.33	0.42	0.50
Isopropanol	0.02	0.03	0.06	0.11	0.16	0.22	0.27	0.32
n-Propanol	0.01	0.02	0.04	0.08	0.12	0.16	0.20	0.24
tert-Butanol	0.03	0.05	0.07	0.12	0.18	0.23	0.28	0.33
sec-Butanol	0.01	0.01	0.01	0.02	0.02	0.03	0.03	0.03
Isobutanol	0.02	0.04	0.07	0.13	0.20	0.26	0.33	0.39
n-Butanol	0.01	0.02	0.04	0.09	0.13	0.17	0.22	0.26
MTBE	0.02	0.05	0.11	0.21	0.31	0.42	0.52	0.63
Reproducibility								
Methanol	0.10	.021	0.39	0.75	1.11	1.47	1.83	2.19
Ethanol	0.07	0.19	0.37	0.75	1.12	1.49	1.87	2.24
Isopropanol	0.07	0.14	0.25	0.46	0.67	0.89	1.10	1.32
n-Propanol	0.04	0.09	0.17	0.33	0.49	0.68	0.82	0.98
tert-Butanol	0.10	0.16	0.25	0.43	0.60	0.78	0.96	1.14
sec-Butanol	0.12	0.20	0.28	0.39	0.48	0.55	0.62	0.68
Isobutanol	0.05	0.10	0.19	0.37	0.55	0.73	0.91	1.09
n-Butanol	0.09	0.22	0.42	0.84	1.25	1.67	2.08	2.50
MTBE	0.05	0.12	0.23	0.45	0.68	0.90	1.13	1.35

15.1.2 Reproducibility—The difference between two single and independent results obtained by different operators working in different laboratories on identical material would in the long run, exceed the following values only in one case in twenty (see Table 3).

Methanol $0.361 \times (V+0.070)$.
Ethanol $0.373 \times (V+0.000)$.
Isopropanol $0.214 \times (V+0.150)$.
n-Propanol $0.163 \times (V+0.026)$.
Isobutanol $0.179 \times (V+0.086)$
sec-Butanol $0.277 \times \sqrt{V}$
tert-Butanol $0.178 \times (V+0.388)$
n-Butanol $0.145 \times (V+0.020)$
MTBE $0.244 \times (V+0.028)$

where V is the mean volume percent.

15.2 Bias—Since there is no accepted reference material suitable for determining bias for the procedure in this test method, bias cannot be determined.

For additional information please see ASTM Designation D 4815—88.

§ 52.137 Controls and prohibitions on gasoline volatility and liability for violations.

(a) *Definitions.* For the purpose of this section:

(1) *Carrier* means any distributor who transport or stores or causes the transportation or stores or storage of gasoline without taking title to or otherwise having any ownership of the gasoline, and without altering either the quality of quantity of the gasoline.

(2) *Distributor* means any person who transport or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

(3) *Ethanol blending plant* means any refinery at which gasoline is produced solely through the addition of ethanol to gasoline, and at which the quality and quantity of gasoline is not altered in any other manner.

(4) *Ethanol blender* means any person who owns, leases, controls, or supervises an ethanol blending plant.

(5) *Maricopa County nonattainment area* means the carbon monoxide nonattainment area in Maricopa County as described in 40 CFR 81.303 (i.e., the MAG urban planning area).

(6) *Refiner* means any person who owns, leases, operates, controls, or supervises a refinery.

(7) *Retailer* means any person who owns, leases, operates, controls, or supervises a retail outlet.

(8) *Reseller* means any person who purchases gasoline identified by the corporate, trade, or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumer displaying the refiner's brand, and whose assets or facilities are not substantially owned, leased, or controlled by such refiner.

(9) *Wholesale purchaser-consumer* means any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

(b) *Prohibited Activities.* During regulatory control periods no refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall sell, offer for sale, supply, offer for supply, or transport gasoline whose Reid vapor pressure exceeds the applicable standard within Maricopa nonattainment area. As used in this section "applicable standard"

means the standard listed in this paragraph for the time period in which gasoline is intended to be dispensed to motor vehicles or, if such time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is sampled. As used in this section, "regulatory control periods" mean the following period: October 1, 1991 to March 31, 1992 and each October 1 to March 31 period thereafter.

APPLICABLE STANDARDS

State	Oct.	Nov.	Dec.	Jan.	Feb.	March
Arizona—Maricopa CO, Nonattainment area	10.0	10.0	10.0	10.0	10.0	10.0

(c) *Determination of Compliance.* Compliance with the standards listed in paragraph (b) of this section shall be determined by use of one of the sampling methodologies specified in Appendix D to 40 CFR part 80 and one of the testing methodologies specified in Appendix E to 40 CFR part 80.

(d) *Liability.* Liability for violations of paragraph (b) of this section shall be determined according to the provisions of paragraphs (e) through (k) of this section.

(e) *Special provisions for alcohol blends.* (1) Any gasoline which meets the requirements of paragraph (e)(2) of this section and which is marketed in accordance with the requirements of paragraph (e)(3) of this section shall not be in violation of this section if its Reid vapor pressure does not exceed the applicable standard in paragraph (a) of this section by more than one pound per square inch.

(2) In order to qualify for the special regulatory treatment specified in paragraph (e)(1) of this section, gasoline must contain at least 9 percent ethanol (by volume). The ethanol content of gasoline shall be determined by use of one of the testing methodologies specified in Appendix F to 40 CFR part 80. The maximum ethanol content of gasoline shall not exceed any applicable waiver conditions under section 211(f)(4) of the Clean Air Act.

(3) In order to qualify for the special regulatory treatment specified in paragraph (e)(1) of this section, gasoline must be marketed in accordance with each of the following requirements:

(i) Each gasoline pump stand from which such gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility shall be affixed with a legible and conspicuous label which states that the gasoline dispensed from the pump contains ethanol and the percentage concentration of ethanol.

(ii) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies the shipment of such gasoline shall contain a legible and conspicuous statement that gasoline being shipped contains ethanol. Such documents shall be retained by distributors, resellers, carriers, retailers, and wholesale purchaser-consumers for at least one year, and shall be available for inspection by the Administrator or his authorized representative during such period.

(f) *Violations at Refineries or Importer Facilities.* Where a violation of the applicable standard set forth in paragraph (b) of this section is detected at a refinery that is not an ethanol blending plant or at an importer's facility, the refiner or importer shall be deemed in violation.

(g) *Violations at Carrier Facilities.* Where a violation of the applicable standard set forth in paragraph (b) of this section is detected at a carrier's facility, whether in a transport vehicle, in a storage facility, or elsewhere at the facility, the following parties shall be deemed in violation:

(1) The carrier, except as provided in paragraph (l)(1) of this section; and

(2) The refiner (if he is not an ethanol blender) at whose refinery the gasoline was produced or the importer at whose facility the gasoline was imported, except as provided in paragraph (l)2) of this section; and

(3) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (l)(6) of this section.

(h) *Violations at branded Distributor or Reseller Facilities, or Ethanol Blending Plants.* Where a violation of the applicable standard set forth in paragraph (l)(6) is detected at a distributor facility, a reseller facility, or an ethanol blending plant which is operating under the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor or reseller, except as provided in paragraph (l)(3) of this section; and

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard; and

(3) The refiner under whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) the distributor, reseller, or ethanol blender is operating, except as provided in paragraph (l)(4) of this section; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in (k)(6) of this section.

(i) *Violations at Unbranded Distributor Facilities or Ethanol Blending Plants.* Where a violation of the applicable standard set forth in paragraph (l)(6) is detected at a distributor facility or an ethanol blending plant not operating under a refiner's corporate, trade, or brand name, or that of any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor, except as provided in paragraph (l)(3) of this section;

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard;

(3) The refiner (if he is not an ethanol blender) at whose refinery the gasoline was produced or the importer at whose import facility the gasoline was imported, except as provided in paragraph (l)(2) of this section; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (l)(6) of this section.

(j) *Violations at Branded Retail Outlets or Wholesale Purchaser-Consumer Facilities.* Where a violation of the applicable standard set forth in paragraph (l)(6) is detected at a retail outlet or at a wholesale purchaser-consumer facility displaying the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (l)(5) of this secion;

(2) The distributor (if any) and/or reseller (if any) except as provided in paragraph (l)(3) of this section;

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard;

(4) The refiner whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) is displayed at the retail outlet or wholesale purchaser-consumer facility, except as provided in paragraph (l)(4) of this section; and

(5) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (l)(6) of this section.

(k) *Violations at Unbranded Retail Outlets or Wholesale Purchaser-Consumer Facilities.* Where a violation of the applicable standard set forth in paragraph (l)(6) of this section is detected at a retail outlet or at a wholesale purchaser-consumer facility not displaying the corporate, trade, or brand name of a refinery or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (l)(5) of this section;

(2) The distributor (if any), except as provided in paragraph (l)(3) of this section; of this section;

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in the paragraph (l)(6) of this section.

(l) *Defenses.* (1) In any case in which a carrier would be in violation under paragraph (g)(1) of this section, the carrier shall not be deemed in violation if he can demonstrate:

(i) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner or importer at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or the carrier, reseller, or distributor from whom the gasoline was received, which represented to the carrier that that gasoline was in compliance with the applicable standard when delivered to the carrier; and

(ii) Evidence of an oversight program conducted by the carrier, such as periodic sampling and testing of incoming gasoline, for monitoring the volatility of product stored or transported by that carrier; and

(iii) That the violation was not caused by the carrier or his employee or agent.

(2) In any case in which a refiner or importer would be in violation under paragraphs (g)(2) or (i)(3) of this section, the refiner or importer shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendices D and E to 40 CFR Part 80, which evidence that gasoline determined to be in violation was in compliance with the applicable standard when it was delivered to the next party in the distribution system.

(3) In any case in which a distributor or reseller would be in violation under paragraphs (h)(1), (i)(1), (j)(2), or (k)(2), of this section, the distributor or reseller shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or a carrier, reseller or distributor from whom the gasoline was received, which represented to the distributor or reseller that the gasoline was in compliance with the applicable standard when delivered to the distributor or reseller; and

(iii) Evidence of an oversight program conducted by the distributor or reseller, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the distributor or reseller sells, supplies offers for sale or supply, or transports.

(4) In any case in which a refiner would be in violation under paragraphs (h)(3) or (j)(4) of this section, the refiner shall not be deemed in violation if he can demonstrate all of the following:

(i) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendices D and E to 40 CFR 80 at the refinery at which the gasoline was produced, which evidence that the gasoline determined to be in violation was in compliance with the applicable standard when transported from the refinery; and

(ii) That the violation was not caused by him or his employee or agent; and

(iii) That the violation:

(A) Was caused by an act in violation of law (other than the Act or this part), or an act of sabotage or vandalism, whether or not such acts are violations of law in the jurisdiction where the violation of the requirements of this part occurred, or

(B) Was caused by the action of a reseller, an ethanol blender, or a retailer supplied by such reseller or ethanol blender, in violation of a contractual undertaking imposed by the refiner on such reseller or ethanol blender designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(C) Was caused by the action of a retailer who is supplied directly by the refiner (and not by a reseller), in violation of a contractual undertaking imposed by the refiner on such retailer designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(D) Was caused by the action of a distributor or an ethanol blender subject to a contract with the refiner for transportation of gasoline from a terminal to a distributor, ethanol blender, retailer or wholesale purchaser-consumer, in violation of a contractual undertaking imposed by the refiner on such distributor or ethanol blender designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(E) Was caused by a carrier or other distributor not subject to a contract with the refiner but engaged by him for transportation of gasoline from a terminal to a distributor, ethanol blender, retailer or wholesale purchaser-consumer, despite reasonable efforts by the refiner (such as specification or inspection of equipment) to prevent such action, or

(F) Occurred at a wholesale purchaser-consumer facility: Provided, however, that if such wholesale purchaser-consumer was supplied by a reseller or ethanol blender, the refiner must demonstrate that the violation could not have been prevented by such reseller's compliance with a contractual undertaking imposed by the refiner on such reseller as provided in paragraph (l)(4)(iii)(B) of this section.

(iv) In paragraphs (l)(4)(iii) (A) through (E) of this section, the term "was caused" means that the refiner must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(5) In any case in which a retailer or wholesale purchaser-consumer would be in violation under paragraph (j)(1) or (k)(1) of this section, the retailer or wholesale purchaser-consumer shall not be deemed in violation if he can demonstrate that the violation was not caused by him or his employee or agent.

(6) In any case in which an ethanol blender would be in violation under paragraphs (g)(3), (h)(4), (i)(4), (j)(5) or (k)(4) of this section, the ethanol blender shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or the carrier, reseller, or distributor from whom the gasoline was received, which represented to the ethanol blender that the volatility of the gasoline when delivered to the ethanol blender was such that the addition of ethanol to the gasoline would not result in an exceedance of the applicable standard; and

(iii) Evidence of an oversight program conducted by the ethanol blender, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the ethanol blender sells, supplies, offers for sale or supply, or transports; and

(iv) That the gasoline determined to be in violation contained no more than 10 percent ethanol (by volume) when it was delivered to the next party in the distribution system. (7) In paragraphs (l)(1)(iii), (l)(2)(i), (l)(3)(i), (l)(4)(ii), (l)(5), and (l)(6)(i) of this section the respective party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that it or its employee or agent did not cause the violation.

§ 52.138 Conformity Procedures.

(a) *Purpose.* The purpose of this regulation is to provide procedures as part of the Arizona implementation plans for metropolitan transportation planning organizations (MPOs) to use when determining conformity of transportation plans, programs, and projects. Section 176(c) of the Clean Air Act (as amended in 1977) (42 U.S.C. 7506(c)) prohibits MPOs from approving any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 110.

(b) *Definitions.* (1) *Applicable implementation plan* or *applicable plan* means the plan, or most recent revision of this plan, which has been approved by the Administrator under section 110(a) of the Clean Air Act, 42 U.S.C. 7410(a), or promulgated by the Administrator under section 110(c) of the CAA.

(2) *Carbon monoxide national ambient air quality standard (CO NAAQS)* means the standards for carbon monoxide promulgated by the Administrator under section 109, 42 U.S.C. 7409, of the Clean Air Act and found in 40 CFR 50.8.

(3) *Cause* means resulting in an exceedance of the CO NAAQS in an area which previously did not have ambient CO concentrations above the CO NAAQS.

(4) *Contribute* means resulting in measurably higher average 8-hour ambient CO concentrations over the NAAQS or an increased number of hours with ambient concentrations over the NAAQS in an area which currently experiences CO levels above the standard.

(5) *Metropolitan planning organization (MPO)* means the organization designated under 23 U.S.C. section 134 and 23 CFR part 450.106. For the specific purposes of this regulation, MPO menas either the Maricopa Association of Governments or the Pima Association of Governments.

(6) *Nonattainment area* means for the specific purpose of this regulation either the Pima County carbon monoxide nonattainment area as described in 40 CFR 81.303 or the Maricopa County carbon monoxide nonattainment area as described in 40 CFR 81.303 (i.e., the MAG urban planning area).

(7) *Transportation control measure (TCM)* means any measure in an applicable implementation plan which is intended to reduce emissions from transportation sources.

(8) *Transportation improvement program (TIP)* means the staged multiyear program of transportation improvements including an annual (or biennial) element which is required in 23 CFR part 450.

(c) *Applicability.* These procedures shall apply only to the Maricopa Association of Governments in its role as the designated metropolitan planning organization for Maricopa County, Arizona, and the Pima Association of Governments in its role as the designated metropolitan planning organization for Pima County, Arizona.

(d) *Procedures*—(1) *Transportation Plans and Transportation Improvement Programs*—(i) *Documentation.* The MPO shall prepare for each transportation plan and program (except for the unified planning work program), as part of the plan or program, a report documenting for each plan and program the following information: (A) the disaggregated population projections used in—

(*1*) The applicable plan, and

(*2*) Preparing the transportation plan/program;

(B) the levels of vehicle trips, vehicle miles traveled, and congestion that were—

(*1*) Assumed in the applicable plan, and

(*2*) Expected to result from the implementation of the plan/program over the period covered by the applicable plan considering any growth likely to result from the implementation of the plan/program;

(C) For each major transportation control measure in the applicable implementation plan—

(*1*) The TCM's implementation schedule and expected effectiveness in reducing CO emissions,

(*2*) The TCM's current implementation status and, if feasible, its current effectiveness in reducing CO emissions, and

(*3*) Actions in the plan/program which may beneficially or adversely affect the implementation and/or effectiveness of the TCM;

(D) The Co emission levels resulting from the implementation of the plan/program over the period covered by the applicable plan considering any growth likely to result from the implementation of the plan/program; and

(E) The ambient carbon monoxide concentration levels, micro-scale and regional, resulting from the implementation of the plan/program over the period covered by the applicable plan considering any growth likely to result from the implementation of the plan or program.

(ii) *Findings.* Prior to approving a transportation plan/program, the MPO shall determine if the plan/program conforms to the applicable implementation plan. In making this determination, the MPO shall make and support the following findings for each transportation plan and program using the information documented in section (d)(1)(i) of this section:

(A) That implementation of the transportation plan/program will provide for the implementation of TCMs in the applicable plan on the schedule set forth in the applicable plan;

(B) That CO emission levels, microscale and regional, resulting from the implementation of the plan/program will not delay attainment or achievement of any interim emission reductions needed for attainment, and/or interfere with maintenance of the CO NAAQS throughout the nonattainment area during the period covered by the applicable plan; and

(C) That implementation of the plan/program would not cause or contribute to a violation of the CO NAAQS anywhere within the nonattainment area during the period covered by the applicable plan.

(2) *Amendments to a Transportation Plan or Transportation Implementation Program.* Prior to approving any amendment to a transportation plan or TIP, the MPO shall first determine that the amendment does not substantially change the information provided under paragraph (d)(1) of this section and does not change the findings in paragraph (d)(2) of this section with respect to the original plan or TIP.

(3) *Transportation Projects.* As part of any individual transportation project approval made by the MPO, the MPO shall determine whether the project conforms to the applicable implementation plan using the following procedure:

(i) For projects from a TIP that has been found to conform under procedures in paragraph (d)(1) of this section within the last two years, the MPO shall document as part of the approval document:

(A) the TIP project number;

(B) whether the project is an exempt project as defined in paragraph (e) of this section; and

(C) whether the design and scope of the project has changed from the design and scope of the project as described in the conforming TIP—

(*1*) If the design and scope of the project has not changed, the MPO may find the project conforming; or the design and scope of the project could not be determined from the TIP, the MPO shall use the procedures in paragraph (d)(3)(ii) of this section to determine if the project conforms to the applicable implementation plan.

(ii) For projects not exempted under paragraph (e) of this section and not in a TIP that has been found to conform under procedures in paragraph (d)(1) of this section within the last two years:

(A) *Documentation.* The MPO shall document as part of the approval document for each such project:

(*1*) The disaggregated population projections, to the extent it is used in—

(*i*) The applicable plan, and

(*ii*) Designing and scoping the project;

(*2*) The levels of vehicle trips, vehicle miles traveled, and congestion that were—

(*i*) Assumed in the applicable plan, and

(*ii*) Expected to result over the period covered by the applicable plan from the construction of the project considering any growth likely to result from the project;

(*3*) For each transportation control measure in the applicable plan likely to be affected by the project:

(*i*) Its implementation schedule and expected emission reduction effectiveness from the applicable plan,

(*ii*) Its current implementation status and, if feasible, its current effectiveness, and

(*iii*) Any actions as part of the project which may beneficially or adversely affect the implementation and/or effectiveness of the TCM;

(*4*) CO emission levels which will result from the project over the period covered by the applicable plan considering any growth likely to result from the project; and

(*5*) Ambient CO concentration levels which will result from the project over the period covered by the applicable plan considering any growth likely to result from the project.

(B) *Findings.* Prior to approving any transportation project, the MPO shall determine if the project conforms to the applicable implementation plan. In making this determination, the MPO shall make and support the following findings for each project using the information documented in paragraph (d)(2)(ii)(A) of this section:

(*1*) That the project will provide for the implementation of TCMs affected by the project on the schedule set forth in the applicable plan;

(*2*) That CO emission levels, microscale and regional, resulting from the implementation of the project during the period covered by the applicable plan will not delay attainment or any required interim emission reductions and/or interfere with maintenance of the CO NAAQS through the nonattainment area; and

(*3*) That the project will not cause or contribute to a violation of the CO NAAQS during the period covered by the applicable plan near the project.

(e) *Exempt Projects.* An individual project is exempt from the requirements of paragraph (d) of this section if it is:

(1) Located completely outside the nonattainment area;

(2) A local- or state-funded project for which no federal funding or approval is necessary;

(3) A safety project which is included in the statewide safety improvement program, will not alter the functional traffic capacity or capability of the facility being improved, and does not adversely affect the TCMs in the applicable plan;

(4) A transportation control measure from the approved applicable plan; or

(5) A mass transit project funded under the Urban Mass Transportation Act, 49 U.S.C.

[FR Doc. 90–22984 Filed 9–9–90; 8:45 am]

BILLING CODE 6560–50–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 752 and Appendices C and D

[AIDAR Case 90–1]

Physical Fitness and Medical Privileges

AGENCY: Agency for International Development, IDCA.

ACTION: Proposed rule.

SUMMARY: The Agency for International Development (AID) proposed to amend the AID Acquisition Regulation (AIDAR) to reflect current Department of State requirements regarding physical fitness of and medical services available to Contractor employees, U.S. Personal Service Contractors, and their dependents. This will require full medical examination and completion of a comprehensive standardized form prior to departure for post.

DATES: Comments must be received by November 26, 1990, in order to be considered in formulation of the final rule.

ADDRESSES: Comments should be addressed to the Agency for International Development, Washington, DC 20523–1435, Attention: MS/PPE, room 1600I, SA–14. Please cite AIDAR Case 90–1 in all correspondence related to this proposed rule.

FOR FURTHER INFORMATION CONTACT: MS/PPE, Mrs. Elizabeth Cordaro, (703) 875–1535.

SUPPLEMENTARY INFORMATION: The AIDAR currently requires that all Contractor employees, U.S. Personal Service Contractors, and their authorized dependents who will be assigned overseas shall have obtained a physician's certification that the employee or dependent is fit to work and/or live in the country in question prior to assuming an overseas assignment. Despite this certification, individuals have arrived at post with medical conditions for which treatment is inadequate or nonexistent. Harsh living conditions in many AID posts aggravate less severe medical problems which are easily treated in more developed countries. When medical crises occur, the health unit may be unable to provide effective treatment and the individual may have to be medically evaucated at considerable risk, expense, and effort by Government personnel. Arranging for replacements for employees may take months and

delay project implementation, possible straining relations with host government officials.

In an effort to prevent medically at-risk individuals from arriving at post with the expectation of receiving medical care from the embassy health unit, several posts have instituted their own clearance procedures. However, the individual is already at post when the decision is made, and the Mission and the health unit face the problem of not being able to provide the level of medical services required or expected. Some posts have tried to prevent this problem by requesting the State Department Office of Medical Services' (M/MED) cooperation in reviewing the individual's examination form before the individual arrives at post. M/MED had agreed to do so for these posts, but they expect that more posts will request this service. Because of the volume of reviews for just these few posts (approximately 750 examinations have been filed with M/MED over the past 30 months, M/MED has informed us that they can no longer provide this service without a consistent Agency policy, which will require Contractors and dependents to obtain a medical examination and provide information on a comprehensive standardized form which would be submitted to M/MED for review and determination of access to State Department health units. AID solicits comments on this proposed procedure.

We do not believe this proposed rule will have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act; nor do we consider this to be a major rule as defined in Executive Order 12291.

The medical examination form which will be used under the proposed rule constitutes an information collection. It has been submitted to an approved by OMB, and has been assigned Control Number 0412–0536, with an expiration date of 5/31/91. A copy of the form may be obtained upon request from the address specified above. It would be appreciated if the request was accompanied by a stamped, self-addressed envelope.

List of subjects in 48 CFR part 752 and Appendices C and D

Government procurement.

Therefore it is proposed that 48 CFR Chapter 7 be amended as follows:

1. The authority citations in part 752 and Appendices C and D continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 453.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

2. Section 752.7027 is revised as follows:

752.7027 Personnel.

For use in all AID contracts involving performance overseas. Note that paragraphs (f) and (g) of this clause are for use only in cost reimbursement contracts.

Personnel (_____ 1990)

(a) *Clearance*—(1) *Individuals Engaged or Assigned Within the United States.* The Contractor will obtain written notification from the Contracting Officer of Cooperating Country clearance of any employee sent outside the United States to perform duties under this contract.

(2) *Individuals Engaged or Assigned When Outside the United States.* No individual shall be engaged or assigned when outside the United States to perform work outside the United States under this contract unless authorized in the schedule or otherwise approved by the Contracting Officer or Mission Director. However, when services are performed in the Cooperating Country on a casual or irregular basis or in an emergency, exception to this provision can be made in accordance with instructions or regulations established by the Mission Director.

(b) *Physical fitness of employees and dependents.* See the clause of this contract entitled Physical Fitness.

(c) *Conformity to laws and regulations of Cooperating Country.* Contractor agrees to use its best efforts to assure that its employees and their dependents, while in the Cooperating Country, abide by all applicable laws and regulations of the Cooperating Country and political subdivisions thereof.

(d) *Importation or sale of personal property or automobiles.* To the extent permitted by Cooperating Country laws, the importation and sale of personal property or automobiles by Contractor employees and their dependents in the Cooperating Country shall be subject to the same limitations and prohibitions which apply to U.S. nationals employed by the Mission. This provision does not apply to employees or consultants who are citizens or legal residents of the Cooperating Country.

(e) *Economic and Financial Activities.* Other than work to be performed under this contract for which an employee or consultant is assigned by the Contractor, no such employee or consultant of the Contractor shall engage, directly or indirectly, either in his/her own name or in the name or through the agency of another person, in any business, profession or occupation in the Cooperating Country or other foreign countries to which he/she is assigned, nor shall he make loans or investments to or in any business, profession or occupation in the Cooperating Country or other foreign countries in which he/she is assigned. This provision does not apply to employees or consultants who are citizens or legal residents of the Cooperating Country.

[The following paragraphs (f) and (g) are applicable only to cost reimbursement contracts.]

(f) *Duration of Appointments.* (1) Regular employees will normally be appointed for a minimum of 2 years which period includes orientation (less language training) in the United States and authorized international travel under the contract except:

(i) An appointment may be made for less than 2 years if the contract has less than 2 years but more than 1 year to run provided that if the contract is extended the appointment shall also be extended to the full 2 years. This provision shall be reflected in the employment agreement prior to employment under this contract.

(ii) When a 2-year appointment is not required, appointment may be made for less than 2 years but in no event less than 1 year.

(iii) When the normal tour of duty established for AID personnel at a particular post is less than 2 years, then a normal appointment under this contract may be of the same duration.

(iv) When the Contractor is unable to make appointments of regular employees for a full 2 years, the Contractor may make appointments of less than 2 but not less than 1 year, provided that such appointment is approved by the Contracting Officer.

(2) Services required for less than 1 year will be considered short-term appointments and the employee will be considered a short-term employee.

(g) *Employment of Dependents.* If any person who is employed for services in the Cooperating Country under this contract is either (1) a dependent of an employee of the U.S. Government working in the Cooperating Country, or (2) a dependent of a Contractor employee working under a contract with the U.S. Government in the Cooperating Country, such person shall continue to hold the status of a dependent. He or she shall be entitled to salary for the time services are actually performed in the Cooperating Country, and differential and allowances as established by the Standardized Regulations (Government Civilians, Foreign Areas).

(End of Clause)

3. Section 752.7029, Post Privileges, is amended by revising the clause heading and paragraph (a) of the clause to read as follows:

752.7029 Post privileges.

* * * * *

Post Privileges (_____ 1990)

(a) Health room services may be available, subject to post policy and review of medical examination results by the State Department Office of Medical Services in accordance with the clause of this contract entitled "Physical Fitness", to U.S. citizen Contractors and their authorized dependents (regardless

of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services normally include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

* * * * *

4. A new section 752.7033 is added to read as follows:

752.7033 Physical fitness.

For use in all AID contracts involving performance overseas.

Physical fitness (_____ 1990)

(The requirements of this provision do not apply to employees hired in the Cooperating Country or to authorized dependents who were already in the Cooperating Country when their sponsoring employee was hired.)

(a) *Assignments of less than 60 days in the Cooperating Country.* The Contractor shall require employees being assigned to the Cooperating Country for less than 60 days to be examined by a licensed doctor of medicine. The Contractor shall require the doctor to certify that, in the doctor's opinion, the employee is physically qualified to engage in the type of activity for which he/she is employed and the employee is physically able to reside in the country to which he/she is assigned. Under a cost reimbursement contract, if the Contractor has no such medical certificate on file prior to the departure for the Cooperating Country of any employee and such employee is unable to perform the type of activity for which he is employed or cannot complete his/her tour of duty because of any physical disability (other than physical disability arising from an accident while employed under this contract), the Contractor shall be responsible for returning the disabled employee to his/her point of hire and providing a replacement at no additional cost to the Government. In addition, in the case of a cost reimbursement contract, the Contractor shall not be entitled to reimbursement for any additional costs attrributable to delays or other circumstances caused by the employee's inability to complete his/her tour of duty.

(b) *Assignments of 60 days or more in the Cooperating Country.* (1) The Contracting Officer shall provide the Contractor with a reproducible copy of the "A.I.D. Contractor Employee Physical Examination Form." The Contractor shall reproduce the form as required, and provide a copy to each employee and authorized dependent proposed for assignments of 60 days or more in the Cooperating Country. The Contractor shall have the employee and all authorized dependents obtain a physical examination from a licensed physician, who will complete the form for each individual and mail it to the address on page three of the form. All envelopes must be marked "A.I.D. Contractor Employee Examination Form—Privileged Medical Information." After reviewing the form, the State Department Office of Medical Services (M/MED) will advise the Contractor as to whether or not the embassy health unit is adequate to provide routine care to the individual, depending on his or her medical condition. The Contractor is responsible for providing the M/MED decision to the health unit in question. No travel to post may be initiated until the health unit has received the M/MED decision and the Contracting Officer authorizes such travel in writing.

(2) (The following information is provided for two purposes: to assist fixed price offerors to develop their price proposal, and to provide cost reimbursement Contractors with guidance in determining reasonable and allowable costs.) As a contribution to the cost of medical examinations, AID shall reimburse the Contractor for the physical examinations authorized in paragraph (a) of this clause in an amount not to exceed $100 for the physical examination, plus reimbursement of charges for immunizations to the extent not covered by the Contractor's health insurance policy. For physical examinations authorized in paragraph (b)(1) of this clause the AID contribution to the cost of the examination shall be as follows:

(i) For the employee and authorized dependents 12 years of age and over, one-half of the cost of each examination up to a maximum AID share of $300 per individual, plus reimbursement of charges for immunizations to the extent not covered by the Contractor's health insurance policy.

(ii) For authorized dependents under 12 years of age, one-half of the cost of each examination up to a maximum AID share of $120 per individual, plus reimbursement of charges for immunizations to the extent not covered by the Contractor's health insurance policy.

(iii) The Contractor must obtain the prior written approval of the Contracting Officer to receive any AID contributions higher than these limits.

(End of Clause)

Appendices to Chapter 7

5. Appendix C is amended by revising paragraph 2.(c) and by removing paragraph 4. *Additional Instructions for Medical Support* in its entirety to read as follows:

Appendix C—Logistic Support Overseas to AID-Direct Contractors

* * * * *

2. Policy

* * * * *

(c) *Medical facilities.* Medical facilities may be made available in accordance with post policy, subject to compliance with the clause of the contract entitled "Physical Fitness".

* * * * *

Appendix D—Direct AID Contracts With A U.S. Citizen Or A U.S. Resident Alien For Personal Services Abroad

6. Paragraph 4(c)(2)(vi) of Appendix D is revised to read as follows:

4. Policy

* * * * *

(c) * * *

(2) * * *

(vi) Health room services may be provided in accordance with the clause of this contract entitled "Physical Fitness and Health Room Privileges."

* * * * *

7. Paragraph 7(j)(3) of Appendix D is revised to read as follows:

7. Executing a Personal Services Contract

* * * * *

(j) * * *

(3) Medical examinations and certifications as required by the contract general provision entitled "Physical Fitness and Health Room Privileges".

* * * * *

8. In Appendix D, Section 11, 3. Physical Fitness (Dec. 1985) is revised to read as follows:

Section 11. General Provisions

* * * * *

3. Physical Fitness and Health Room Privileges (_____ 1990)

(a) *Physical Fitness.*

(1) For assignments of less than sixty (60) days in the Cooperating Country, the Contractor shall be required to be examined by a licensed doctor of medicine, and the Contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the Contractor is physically able to engage in the type of activity for which he/she is to be employed under the contract and is physically able to reside in the Cooperating Country. A copy of the certificate shall be provided to the Contracting Officer prior to the Contractor's departure for the Cooperating Country, or if this contract is entered into in the Cooperating Country, the Contractor shall provide the certificate before he/she starts work under the contract.

(2) For contract periods of sixty (60) days or more, prior to departure for such assignment, the Contracting Officer shall provide to the Contractor for himself/herself plus any authorized dependents the form entitled "A.I.D. Contractor Employee Physical Examination Form". The Contractor shall obtain a physical examination from a licensed physician, who will complete the form and mail it to the address on page three of the form. All envelopes must be marked "A.I.D. Contractor Employee Examination Form—Privileged Medical Information". After reviewing the form, the State Department Office of Medical Services (M/MED) will advise the Contractor as to whether the embassy health unit is adequate to provide routine care to the individual, depending on his or her medical condition. The Contractor is responsible for providing the M/MED decision to the health unit in question. No travel to post may be initiated until the health unit has received the M/MED decision and the Contracting Officer authorizes such travel in writing.

(b) *Reimbursement.* (1) As a contribution to the cost of medical examinations required by paragraph (a)(1) of this clause, AID shall reimburse the Contractor not to exceed $100 for the physical examination, plus reimbursement of charges for immunizations.

(2) As a contribution to the cost of medical examinations required by paragraph (a)(2) of this clause the Contractor shall be

reimbursed in an amount not to exceed half of the cost of the examination up to a maximum AID share of $300, plus reimbursement of charges for immunizations for himself/herself and each authorized dependent 12 years of age and over. For dependents under 12 years of age the AID contribution shall not exceed half of the cost of the examination up to a maximum AID share of $120 per individual, plus reimbursement of charges for immunizations. The Contractor must obtain the prior written approval of the Contracting Officer to receive any AID contributions higher than these limits.

(c) *Health Room Privileges.* Health room services may be available, subject to post policy and review of medical examination results by M/MED in accordance with paragraph (a) of this clause, to U.S. citizen Contractors and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services normally include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

(End of Clause)

Dated: August 7, 1990.

John F. Owens,

Procurement Executive.

[FR Doc. 90-23796 Filed 10-9-90; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 90-24; Notice 1]

RIN 2127-AD31

Insurer Reporting Requirements:

List of Insurers Required to File Reports in October 1990

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires insurers to file annual reports with this agency, unless NHTSA exempts an insurer from filing such reports. This law also specifies that NHTSA can exempt only those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State, or for which NHTSA determines that: (1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and (2) the insurer's report will not significantly contribute to carrying out the purposes of Title VI. To carry out the reporting requirements, NHTSA has exempted all those insurance companies that are statutorily eligible to be exempted and published a listing of those insurance companies that are required to file annual reports. Appendix A includes a list of issuers of motor vehicle policies subject to the reporting requirements in each state in which they do business. Appendix B includes a list of issuers of motor vehicle insurance policies subject to the reporting requirements only in designated states. Appendix C includes a list of motor vehicle rental and leasing companies (including licensees and franchisees) subject to the reporting requirements of part 544.

However, an insurance company's eligibility for exemption from the reporting requirements may vary annually, as its national and State-by-State market shares change, or the size of its motor vehicle fleet changes. To address this situation, NHTSA has stated that it will publish annual updates of the list of insurance companies that are required to file annual reports. If these listings are adopted as a final rule, those insurance companies included on any list would be required to file reports for the 1989 calendar year not later than October 25, 1990. Any insurance company not on any of the final lists would *not* be required to file a report for the 1989 calendar year.

DATES: Comments on this notice must be received by this agency not later than October 22, 1990. This comment period takes into account both the need for the affected parties to have a meaningful opportunity to comment on the proposal and the need to make the rule final by October 25, 1990. The agency believes the comment period provided is sufficient since most of the companies that are proposed to be required to report have already filed reports in previous years.

The final rule on this subject will be effective upon publication in the **Federal Register**. The agency will accept petitions for reconsideration up to thirty days after publicaiton of the final rule in the **Federal Register**.

ADDRESSES: Comments on this notice should refer to Docket No. 90-24; Notice 1, and be submitted to: Docket Section, NHTSA, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Gray's telephone number is (202) 366-4808.

SUPPLEMENTARY INFORMATION: Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act; 15 U.S.C. 2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The term "insurer" is defined very broadly for the purposes of section 612, consisting of two broad groups of entities. The first broad group is included within the term "insurer" by virtue of section 2(12) of the Act (15 U.S.C. 1901(12)). That section provides that every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer, regardless of the size of the business. The second of these broad groups is included in the definition of "insurer" by virtue of section 612(a)(3). That section specifies that for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by insurers of passenger motor vehicles.

Exemptions From Reporting

Two provisions in section 612 authorizes the agency to exempt certain insurers from these reporting requirements.

1. Insurers of Passenger Motor Vehicles

The first exemption provision is set forth at section 612(a)(5). Section 612(a)(5) provides that the agency shall exempt small insurers from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled, either nationally or on a state-by-state basis. The term "small insurer" is defined in section 612(a)(5)(C) as one whose premiums account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also provides that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA has used the data voluntarily supplied by insurance companies to A.M. Best to determine the insurers' market shares nationally and in each State. The A.M.

Best data were chosen because they are both accurate and timely, and its use imposes no additional burdens on any party.

After examining the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemptions from these reporting requirements. This determination was based on the fact that the reports from only those insurance companies that were statutorily required to file reports would provide the agency with representative data, both nationally and on a State-by-State basis, and that the data in the insurer reports provided by the insurance companies that were ineligible for an exemption would be sufficient for NHTSA to carry out its activities and responsibilities under Title VI of the Act.

Accordingly, the agency included an appendix A and appendix B in the final rule for insurer reports published January 2, 1987 (52 FR 59). The most recent listing, for insurers required to file reports in October 1989, appeared as a final rule in the Federal Register of November 2, 1989 (54 FR 46252). In the January 2, 1987 final rule, NHTSA stated, "The agency will update these appendices annually, shortly after A.M. Best published its revised listings, to reflect changes in premium shares for the insurance companies." (52 FR 62). This rulemaking action implements that pledge. The agency would like to emphasize that this rulemaking does not affect its prior determination that those insurance companies that are statutorily eligible to be exempted from these reporting requirements should, in fact, be exempted therefrom. Instead, this rulemaking simply uses more current data to determine which insurance companies are eligible for such exemptions.

2. Self-Insured Rental and Leasing Companies

Section 612(a)(4) is the second provision in section 612 that allows NHTSA to exempt insurers from reporting requirements. NHTSA has used this authority to reduce the number of companies that are subject to the reporting requirements because each has a fleet of more than 20 vehicles that is used primarily for rental and lease and that is not covered by theft insurance policies issued by an insurer. For convenience, these companies will be referred to as "rental and leasing companies."

Section 612(a)(4) authorizes NHTSA to exempt any insurer from reporting requirements if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of title VI.

In the final rule published on June 22, 1990 (55 FR 25606), NHTSA announced that the agency had been able to gather the necessary data in order to make the two statutory determinations required in section 612(a)(4). NHTSA learned that information on the size of the fleets of rental and leasing companies and the market share for these companies are voluntarily supplied to, and tabulated by two national publications; *Automotive Fleet Magazine* (for both rental and leasing companies) and *Travel Trade Business Travel News* (for rental companies only). The agency's use of the information in these publications to make the statutory determinations required in section 612(a)(4) is discussed in detail in the final rule of June 22, 1990.

To summarize, in the final rule, NHTSA had determined that the costs of preparing and filing theft reports are excessive for rental and leasing companies with fewer than 50,000 vehicles in their fleet, and that reports from such companies would not significantly contribute to carrying out the purposes of title VI of the Cost Savings Act. The 50,000 vehicle threshold is applied, in the case of a franchisor, to the total number of vehicles in the fleets of all of the franchisor's franchisees and in the case of a licensor, to the total number of vehicles in the fleets of all of the licensor's licensees. Based on those determinations, NHTSA decided to exempt all rental and leasing companies with fewer than 50,000 vehicles in their fleet (as reported by *Automotive Fleet Magazine* and *Travel Trade Business Travel News*) from insurer reporting requirements. As a result of the final rule, a new appendix C, which consists of an annually updated listing of the rental and leasing companies that are subject to the reporting requirements in part 544, was added. As in the case with new additions to appendices A and B, a rental and leasing company that was not formerly subject to these reporting requirements and whose name is added to appendix C by virtue of its fleet being reported as 50,000 or more vehicles would have to file a theft report in the year following the year in which its name was added to the appendix. For example, if a rental and leasing company's name is added to appendix C in November 1989, the company would have to file a report for calendar year 1989 in October 1990. Any rental and leasing company not listed in appendix C will not be required to file a theft report under part 544.

Part 544 limits the information that rental and leasing companies must provide in their theft reports, for the reasons explained in the final rule implementing part 544 (52 FR 59, at 75; January 2, 1987).

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

Based on the 1988 calendar year A.M. Best data for market shares, it is proposed that appendix A, which lists companies which must report based on the fact that each insurer had at least one percent of the national market for motor vehicle insurance premiums, be changed slightly from the November 2, 1989, filing listing. Two companies, Continental Group and Fireman's Fund Group, that were included in appendix A in the November 1989 listing, are proposed to be deleted from appendix A, and one company, Hanover Insurance Companies, that was not previously listed in appendix A, is proposed to be added. It is proposed that each of the 19 companies listed in appendix A in this notice be required to file a report not later than October 25, 1990, setting forth the information required by part 544 for each State in which it did business in the 1989 calendar year.

Appendix B lists those insurers that would be required to report for particular States for 1989, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1988 calendar year A.M. Best data for market shares, it is proposed that all eight of the insurance groups listed in the November 1989 final listing for appendix B again be required to report on their activities in those States in which they had a 10 percent or greater market share. Two additional insurance groups are proposed to be added to appendix B. The Indiana Farm Bureau Group would be required to report on its activities in the State of Indiana and Erie Insurance Group would be required to report on its activities in the State of Pennsylvania. Accordingly, it is proposed that, for calendar year 1989, each of these ten groups report on their activities in every State in which they had a 10 percent or greater market share, pursuant to section 612 of the Cost Savings Act. These reports must be filed no later than October 25, 1990, and set forth the information required by part 544.

2. Rental and Leasing Companies

The list of self-insured rental and leasing companies proposed to be included in Appendix C was derived, in all but one case, from the information in *Automotive Fleet Magazine* and *Travel Trade Business Travel News* for the most recent year for which such data are available. That year is 1988.

The single exception is U-Haul International, which did not report any data to either of those publications for 1988. In the final rule of June 22, 1990, the agency included U-Haul on the list of rental and leasing companies required to report. Its inclusion was based largely on a letter dated March 27, 1987, in which U-Haul had informed the agency that it operates "a fleet in excess of 65,000 motor vehicles." In the absence of information from either of the industry publications or from U-Haul itself showing that U-Haul's combined fleet has fallen below the 50,000 threshold, NHTSA will continue to include it in the list of companies which must submit reports. Continued inclusion of U-Haul seems particularly appropriate in light of its statement in a March 17, 1989 letter to the agency that it has a rental fleet in excess of 65,000 trucks, of which approximately 59,000 are heavy trucks and 6,000 are light trucks. U-Haul further indicated that all of the rental trucks are Class 6 or smaller, i.e., none are rated at higher than 18,000 lbs. gross vehicle weight rating.

Based on the above, since the final rule published on June 22, 1990, it is proposed that appendix C be changed slightly. In the 1989 listing, the company that was called Enterprise Leasing Co., with subsidiaries Enterprise Fleets, Inc. and Rent A Car Co., is called Enterprise Rent-A-Car in the 1990 listing. The company called Peterson, Howell & Heather, Inc. in the 1989 listing is now called PHH Fleet America in the 1990 listing. The company called Security Pacific Credit Corporation is now called Security Pacific Auto Finance in the 1990 listing. All these changes are due to name changes by each company. Based on the 1988 calendar year data from *Automotive Fleet Magazine* and *Travel Trade Business Travel News*, two new companies are proposed to be included in appendix C, GE Capital Auto Lease, Inc., and Rental Concepts, Inc.

Accordingly, it is proposed that for calendar year 1989, each of these 23 rental and leasing companies (including franchisees and licensees) file reports no later than October 25, 1990, and set forth the information required by part 544.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted as a final rule, this listing would ensure that all insurance companies that are statutority eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Those companies that are not statutorily eligible for an exemption would be expressly required to file reports.

NHTSA does not believe that this proposed rulemaking to reflect more current data from A.M. Best, *Automotive Fleet Magazine*, and *Travel Trade Business Travel News* would affect the impacts described in the final regulatory evaluation prepared for part 544. Accordingly, a separate regulatory evaluation has not been prepared for this proposal. Using the cost estimates in the final regulatory evaluation for part 544, the agency estimates that it would cost the two companies that would be added to appendix B about $20,000 each to file a report, and th two companies that would be added to appendix C about $5,770 each to file a report. This would be counterbalanced by the fact that one less company would be required to report in appendix A, resulting in a savings of $50,000. Thus, the net total impact of these changes is estimated to be a cost increase of about $1,540 for insurance companies as a group. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order.

As noted above, a full regulatory evaluation was prepared for the final rule establishing part 544. Interested persons may wish to examine that evaluation in connection with this proposal. Copies of that evaluation have been placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

The agency has also considered the effects of this proposed rulemaking under the Regulatory Flexibility Act. I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. In formulating the reporting requirements, the agency attempted to exempt as many businesses as possible from the reporting requirements, and has exempted all small businesses from reporting. NHTSA believes that any insurance company that does not qualify as a "small insurer" within the meaning of section 612 of the Act would also not qualify as a small entity within the meaning of the Regulatory Flexibility Act.

The Final Regulatory Flexibility Analysis for the final rule (55 FR 25609) that exempted most rental and leasing companies from reporting noted that the U.S. Small Business Administration considered as small business those rental and leasing companies that grossed less that $12.5 million a year. Because the 50,000 vehicle fleet cutoff point for reporting is attained by only approximately two dozen companies, all the companies proposed to be included in appendix C exceed the $12.5 million small business size standard. Furthermore, this proposed action simply applies more current information to determine which insurance companies are statutorily eligible to be exempted from these reporting requirements. It does not in any way change the criteria by which companies are selected for inclusion on the Appendices.

In accordance with the National Environmental Policy Act, the agency has considered the environmenal impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 of "Federalism," and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies of the comments be submitted. If applicable, it is requested that 2 copies of films, tapes, and other similar materials be provided.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business

information, should be sumbitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after than date. To the extent possible, comments fill after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed that 49 CFR part 544 be amended as follows:

1. The authority citation for part 544 would continue to read as follows:

Authority: 15 U.S.c. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to part 544 would be revised to read as follows:

Appendix A—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CIGNA Group
CNA Insurance Companies
Crum & Forster Companies
Farmers Insurance Group
Geico Corporation Group
Hanover Insurance Companies
Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
State Farm Group
Travelers Insurance Group
United States F & G Group
USAA Group

3. Appendix B to part 544 would be revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Island Insurance Group (Hawaii)
Indiana Farm Bureau Group (Indiana)
Kentucky Farm Bureau Group (Kentucky)
Commercial Union Insurance Companies (Maine)
Auto Club of Michigan Group (Michigan)
Southern Farm Bureau Casualty Group (Mississippi)
Erie Insurance Group (Pennsylvania)
Amica Mutual Insurance Company (Rhode Island)
Concord Group Insurance Companies (Vermont)

4. Appendix C to part 544 would be revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
American International Rent-A-Car Corp./ANSA
Automotive Rentals, Inc. (subsidiary of ARI, Inc.)
Avis Car Leasing-USA (subsidiary of Avis, Inc.)
Avis Rent-A-Car System, Inc. (subsidiary of Avis, Inc.)
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Enterprise Rent-A-Car
GE Capital Auto Lease, Inc.
GE Capital Fleet Services
Hertz Penske Truck Leasing, Inc. (subsidiary of Hertz Corporation)
Hertz Rent-A-Car (subsidiary of Hertz Corporation)
Lease Plan USA
Lend Lease Cars
McCullagh Leasing
National Car Rental System, Inc.
PHH Fleet America
Rental Concepts, Inc.
Ryder Truck Rental (both rental and leasing operations)
Security Pacific Auto Finance
U-Haul International, Inc. (subsidiary of AMERCO)
United States Fleet Leasing, Inc.
Wheels, Inc.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-23836 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Extension of Public Comment Period on Proposed Threatened Status under "Similarity of Appearance" Provisions for Panthers (Felis concolor) in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule: Notice of extension of public comment period.

SUMMARY: The dates originally given in the Service's proposed rule to designate threatened status under "similarity of appearance" provisions for panthers (*Felis concolor*) in Florida are extended for 21 days. The purpose of this action is to allow additional time for the publication of legal notices as required by the Endangered Species Act (Act) of 1973, as amended.

DATES: The date for submitting comments on the proposed rule was originally set to close on October 26, 1990. The date is now extended to close on November 16, 1990. Requests for a public hearing must be submitted by November 1, 1990.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone 904/791-2580; or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1990, the Service published in the **Federal Register** (55 FR 34943) a proposal to list all panthers (also known as mountain lions, pumas, cougars, etc.) of the species *Felis concolor* in Florida as threatened by similarity of appearance to the endangered Florida panther (*Felis concolor coryi*). The proposed action

would protect Florida panthers from illegal take. It is difficult to distinguish Florida panthers from unprotected subspecies of *Felis concolor*, many of which are held in captivity in Florida. There is risk that Florida panthers will be killed under the assumption they are escapees of other subspecies. If the regulation becomes final, the take provisions of the Act will apply to all free-living *Felis concolor* in Florida.

Section 4(b)(5)(D) of the Act requires that a summary of proposed listing regulations be published in a newspaper of general circulation in the area in which the species occurs. Since this was not done promptly after publicaiton of the proposal, the dates for public hearing requests and comments are being extended to allow adequate time for any public response to publication of the required legal notices.

Author

The primary author of this notice is Thomas Turnipseed, U.S. Fish and Wildlife Service, 75 Spring street, SW., Atlanta, Georgia 30303.

Authority

The authority for this notice is the Endangered Species Act (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Dated: September 28, 1990.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 90–23794 Filed 10–9–90; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status for the Plant Astragalus bibullatus (Guthrie's ground-plum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for Guthrie's ground-plum. This rare plant is presently known from only three sites in Tennessee. All sites are threatened by habitat alteration; residential, commercial, or industrial development; and livestock grazing. This proposal, if made final, would extend the protection of the Endangered Species Act of 1973 (Act), as amended, to Guthrie's ground-plum. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by December 10, 1990. Public hearing requests must be received by November 26, 1990.

ADDRESSES: Comments, materials, and requests for a public hearing concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259–0321 or FTS 672–0321.

SUPPLEMENTARY INFORMATION:

Background

Astragalus bibullatus Barneby and Bridges (Guthrie's ground-plum) is a perennial member of the pea family (Fabaceae) that is presently known to exist only in Rutherford County in Tennessee's Central Basin. The plant has short stems (5 to 15 centimeters, 2 to 6 inches) that arise from a tap root. Each stem supports 5 to 10 leaves. The leaves are 5 to 10 cm (2 to 4 inches) long and are composed of about 24 small leaflets. The inflorescence is a raceme supporting 10 to 16 purple flowers. The plants flower in April and May. During flowering, the peduncle supporting the inflorescence arches upward. After flowering and as the fruits mature, this peduncle gradually arches downward. The fruits are fleshy pods that usually mature in May and June. At maturity the pods are colored red above and yellow below. *Astragalus bibullatus* superficially resembles the widespread *A. tennesseensis*. However, *A. tennesseensis* can be readily distinguished by its yellow rather than purple flowers, its yellow-brown rather than reddish topped fruits, and the copious number of hairs found on the plant (Somers and Gunn 1990).

Specimens that would now be assigned to *A. bibullatus* were apparently first collected in about 1861 by the early Tennessee botanist, Augustin Gattinger. For over 100 years this material was assigned to *A. crassicarpus*, which is a related but morphologically and geographically distinct species. The Rutherford County, Tennessee, type locality for the species was rediscovered in 1980, by Milo J. Guthrie of the Tennessee Department of Conservation (Department). Botanists familiar with the genus *Astragalus* determined that the plants found by Guthrie represented a new species. Barneby and Bridges described *Astragalus bibullatus* in 1987 using material collected from Guthrie's 1980 site by Jerry and Carol Baskin (University of Kentucky at Lexington) and others (Barneby and Bridges 1987).

Guthrie's ground-plum is endemic to the cedar glades of middle Tennessee. All sites are associated with thin bedded, fossiliferous Lebanon limestone outcroppings that support the unique cedar glade communities found in Tennessee's central basin. The species only grows along the deeper soiled glade margins or in areas within the glades that are partially shaded. Soil depths vary between 5 and 20 cm (2 to 8 inches) at the known sites. Cedar glades are typically wet in winter and spring, and dry and very hot in summer and fall (Somers and Gunn 1990, Quarterman 1986).

A description of the species' status at each of the three known sites is provided below. This information is extracted in part from Somers and Gunn (1990).

Population 1

Population 1 consists of two colonies. The first colony was discovered by Guthrie and was referred to as the type locality in the above discussion. In 1988 this colony contained 171 plants on a 1.5-acre glade. The site is in private ownership and is not formally protected. The second colony occurs along one edge of a privately owned residential lot located about 0.25 mile from the first colony. In 1990 the site supported about 50 plants. Twenty-five of these occurred within a 100 square foot area, while the remaining plants were scattered along a road that crosses the site.

In addition to the two colonies described above, there is a group of about 100 plants on a glade located approximately 1 mile northwest of colony 1. The owner of this site is a wildflower enthusiast and is believed to have established this colony with seeds collected from the nearby natural population (Somers, *in litt.*, 1990).

Population 2

This population is located about 12 miles from population 1. The site is privately owned and appears to support a declining population of Guthrie's ground-plum. In 1984 several dozen plants were observed by biologists from the Department. In 1988 only five plants were observed during a visit to the site by Guthrie. The years between 1985 and 1988 were very dry in central Tennessee, and this may account for the observed decline in population 2. It is not known

if the return of normal rainfall in 1989 and 1990 has resulted in a reversal of the decline observed in the previous years.

Population 3

Population is located about 3 miles from population 1. It was discovered in the spring of 1990 by the Department. Subsequent visits to the site by the Department's botanists revealed the presence of two colonies in this population. Colony 1 contains about 40 plants while Colony 2 contains about 200 plants. The 240 plants in population 3 make it the largest known for *A. bibullatus*. Additionally, Somers (*in litt.*, 1990) describes the glades at this site as pristine.

Extirpated Populations

There are believed to be two extirpated populations of Guthrie's ground-plum. The first was in Rutherford County and is represented by material collected near the La Vergne railroad station in 1901 by Augustin Gattinger. The landscape in this area has been radically changed since 1901, and it is unlikely that the species still survives at this location.

Another population is believed to have been extirpated from Davidson County, Tennessee. Vegetative material that was collected in 1948 from a site just north of the Rutherford/Davidson County line by botanists from the University of Tennessee at Knoxville has been identified by Barneby as *A. bibullatus*. The site from which the plant was collected is now under the waters of Percy Priest Reservoir. An examination of the glades adjacent to this part of the reservoir revealed that they were badly abused by vehicle travel. *A. bibullatus* was not found in this area, and it is unlikely that the species still exists in Davidson County.

Federal government actions on this species began in 1987 with issuance of a contract to the Department for a status survey. The Department conducted the survey during the 1987, 1988, and 1989 field seasons. During this survey they visited over 300 cedar glades and cedar glade remnants. Based upon the preliminary results of the Department's survey, *A. bibullatus* was added as a category 2 species to the Service's Notice of Review for Native Plants when it was revised in February 1990 (55 FR 6184).

Category 2 species are those for which the Service has information which indicates that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the preparation of rules. This was the case with *A. bibullatus* in February 1990. Information on current threats, biological vulnerability, distribution, and status was provided by the Department's final report on the status of Guthrie's ground-plum. This report was received and accepted by the Service in the spring of 1990.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus bibullatus* Barneby and Bridges (Guthrie's ground-plum) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The three known naturally occurring populations of *Asragalus bibullatus* are within a short distance of the rapidly growing middle Tennessee city of Murfreesboro. Residential, commercial, and industrial development associated with this growth threaten to destroy or adversely modify the remaining habitat for the species. All of the known *A. bibullatus* locations are threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants, such as cedar, that produce shade and compete for limited water and nutrients. Active management to reduce or eliminate this encroachment is required to ensure tht the species continues to survive at all sites. The species is vulnerable to livestock grazing, and this factor is a threat to all populations. Direct destruction of habitat for commercial, residential, or industrial development; intensive right-of-way maintenance activities; and off-road-vehicle traffic are the most significant threats to the species at this time (Somers and Gunn 1990).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is little or no commercial trade in *Astragalus bibullatus* at this time. All populations are very small and cannot support collection of plants for scientific or other purposes. Inappropriate collecting for scientific purposes or as a novelty is a potential threat to the species.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms. Astragulus bibullatus* is listed as an endangered plant in Tennessee under that State's Rare Plant Protection and Conservation Act of 1985. This protects the species from taking without the permission of the landowner or land manager. Should the species be added to the Federal list of endangered and threatened species, additional protection from taking will be provided by the Act when the taking is in violation of any State law, including State trespass laws. Protection from inappropriate commercial trade would also be provided.

E. *Other natural or manmade factors affecting its continued existence.* The only other additional factor that threatens *Astragalus bibullatus* is the extended drought condition that the species faced through the fall of 1988. This extremely dry weather may be responsible for the decline observed in population 2 and may have adversely affected the other populations. These conditions probably caused higher than normal mortality of mature plants and seedlings and could, if they had continued to the present time, have an adverse effect on the survival of *A. bibullatus*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Astragalus bibullatus* as an endangered species. The species is known to occur in only three small, geographically limited populations that are threatened by factors which could render the plant extinct throughout all or a significant portion of it range. The appropriate classification for such species is endangered, as defined in section 3(6) of the Act. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. All populations of this species are small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from its known locations. Taking without permits, is prohibited by the Act from locations under Federal

jurisdiction; however, none of the known populations are under Federal jurisdiction. Therefore, publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Astragalus bibullatus* have been made aware of the plant's location and of the importance of protecting the plant and its habitat. No additional benefits would result from a determination of critical habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Astragalus bibullatus*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All of the known populations of *Astragalus bibullatus* are on privately owned land. The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or resolution, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits woud ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22201 (703/358–2104).

In some instances, permits may be issued for a specified time to relieve undue economic hardship. However, since *Astragalus bibullatus* is not in commercial trade, no such permits are anticipated.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Astragalus bibullatus*;

(2) The location of any additional populations of *Astragalus bibullatus* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Astragalus bibullatus*.

Final promulgation of the regulation on *Astragalus bibullatus* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Barneby, R.C., and E.L. Bridges. 1987. A new species of *Astragalus* (Fabaceae) from Tennessee's Central Basin. Brittonia 39(3):358–363.

Quarterman, Elsie. 1986. Biota, Ecology, and Ecological History of Cedar Glades: Introduction. ASB Bulletin 33(4):124–127.

Somers, Paul, and Scott C. Gunn. 1990. Status Report *Astragalus bibullatus* Barneby and Bridges. Unpublished report to the Southeast Region, U.S. Fish and Wildlife Service. 33 pp.

Author

The primary author of this proposed rule is Mr. Robert R. Currie, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–154; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Fabaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
*	*	*	*	*	*	*
Astragalus bibullatus	Guthrie's ground-plum	U.S.A. (TN)	E		NA	NA
*	*	*	*	*	*	*

Dated: September 14, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 23833 Filed 10–9–90; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status for Lepanthes eltorensis and Cranichis ricartii, Two Endemic Puerto Rican Orchids

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Lepanthes eltorensis* and *Cranichis ricartii* to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Both *Lepanthes eltorensis* and *Cranichis ricartii* are orchids endemic to mountain forests in Puerto Rico. *Lepanthes eltorensis* is a small epiphytic orchid which grows on trunks at upper elevations in the Luquillo Mountains of eastern Puerto Rico. Only two populations, approximately 140 individuals, are known today from the palo colorado and dwarf forests of these mountains. *Cranichis ricartii*, a terrestrial orchid, has been found at only three locations in the Maricao Forest of western Puerto Rico. Both species are threatened by forest management practices, hurricane damage, and collection. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Lepanthes eltorensis* and *Cranichis ricartii*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 10, 1990. Public hearing requests must be received by November 26, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Thomas Turnipseed at the Atlanta Regional Office address (404/331–3583 or FTS 841–3583).

SUPPLEMENTARY INFORMATION:

Background

Lepanthes eltorensis was described by William Stimson in 1969 (Stimson 1969) in his study of the genus *Lepanthes* in Puerto Rico. All species belonging to this genus had previously been considered to be conspecific with *L. selenitepala* until it was recognized that the variability observed in the field indicated the presence of several species. *L. eltorensis* was named for the El Toro Trail in the Luquillo Mountains, the only location from which this species was known (Vivaldi et al. 1981). The orchid has been reported from three locations, the palm forest to the east of El Toro, and the palo colorado and dwarf forests to the west and south of this same peak. Collectors apparently eliminated the palm forest population between 1969 and 1975.

Lepanthes eltorensis is a small, epiphytic orchid found growing on moss-covered trunks of upper elevation forests in the Luquillo Mountains. The orchid is approximately 4 centimeters tall, with numerous, slender, 3 to 7 sheathed stems terminated by a single leaf. Leaves are 9 to 24 millimeters long and 4 to 9 millimeters wide, entire, chartaceous, and obovate to oblanceolate. The inflorescence is a long peduncled flat raceme, about ⅓ as long as the leaves, and usually appressed to the back of these leaves. The sepals are narrowly deltoid to deltoid-lanceolate, ciliate, and acute at the apices. The dorsal sepal is 3.2 to 3.8 millimeters long and 1.2 to 2.0 millimeters wide, 3-nerved, and slightly adnate to the 2-nerved lateral sepals, which are about 3 millimeters long and 1.0 to 1.6 millimeters wide. The petals are transversely 2-lobed, 1 nerved, and reddish. The posterior lobes are somewhat longer than the anterior, the lip is 3-lobed, and the lateral lobes linear-ovate and about 1 millimeter long and .25 millimeters wide. *Lepanthes eltorensis* is distinguished from other members of the genus by its obovate to oblanceolate leaves, the ciliate sepals, and the length of the inflorescence (Vivaldi et al. 1981).

In the Luquillo Mountains *Lepanthes eltorensis* has been reported from the sierra palm, palo colorado, and dwarf forest associations, all at elevations greater than 850 meters. It has been reported from several species of trees, all supporting abundant mosses and liversworts. Relative humidity in these forests ranges from 90 to 100 percent and cloud cover is continuous during evening hours and the majority of the day. Annual precipitation ranges from 313 to 450 centimeters in the mountains. Igneous rocks cover the majority of the area.

Although this is an inconspicuous orchid, collectors apparently devastated the original population known from the

sierra palm forest (Vivaldi et al. 1981). All known populations are found within the Caribbean National Forest (managed by the U.S. Forest Service) where collecting is not permitted, but these inaccessible areas are difficult to monitor. All known individuals occur along the El Toro Trail and a small trail to the south, and may be impacted by forest management practices, including trail maintenance and shelter construction. Hurricane Hugo (1989) recently devastated this National Forest, and although the storm apparently did not affect any of the known host trees, it did create numerous gaps along the El Toro Trail, felling huge trees. The extreme rarity of this orchid makes the species extremely vulnerable to the loss of any one individual.

Cranichis ricartii, a small terrestrial orchid, was first discovered by Ruben Padrón and Dr. Juan Ricart in 1979 in the Maricao Commonwealth Forest of the western mountains of Puerto Rico. In this Forest it is found growing in humus of moist serpentine scrub forests of montane ridges at elevations above 680 meters. Found growing with *Cranichis tenuis*, this new species was described in 1989 (Ackerman 1989). In the Maricao Forest is has been reported from three locations, but it has not been observed at all of these sites every year. A total of approximately 30 individual plants have been observed (R. Padrón, personal communication). Selective cutting and the establishment of plantations in the Maricao Commonwealth Forest continue to be proposed as a management alternative.

Plants of *Cranichis ricartii* may reach 27 centimeters in height. The roots are few, fleshy, cylindric and villous. The several leaves are basal, erect, and about 2 to 3 centimeters long. The green, spreading blades are ovate to broadly elliptic, and 21 to 35 millimeters long and 14 to 20 millimeters wide. Infloresences are terminal, scapose, spicate, and pubescent. The raceme is many flowered and may reach up to 10 centimeters in length. Flowers are small, erect, non-resupinate, and green. The dorsal sepal is elliptic, obtuse, and about 1.8 millimeters long and 1.0 millimeter wide. The lateral sepals are broadly ovate, obtuse, adpressed to the lip, and about 1.9 millimeters long and 1.1 millimeters wide. The petals are filiform-oblanceolate, 1.9 millimeters long 0.2 millimeters wide, reflexed and addressed along the margins of the dorsal sepal but becoming somewhat free with age. The lip is green with a white margin, simple, short-clawed, pinched near the base, fleshy, essentially glabrous, and 2.0 to 2.5 millimeters long. The column is short, stout, and conspicuously winged. The fruit is an ellipsoid capsule, 5 to 7 millimeters long (Ackerman 1989).

Lepanthes eltorensis was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53680) of the 1980 notice; and the revised notices of September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184). The species was designated Category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the four notices. *Cranchis ricartii* was recommended for listing by Dr. James Ackerman, University of Puerto Rico, during a September 1988 meeting concerning the revision of candidate plant species list in Puerto Rico and the U.S. Virgin Islands.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently made petition findings in each October from 1983 to 1989 that listing *Lepanthes eltorensis* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final 1-year finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lepanthes eltorensis* Stimson and *Cranchis ricartii* Ackerman are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Although *Lepanthes eltorensis* and *Cranichis ricartii* are both found in protected areas, the Caribbean National Forest and the Maricao Commonwealth Forest, forest management practices such as the establishment and maintenance of plantations, selective cutting, trail maintenance, and shelter construction may affect these orchids. The extreme rarity of both these species makes the loss of any one individual even more critical.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Both these orchids are small and easily overlooked; however, taking has been documented for *Lepanthes eltorensis*. Although plant collecting is prohibited in the Caribbean National Forest, as it is in the Maricao Commonwealth Forest, Vivaldi et al. (1981) reported that collectors had apparently eliminated the population which was known in the palm forest. Scars were evident in more than 50 palms.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Lepanthes eltorensis* and *Cranichis ricartii* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, it would enhance their protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* Probably the most important factor affecting *Lepanthes eltorensis* and *Cranichis ricartii* in Puerto Rico is their limited distribution. Only two populations of *Lepanthes* and three of *Cranichis* are currently known to exist. *Cranichis* flowers in the fall, and preliminary studies indicate that seed set was only 32 percent, suggesting that the pollination mechanism may be inefficient. Hurricane Hugo recently devastated the Caribbean National Forest, creating microclimatic conditions unfavorable for *Lepanthes eltorensis* by causing numerous canopy gaps in the areas of the known populations. Because so few individuals are known to occur, the risk of extinction is extremely high.

The Service has carefully assessed the best scientific and commercial information available regarding the past present, and future threats faced by these species in determining to propose

this rule. Based on this evaluation, the preferred action is to list *Lepanthes eltorensis* and *Cranichis ricartii* as endangered. Only two populations are known for *Lepanthes* and three for *Cranichis*. Collecting is known to have severely impacted one population of *Lepanthes*. Habitat modification, altering microclimatic conditions, may dramatically affect both these species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatend. The Service finds that designation of critical habitat is not prudent for these species at this time. The number of individuals of *Lepanthes eltorensis* and *Cranichis ricartii* are sufficiently small that vandalism and collection could seriously affect the survival of these species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitats. Protection of these species' habitats will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Lepanthes eltorensis* and *Cranichis ricartii*, as discussed above. Federal involvement relates to activities to be conducted by the U.S. Forest Service in the Caribbean National Forest.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Lepanthes eltorensis* and *Cranichis ricartii* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22201 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lepanthes eltorensis* and *Cranichis ricartii*;

(2) The location of any additional populations of *Lepanthes eltorensis* and *Cranichis ricartii*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on *Lepanthes eltorensis* and *Cranichis ricartii*.

Final promulgation of the regulation of *Lepanthes eltorensis* and *Cranichis ricartii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ackerman, James D. 1989. *Prescotia* and *Cranichis* of Puerto Rico and the Virgin Islands. Lindleyana (1):42–47

Ayensu, E.S., and R.A. Defilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund. Washington, DC. xv + 403 pp.

Stimson, W. 1969. A revision of the Puerto Rican species of *Lepanthes* (Orchidaceae). Brittonia 21: 332–345.

Vivaldi, J.L., R.O. Woodbury, and H. Diaz-Soltero. 1981. Status report on *Lepanthes eltorensis* Stimson. Submitted to U.S. Fish and Wildlife Service, Atlanta, Georgia. 31 pp.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

Part 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Orchidaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	special rules
Scientific name	Common name					
Orchidaceae—Orchid Family:						
*	*	*	*	*		
Cranichis ricartii	None	U.S.A. (PR)	E		NA	NA
*	*	*	*	*		
Lepanthes eltorensis	None	U.S.A. (PR)	E		NA	NA
*	*	*	*	*	*	*

Dated: September 14, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–23834 Filed 10–9–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 196
Wednesday, October 10, 1990

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

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development

Agribusiness Promotion Council; Meeting

Notice is hereby given that the USDA Agribusiness Promotion Council, advisory committee to the Secretary of Agriculture on matters pertaining to the Caribbean Basin, will meet from 8:30 a.m. to 5 p.m. on Monday, October 29, 1990. The meeting will be held in room. 104–A Administration Building, U.S. Department of Agriculture. The agenda for the meeting includes: Report on previous activities, discussion of issues of concern to the entire Council, and recommendations on the future direction of the program and specific projects. The meeting is open to the public. The public may participate as time and space permit.

Comments may be submitted to Dr. Duane Acker, Administrator, Office of International Cooperation and Development, until November 15, 1990. Further information may be obtained by calling Avram E. Guroff, Assistant to the Administrator, Office of International Cooperation and Development, (202–653–7710).

Done at Washington, DC, this 3rd day of October 1990.

Duane Acker,

Administrator.

[FR Doc. 90–23894 Filed 10–9–90; 8:45 am]

BILLING CODE 3410–DP–M

Animal and Plant Health Inspection Service

[Docket No. 90–154]

U.S. Veterinary Biological Product and Establishment Licenses, and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenses and veterinary biological product permits by the Animal and Plant Health Inspection Service during the month of June 1990. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Enviromental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8674.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to the regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the month of June 1990:

Product license code	Date issued	Product	Establishment	Establishment license No.
1185.20	06–13–90	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$-Respiratory Syncytial Virus Vaccine, Killed Virus.	Boehringer Ingelheim Animal Health, Inc	124
1431.50	06–25–90	Coccidiosis Vaccine, Live Oocysts	Vetech Laboratories of Buffalo, Inc	374
1431.56	06–25–90	Coccidiosis Vaccine, Live Oocysts	Vetech Laboratories of Buffalo, Inc	374
1541.01	06–27–90	Erysipelothrix Rhusiopathiae Vaccine, Avirulent Live Culture.	Bio-Vac Laboratories, Inc	307
1771.18	06–11–90	Newcastle-Bronchitis Vaccine B$_1$ Type, Lasota Strain, Mass. Type, Live Virus.	Intervet America, Inc	286
1871.03	06–25–90	Pasteurella Multocida Vaccine, Avirulent Live Culture, Avian Isolate.	Arko Laboratories Ltd	337
1895.RO	06–14–90	Pseudorabies Vaccine, Killed Virus	Syntrovet Incorporated	314
1961.00	06–11–90	Transmissible Gastroenteritis Vaccine, Modified Live Virus	Schering-Plough Animal Health Corporation	165–A
19E5.20	06–11–90	Porcine Rotavirus Vaccine, Killed Virus	Schering-Plough Animal Health Corporation	165–A
19H7.20	06–11–90	Porcine Rotavirus-Transmissible Gasteroenteritis Vaccine, Modified Live and Killed Virus.	Schering-Plough Animal Health Corporation	165–A
2112.01	06–04–90	Bordetella Bronchiseptica-Escherichia Coli Bacterin	Rhone Merieux, Inc	298
2126.00	06–13–90	Borrelia Burgdorferi Bacterin	American Home Products Corporation	112
2659.01	06–04–90	Haemophilus Somnus Bacterin	Grand Laboratories, Inc	303
49B9.20	06–11–90	Porcine Rotavirus-Transmissible Gastroenteritis Vaccine—Clostridium Perfringens Type C-Escherichia Coli Bacterin-Toxoid, Modified Live and Killed Virus.	Schering-Plough Animal Health Corporation	165–A
49C5.20	06–11–90	Porcine Rotavirus Vacine—Clostridium Perfringens Type C-Escherichia Coli Bacterin-Toxoid, Killed Virus.	Schering-Plough Animal Health Corporation	165–A
502A.01	06–11–90	Feline Leukemia Virus Antigen-Feline Immunodeficiency Virus Antibody Test Kit.	IDEXX Corp	313
5112.00	06–18–90	Pseudorabies Virus gpIII Antibody Test Kit	Fermenta Animal Health Company	272
A961.00	06–11–90	Transmissible Gastroenteritis Vaccine, Modified Live Virus	Diamond Scientific Co	213

Product license code	Date issued	Product	Establishment	Establishment license No.
G054.00	06-04-90	Bordetella Bronchiseptica-Erysipelothrix Rhusiopathiae-Pasteurella Multocida Bacterin-Toxoid.	SmithKline Beckman Corporation	189

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.)* shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedure for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. No U.S. Veterinary Biologics Establishment Licenses were issued during the month of June 1990.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

Pursuant to the regulations, APHIS issued the following U.S. Veterinary Biological Product Permit during the month of June 1990:

Establishment	Permit No.	Date issued
Vetech Laboratories of Buffalo, Inc.	374	6-25-90

The regulations in 9 CFR Parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product and Establishment Licenses, and U.S. Veterinary Biological Product Permits. Pursuant to these regulations, APHIS terminated the following U.S. Veterinary Biological Product License during June 1990:

Product license code	Date terminated	Product	Establishment	Establishment License No.
1565.00	6-18-90	Feline Panleukopenia Vaccine, Killed Virus	Beecham laboratories	225

No establishment licenses were suspended, revoked, or terminated during June 1990; and no product licenses or product permits were suspended or revoked during June 1990.

Done in Washington, DC, this 3rd day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-23893 Filed 10-9-90; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Thirtymile Creek Watershed, MT: Environmental

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFS part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Thirtymile Creek Watershed, Blaine County, Montana.

FOR FURTHER INFORMATION CONTACT: Richard J. Gooby, State Conservationist, Soil Conservation Service, 10 East Babcock, Bozeman, Montana, 59715, telephone (406) 587-6813.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard J. Gooby, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for a flood prevention, primarily to benefit the city of Harlem and surrounding agricultural lands. The planned works of improvement include about 1.2 miles of channel improvement, a drop structure, and diking. Flood damages will be reduced by 92 percent. All flood damages will be eliminated during a 50-year event.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Scott V. Hoag, Jr.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: September 28, 1990.

James S Johnson,

Acting State Conservationist.

[FR Doc. 90-23792 Filed 10-9-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Information Collections Under Review by the Office of Management and Budget (OMB); Expedited Review

Doc has submitted to OMB for expedited clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The collections are for the National Oceanic and Atmospheric Administration of the Department of Commerce.

Title: Permits for Pelagic Longline Vessels in the Western Pacific Region.

Form Number: Agency—N/A; OMB—0648–0204.

Type of Request: Revision.

Burden: 150 new respondents; 38 new burden hours—average hours per response 15 minutes.

Needs and Uses: The information collected from the Longline fleet will be used by the National Marine Fisheries Service to monitor the level of activity in the fishery by tracking the number of active vessels. It will also be used to determine those vessels on which observers should be placed to determine the nature and extent of impact on protected species (monk seals, sea turtles, etc.).

Affected Public: Individuals; Small businessess or organizations; Businesses or other for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ron Minsk, 395–3084.

Title: Logbooks and Observers for Pelagic Longline Fishery Vessels in the Western Pacific Region.

Form Number: Agency—N/A; OMB—0648–0214.

Type of Request: Revision.

Burden: 150 new respondents; 2,264 new burden hours; 2,252 for logbook requirements; 12 hours for notification requirements—Average hours per response—60 minutes per trip for completing daily log, submission of log, and trip notification requirements.

Needs and Uses: The logbooks will be used to evaluate the status of stocks and to prevent overfishing. They will also be used to determine if there are any interactions with protected species. The pre-trip notification requirements will be used to place observers aboard vessels to collect detailed information about the fishery. The post-trip notification is required so that a briefing by the observer can be arranged upon return to port.

Affected public: Individuals; Small businesses or organizations; Businesses or other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ron Minsk, 395–3084.

The pre-trip and post-trip requirements are as follows: Operators of fishing vessels shall inform the Regional Director at least 72 hours (not including weekends and holidays) before leaving port of his or her intent to fish within 50 nautical miles off French Frigate Shoals, Gardner Pinnacles, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands and Kure Island off the Northwestern Hawaiian Islands. The notice must include the name of the vessel, the name of the operator, the intended departure date and location, and a telephone number at which the operator or his agent may be contacted during the business day. In addition, the operator of a fishing vessel carrying an observer must contact the U.S. Coast Guard at least 24 hours before landing, and report the estimated time and date and port at which the permitted vessel will land billfish and associated species.

Copies of the information collection proposals (logbook and permit application) are published below. Any questions can be directed to Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments for the proposed information collections should be sent to Ron Minsk, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503. You can also telephone him on (202) 377–3084.

Dated: October 2, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

BILLING CODE 3510–22–M

OMB CONTROL NO:
EXPIRATION DATE:

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

FISHING VESSEL PERMIT APPLICATION
LONGLINE FISHING VESSEL PERMIT APPLICATION

Date Received
Permit No.

APPLICATION INFORMATION — PLEASE PRINT		
Name of Applicant (Last, First, Middle)		Telephone No.
Name of Vessel Owner (Last, First, Middle)		Telephone No.
Mailing Address of Owner	City and State	Zip Code
Operator's Name (Last, First, Middle)		Telephone No.
Operator's Mailing Address	City and State	Zip Code

PERMIT INFORMATION - PLEASE PRINT		
Primary Fishing Area MHI____ A. Samoa____ NWHI____ Guam_____	Prior Permit No.	Expiration Date of Permit

VESSEL INFORMATION - PLEASE PRINT			
Vessel Name	Vessel Number	Radio Call Sign	Home Port
Gross Reg. Tons	Registered Length	Beam of Vessel	Fuel Capacity
Avg. Cruising Speed	Max. Range	Horsepower	Age of Vessel
Date Vessel Purchased	Purchase Price	Number of Crew	

FISHING INFORMATION - PLEASE PRINT	
Vessel Fish Hold Capacity (tons)	Type of Refrigeration and Capacity (tons) a. Ice _____ d. Plate Freeze _____ b. Onboard Ice Plant_____ e. Blast Freeze _____ f. Other (specify)_____
Type and Amount of Gear	a. Handline _____ c. Bottom Longline _____ b. Traps _____ d. Other (specify) _____

APPLICANT'S SIGNATURE _____ DATE_____

INSTRUCTIONS FOR DAILY LONGLINE FISHING LOGBOOK

1. VESSEL: Enter name of vessel

2. PERMIT NO.: Enter longline fishing permit number

3. DATE OF HAUL: Enter date of haul of longline

4. SET: Enter time (using 24 hour clock) and latitude and longitude of location when the longline set began

5. HAUL: Enter time (using 24 hour clock) and latitude and longitude of location when the longline haul began

6. NO. OF HOOKS SET: Enter total number of hooks set

7. NO. OF LIGHTSTICKS USED: Enter total number of lightsticks used

8. SURFACE TEMP.: Enter surface water temperature (if taken)

9. SPECIES: For each listed species, enter the numbers kept and released in the TOTAL columns; the TALLY columns are work space for your convenience in tallying the catch as the haul is carried out

10. PROTECTED SPECIES INTERACTION OBSERVATION: For each species or species category, enter in the appropriate columns the number sighted in the vicinity of the gear (not including birds) and the number released alive and uninjured, alive and injured, and dead; the TALLY columns again are provided for work space for your convenience

11. CAPTAIN: Signature of the captain

12. DATE: Date of completion of the log

Public reporting burden for this collection of information:

Completion of this report is required to obtain a benefit. The information collected is used for fishery management and research purposes. The public reporting burden for this collection is estimated to average 60 minutes per trip, including the time to complete the daily log sheet, submit log forms to the National Marine Fisheries Service (NMFS), and notify the NMFS prior to and on return from a trip. Any comments you may have on this burden estimate or on any other aspect of this data collection should be sent to the Pacific Area Office, SWR, NMFS, 2570 Dole Street, Honolulu, Hawaii 96822, and to the Office of Management and Budget, Paperwork Reduction Project (0648-0214), Washington, D.C. 20503.

OMB CONTROL NO:
EXPIRATION DATE:

DAILY LONGLINE FISHING LOG

Vessel_____Permit No._____Date of Haul__/__/__

Set: Time_____Location_____
Latitude/Longitude

Haul: Time_____Location_____
Latitude/Longitude

No. of Hooks Set_____No. of Light Sticks Used_____Surface Temp._____

Species	Number Kept		Number Released	
	Tally	Total	Tally	Total
BILLFISHES Marlin, Blue				
Marlin, Striped				
Marlin, Black				
Sailfish				
Spearfish				
Swordfish				
SHARKS Blue				
Mako				
Thresher				
Other				
MISC. Mahimahi				
Moonfish				
Wahoo				
Other				
TUNAS Albacore				
Bigeye				
Yellowfin				
Other				

PROTECTED SPECIES INTERACTION OBSERVATION

Species	Sighted in Area of Gear		Released or Lost					
			Alive		Injured		Dead	
	Tally	Total	Tally	Total	Tally	Total	Tally	Total
Dolphin								
Monk Seal								
False Killer Whale								
Green Turtle								
Leatherback Turtle								
Albatross								
Booby								
Others								

I certify that the above information is complete and true to the best of my knowledge.

Captain_____Date_____

[FR Doc. 90-23803 Filed 10-9-90; 8:45 am]
BILLING CODE 3510-22-C

International Trade Administration

[A-588-816]

Preliminary Determination of Sales at Less Than Fair Value: Benzyl P-Hydroxybenzoate From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that imports of benzyl p-hydroxybenzoate (benzyl paraben) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of benzyl paraben from Japan, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by December 12, 1990.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Ross L. Cotjanle, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2815 or (202) 377-3534, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that imports of benzyl paraben from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the notice of initiation on July 27, 1990, (55 FR 30732), the following events have occurred. On August 23, 1990, the ITC published its determination that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports from Japan of benzyl paraben (55 FR 34626).

On August 24, 1990, the Department forwarded a questionnaire to Ueno Fine Chemicals Industry, Ltd. (Ueno). This manufacturer accounts for all exports of the subject merchandise to the United States during the period of investigation (POI).

On August 17 and August 31, 1990, Ueno submitted letters notifying the Department that it did not intend to reply to the Department's questionnaire.

Scope of Investigation

The product covered by this investigation is benzyl p-hydroxybenzoate (benzyl paraben). Benzyl paraben is currently classified under HTS item number 2918.29.50 (previously classified under item number 404.47 of the Tariff Schedules of the United States). The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the investigation.

Period of Investigation

The period of investigation is January 1, 1990, through June 30, 1990.

Fair Value Comparisons

To determine whether sales of benzyl paraben from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We used best information available as required by section 776(c) of the Act because Ueno refused to respond to the Department's request for information. We determined that the best information available was information submitted by the petitioner.

United States Price

U.S. price is based on an alleged actual price from Ueno's related U.S. distributor to a U.S. customer, as reported in the petition. We adjusted this price for credit costs, other direct selling expenses, indirect selling expenses, U.S. inland freight, U.S. import duty, handling charges, ocean freight and insurance based on information contained in the petition.

Foreign Market Value

We based FMV on price quotes regarding Ueno's sales in Japan as reported in the petition. We adjusted the homemarket price for credit costs, other direct selling expenses, indirect selling expenses up to the amount of the selling expenses incurred on U.S. sales, and Japanese inland freight based on information contained in the petition.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of benzyl paraben from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Ueno Fine Chemicals Industry, Ltd.	126.00
All Others	126.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Asssistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, or are materially retarding the establishment of, an industry in the United States before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than October 22, 1990, and rebuttal briefs no later than October 29, 1990. In addition, a public version in five copies should be submitted by the appropriate date, if the submission is business proprietary. In accordance with 19 CFR 353.38(b), we will hold a hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 10 a.m. on November 1, 1990, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a

written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. section 1673(f)).

Dated: September 28, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–23804 Filed 10–9–90; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–401]

Calcium Hypochlorite From Japan; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On June 1, 1990 the Department of Commerce published the preliminary results of two administrative reviews of the antidumping duty order on calcium hypochlorite from Japan. The reviews cover three manufacturers and/or exporters of this merchandise to the United States and the periods of April 1, 1986 through March 31, 1987 and April 1, 1987 through March 31, 1988.

We gave interested parties an opportunity to comment on the preliminary results. At the request of petitioner Olin Corporation and respondent Tohoku Tosoh Chemical Co., Ltd., we held a hearing on July 18, 1990. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1990 the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 22367) the preliminary results of its administrative reviews of, and intent to revoke in part, the antidumping duty order on calcium hypochlorite from Japan (50 FR 15470, April 18, 1985). The Department has now completed the administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Reviews

Imports covered by this review are shipments of calcium hypochlorite from Japan. During the review periods such merchandise was classifiable under item number 418.2200 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS item number 2828.10.00.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods April 1, 1986 through March 31, 1987 and April 1, 1987 through March 31, 1988. Three manufacturers/exporters, Tohoku Tosoh Chemical Co., Ltd. ("Tohoku Tosoh"), Nippon Soda Co., Ltd. ("Nippon Soda"), and Nankai Chemical Industry Co., Ltd. ("Nankai"), of Japanese calcium hypochlorite were reviewed. The manufacturer known to the Department as Tohoku Tosoh Chemical Co., Ltd., during the review period April 1, 1987 through March 31, 1988 ("third review") was known as Nissin Denka Co., Ltd., during the review period April 1, 1986 through March 31, 1987 ("second review").

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of petitioner Olin Corporation ("Olin") and respondent Tohoku Tosoh, we held a public hearing on July 18, 1990. We received comments from Olin Corporation, Tohoku Tosoh, and Nippon Soda.

Comment 1: Olin argues that the Department abused its discretion in calculating Nippon Soda's FMV based on sales to only one home market customer, and not on all sales to all customers in the home market, including those to the septic tank market. Olin argues that by limiting the sales employed in calculating FMV, the Department allowed Nippon Soda to reduce its FMV, and thus its antidumping duties, by lowering its price to a single home market customer who accounts for only a small percentage of total home market sales of calcium hypochlorite.

Olin further argues that for the foregoing reason, this case should not be regarded as "normal" within the meaning of 19 CFR 353.55(a), which states that in comparing U.S. price with foreign market value, the Department normally will use sales of comparable quantities of merchandise. Thus, one of the Department's stated reasons for employng sales to only one customer in calculating FMV is not valid.

Nippon Soda argues that the methodology the Department used in calculating FMV is in fact mandated by two Departmental regulations. The first is 19 CFR 353.55(a) cited above; the other is 19 CFR 353.58, which states that the Secretary normally will calculate foreign market value and United States price based on sales at the same commercial level of trade.

Department's Position: We disagree with Olin. As stated in the Department's file memorandum of May 30, 1990, the Department determined that sales to one home market customer, a repackager, were an adequate basis for calculating FMV. The level of trade to the repackager more closely approximated the level of trade of sales to the U.S. customer than did sales to Nippon Soda's other home market customers, all wholesalers, because of the functional similarity of the home market repackager to the trading company that exports to the United States. Furthermore, Nippon Soda performed various services for its wholesaler customers that it did not perform for its repackager customer. Additionally, the lot sizes of sales to the repackager were generally closer to the lot sizes of sales to the U.S. than were the lot sizes of sales to Nippon Soda's home market wholesaler customers.

Olin's arguments are unsubstantiated by any evidence that Nippon Soda is in fact manipulating the price to the repackager in order to lower its antidumping duties. On the contrary, evidence on the record indicates that the price differential between sales to the repackager and sales to wholesalers during the second and third review periods was smaller than during the investigation. Furthermore, the total volume of sales to the repackager during the second and third reviews constituted a higher proportion of the total volume of home market granular sales than did the volume of sales to the repackager during either the investigation or the first administrative review. In both of these prior proceedings the Department calculated FMV based on sales only to

the repackager. Given these facts, our decision is that this situation is "normal" within the meaning of the Department's regulations, and that both 19 CFR 353.55(a) and 19 CFR 353.58 are applicable.

Regarding Olin's contention that sales to the home market septic tank market should be included in the reviews, the Department did not base FMV for any respondent on sales to a particular market. Rather, we based FMV on sales of identical merchandise. If any sales of granular calcium hypochlorite were made to the septic tank market among the subset of identical merchandise sales used as the basis for calculating FMV, then they were included in our calculation of FMV.

Comment 2: Olin argues that by requiring Nippon Soda to report all home market sales for the fourth administrative review period ("fourth review"), the Department implicitly acknowledged the validity of Olin's concerns about Nippon Soda's not reporting all its home market sales in the second and third reviews. Thus, the Department must complete its analysis for the fourth review, utilizing all home market sales in calculating FMV while making any appropriate adjustment for differences in quantities, and place the results on the public record for review and comment. Until it has done so the Department cannot justifiably conclude that future dumping is unlikely to occur, in which case the antidumping duty order cannot be revoked with respect to Nippon Soda at the completion of the third review without violating the Department's regulations at 19 CFR 353.25(b).

Nippon Soda argues that Olin is reading too much into the Department's request for all home market sales during the fourth review. The Department's request need imply nothing more than that the Department wanted to confirm the striking difference in quantities between the home market repackager sales and sales to the wholesalers.

Department's Position: We disagree with Olin. The Department's request for all home market sales for the fourth review is not evidence that future dumping is likely, nor is it confirmation that the Department considers that dumping will reoccur. The Department requested all home market granular sales for the fourth review as a check on Nippon Soda's claimed home market lot sizes. This objective was accomplished for the third review at the verification.

Comment 3: Nippon Soda argues that it should have been granted a difference in merchandise ("difmer") adjustment for the difference in chlorine content between the granular-form calcium hypochlorite consisting of 65 percent chlorine (type 65G) sold in the United States and the granular-form calcium hypochlorite consisting of 70 percent chlorine (type 70G) sold in the home market. It argues that it presented the same type of difmer information in the second and third reviews that it had presented during the investigation, in which the Department made a difmer adjustment. Nippon Soda claims that it was not given any reason to believe that the Department required any different information in these reviews.

Tohoku Tosoh argues that it, too, should be granted a difmer adjustment for the five percent difference in chlorine content between some of the U.S. product it sells in the U.S. and its home market product. It alleges that the basis for the Department's decision not to grant the adjustment—that input quantities of chlorine were not reported—is not valid because the regulatory basis for the difmer adjustment is the difference between the end products, not between the input quantities.

Olin argues in the case of Nippon Soda that no difmer adjustment should be granted because Nippon Soda failed to meet the required burden to receive a difmer adjustment. That burden, according to Olin, was for Nippon Soda to articulate its approach to the difmer adjustment in its questionnaire response. By simply submitting a questionnaire response identical in format to that which it submitted in the investigation, Nippon Soda has, according to Olin, "slept on its rights."

In the case of Tohoku Tosoh, Olin argues that it was Tohoku Tosoh's responsibility to submit the necessary data and ensure that the Department verified that data. As Tohoku Tosoh did not do so, the difmer adjustment is barred.

Department's Position: The Department evaluates claims for difmer adjustments on their individual merits, based on the information submitted for the record of each review. The Department is not required to grant a difmer adjustment merely because it granted one in a prior review based on similar information. Moreover, the Department believes that input quantities is the better basis for calculating the amount of any adjustment. Nevertheless, the Department's attempt to obtain the input quantities was subject to misinterpretation. Therefore, for purposes of administrative equity, we have made difmer adjustments based on the information submitted by the respondents in their questionnaire responses. The new dumping margins listed in this notice reflect this change.

Comment 4: Tohoku Tosoh argues that the Department should calculate its FMV based on only large-quantity sales in the home market. This method is justified, it argues, because the same situation exists among its home market customers as exists among Nippon Soda's home market customers, i.e., that the bulk of its home market sales are in quantities much smaller than the quantities of sales to the United States. Furthermore, the Department is required under 19 CFR 353.55(a) to compare U.S. price with home market sales of comparable quantities.

Olin argues that is is too late for Tohoku Tosoh to make this request, and that the relevant regulation is not mandatory. If the Department acceded to this request, it would set an undesirable precedent, allowing vast numbers of respondents in other cases to manipulate their home market sales structures to ensure that only a tiny fraction of home market sales need be adjusted downward to eliminate the dumping margins established in the investigation phase of the case.

Department's Position: There is no regulatory or statutory requirement that requests such as that submitted here by Tohoku Tosoh be submitted prior to publication of the preliminary results. Moreover, Olin's argument that acceding to Tohoku Tosoh's request would set a bad precedent is an argument that could be used against ever implementing 19 CFR 353.55(a). Furthermore, Olin has presented no evidence that Tohoku Tosoh has manipulated prices of comparison merchandise. Therefore, we have determined that Tohoku Tosoh's recommended approach is consistent with the intent of 19 CFR 353.55(a), which states that the Secretary normally will compare comparable quantities, and have recalculated Tohoku Tosoh's dumping margin, using only large quantity home market sales of granular calcium hypochlorite.

Comment 5: Tohoku Tosoh argues that the Department erred by including in the deduction for U.S. duty the amount of the deposit for estimated antidumping duties. Tohoku Tosoh requests that its U.S. price be recalculated without this deduction.

Olin argues that Tohoku Tosoh's claimed adjustment, while possibly valid in theory, may be factually

irrelevant because Tohuku Tosoh's dumping margin for the first administrative review period was *de minimis*. Thus, it would not have been paying antidumping duty deposits during the second and third reviews.

Department's Position: We agree with the respondent. The dumping margins listed below reflect a recalculation of Tohoku Tosoh's U.S. duty adjustment for those sales in which antidumping duty deposits were inadvertently included in the U.S. duty adjustment. As for Olin's argument that Tohoku Tosoh's claim may be factually irrelevant, we note that the final results of the first administrative review were not published until October 29, 1987. Thus, Tohoku Tosoh would have been paying antidumping duty deposits until that date.

Final Results of Review and Revocation in Part

Based on our analysis of the comments received and the correction of certain clerical errors, the final results are revised from those presented in the preliminary results for the periods April 1, 1986 through March 31, 1987 and April 1, 1987 through March 31, 1988 as follows:

Manufacturer/exporter	Period	Margin (percent)
Second Review Period:		
Nissin Denka Co., Ltd.	04/01/86-03/31/87	1.19
Nippon Soda Co., Ltd.	04/01/86-03/31/87	0.00
Nankai Chemical Industry Co., Ltd.	04/01/86-03/31/87	0.65
Third Review Period:		
Tohoku Tosoh Chemical Co., Ltd. (a/k/a/ Nissin Denka Co., Ltd.)	04/01/87-03/31/88	10.56
Nippon Soda Co., Ltd.	04/01/87-03/31/88	0.04
Nankai Chemical Industry Co., Ltd.	04/01/87-03/31/88	1.50

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since we are revoking the order with respect to Nippon Soda, no cash deposit shall be required for this firm. For any shipments from the remaining known manufacturers and exporters not covered by this review, the cash deposit will continue to be at the rate for each of those firms published in the final results of the last administrative review. (52 FR 41600; October 29, 1987).

For any entries of this merchandise from a new exporter, not covered in the administrative review covering the period of April 1, 1986 through March 31, 1987, whose first shipment occurred after March 31, 1987 and before April 1, 1988, and who is unrelated to any reviewed firm, a cash deposit of 1.19 percent shall be required.

For any future entries of this merchandise from a new exporter, not covered in the administrative review covering the period April 1, 1987 through March 31, 1988, whose first shipment occurred after March 31, 1988, and who is unrelated to any reviewed firm, a cash deposit of 10.56 percent shall be required.

These deposit requirements are effective for all shipments of Japanese calcium hypochlorite entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

In accordance with 19 CFR 353.25 (1990) we are revoking the antidumping duty order with respect to Nippon Soda on the basis of three years of no dumping or dumping at *de miminis* levels, Nippon Soda's certified statement, and our determination that future dumping is not likely. The revocation applies to all unliquidated entries of this merchandise manufactured by Nippon Soda and entered, or withdrawn from warehouse, for consumption on or after April 1, 1988.

This admininstrative review, revocation in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and 19 CFR 353.22 (1990) and 353.25 (1990).

Dated: October 1, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23805 Filed 10-9-90; 8:45 am]

BILLING CODE 3510-05-M

[A-475-703]

Granular Polytetrafluoroethylene Resin From Italy; 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 Montefluos S.p.A. (Montefluos), a respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin (PTFE) from Italy. The review covers one manufacturer/exporter of this merchandise to the United States and the period April 20, 1988 through July 31, 1989.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1988, the Department of Commerce (the Department) published in the **Federal Register** (53 FR 33163) an antidumping duty order on granular PTFE from Italy. A manufacturer/exporter, Montefluos S.p.A. (Montefluos), requested in accordance with 19 CFR 353.22 that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on September 20, 1989 (54 FR 38712). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.*, of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or

after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of granular polytetrafluoroethylene resin, filled and unfilled, which during the period was provided for in Tariff Schedules of the United States (TSUS) item number 445.54, and is currently classifiable under HTS item number 3904.61.00. Polytetrafluoroethylene dispersions in water and fine powders are not covered by this order. The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter to the United States of Italian PTFE and the period April 20, 1988 through July 31, 1989.

United States Price

The Department based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Tariff Act. We calculated ESP based on packed, delivered prices to unrelated purchasers in the United States. We made deductions where appropriate for foreign inland freight, ocean freight, brokerage and handling charges, U.S. duty, U.S. inland freight, credit expenses, and other U.S. selling expenses pursuant to 19 U.S.C. 772(e) (1) and (2).

Foreign Market Value

In calculating foreign market value the Department used home market prices, as defined in section 773(a) of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. When possible, we compared sales of identical merchandise in the two markets. When identical merchandise was not sold in the home market, we based our comparison on the most similar merchandise, and, where applicable, we made an adjustment for differences in merchandise. Foreign market value was based on the packed, delivered prices to unrelated purchasers in Italy, with appropriate deductions for inland freight and insurance, discounts, and rebates. We also made adjustments, where applicable, for differences in packing and credit expenses. We deducted indirect selling expenses incurred on home market sales up to the amount of U.S. selling expenses, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/exporter	Period	Margin (percent)
Montefluos S.p.A.	04/20/88-07/31/79	27.72

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date 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 workday thereafter. Prehearing 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. The Department will publish the final results of the administrative review, including the results of its analysis of any issues raised in such comments or at a hearing.

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 differ from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after July 31, 1989, and who is unrelated to Montefluos, a cash deposit of 27.72 percent shall be required. These deposit requirements are effective for all shipments of Italian granular PTFE resin, filled and unfilled, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

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.

Dated: October 1, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23806 Filed 10-4-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-503]

Certain Iron Construction Castings From Brazil; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On June 27, 1990, the Department of Commerce published the final results of its administrative review of the antidumping duty order on certain iron construction castings from Brazil. The review covered one manufacturer of the merchandise for the period October 21, 1985 through April 30, 1987, and a second firm for the period October 21, 1985 through April 30, 1988.

In those results of review, the Department stated that the cash deposit for new exporters whose first shipment occurred after April 30, 1988 is 25.50 percent. The correct cast deposit rate for new exporters is 8.46 percent.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION: .

Background

On June 27, 1990, the Department of Commerce (the Department) published in the Federal Register (55 FR 26240) the final results of its administrative review of the antidumping duty order on certain iron construction castings from Brazil (51 FR 8197, May 9, 1986). After publication of our final results, we noted a ministerial error in the notice. We used the wrong rate for new exporters (25.50 percent). The correct rate is 8.46 percent, the highest rate for responsive firms with shipments during the most recent period reviewed.

Section 1333 of the Omnibus Trade and Competitiveness Act of 1988, which amended section 735 of the Tariff Act of 1930 (the Act), authorizes the Department to establish procedures for the correction of ministerial errors in final determinations. On February 26, 1988 (53 FR 5813) and October 24, 1988 (53 FR 41617), the Department published these procedures in the **Federal Register**. Congress defined the term "ministerial error" to specifically include errors in addition, subtraction, or other arithmetic functions, clerical errors resulting from inaccurate copying, duplication, or the like.

Accordingly, pursuant to the Department's regulations and section 735(e) of the Act, we are amending the cash deposit rate for new exporters to correct this ministerial error.

Amended Final Results of Review

Based on our correction of the ministerial error, the cash deposit rate for new exporters not covered in this administrative review, whose first shipments occurred after April 30, 1988 and who are unrelated to the reviewed firms, will be 8.46 percent.

Dated: October 1, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23807 Filed 10-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-059]

Preliminary Results of Antidumping Duty Administrative Review of Pressure Sensitive Plastic Tape from Italy

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In response to a request filed by the petitioner, Minnesota Mining and Manufacturing Company (3M), the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on pressure sensitive plastic tape (PSPT) from Italy. The review initially covered three manufacturers/exporters of this merchandise to the United States for the period October 1, 1988, through September 30, 1989. Subsequently, on February 21, 1990, the Department revoked the antidumping finding with respect to one respondent, Boston S.p.A. Another respondent, Manuli S.p.A., made no shipments during the review period. Only one respondent, NAR S.p.A., made shipments to the United States during the review period.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October, 10, 1990.

FOR FURTHER INFORMATION CONTACT: James P. Maeder, Jr., Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-4929.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1990, the Department published in the **Federal Register** (55 FR 6031) the final results of the October 1, 1987, through September 30, 1988, review of the antidumping duty finding on PSPT from Italy (42 FR 56110, October 21, 1977). On October 30, 1989, the petitioner, 3M, requested, in accordance with 19 CFR 353.53(a), that the Department conduct an administrative review for the period October 1, 1988, through September 30, 1989. We published a notice of initiation of this antidumping duty administrative review on November 20, 1989 (54 FR 48010) covering three manufacturers/exporters—Boston S.p.A. Manuli S.p.A., and NAR S.p.A. Subsequently, we revoked the antidumping finding with respect to Boston S.p.A. in the final results of the administrative review covering the period October 1, 1987, through September 31, 1988, published on February 21, 1990 (55 FR 6031). Another respondent, Manuli S.p.A., made no shipments during the review period. Only NAR S.p.A. made shipments to the United States during the review period. The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of PSPT measuring over 1⅜ inches in width and not exceeding 4 mils in thickness. During this review period such merchandise was provided for under items 790.5530, 790.5545, and 790.5555 in the *Tariff Schedules of the United States Annotated* (TSUSA) and under 3919.90.20 and 3919.90.50 of the Harmonized System (HTS). The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers two manufacturers/exporters of Italian PSPT to the United States and the period October 1, 1988 through September 30, 1989.

Use of Best Information Available

We have determined, in accordance with section 776(c) of the Act and 19 CFR 353.37, that the use of best information available is appropriate for entries of the subject merchandise from NAR S.p.A. in this review.

In deciding what to use as best information available, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's review, the Department assigns to that company the higher margin for the subject merchandise of either (1) the highest margin calculated for that company in any previous review; or (2) the highest calculated margin for any respondent within that country that supplied adequate responses.

When a company has cooperated with the Department's request for information but fails to provide the information requested in a timely manner or in the form required, the Department may assign the affected company the highest margin assigned that company in any previous review.

Because NAR attempted to cooperate, but failed to provide an adequate questionnaire response in a timely manner, we used the highest calculated margin for that firm from all past reviews, 6.39%. This calculated margin may, however, be subject to change prior to the final results for this review, because the September 1, 1985, through September 30, 1986, review that generated that margin is pending approval of remand results.

Preliminary Results of the Review

Based on the untimely and deficient submission of NAR's responses, as best information available, we are assigning the highest dumping margin NAR received in any prior review. Therefore, we preliminarily determine the margins to be:

Manufacturer/exporter	Time period	Margin (percent)
NAR S.p.A.	10/1/88-9/30/89	6.39%
Manuli S.p.A.	10/1/88-9/30/89	[1]0%

[1] No shipments during the period; margin is from last review in which there were shipments.

The Department will issue appraisement instructions concerning NAR directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of Italian PSPT entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the most recent rate applicable for each of those firms (55 FR 6031, February 21, 1990); (2) the cash deposit rate for the companies included in this notice will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after September 30, 1989, and who is unrelated to any reviewed firm, will be 6.39 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of this administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 1, 1990, and rebuttal briefs no later than November 8, 1990. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Such hearing will be held at 2 p.m. on November 15, 1990, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) of the Department's regulations, an interested party may make an affirmative oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act and 19 CFR 353.22(c)(5).

Dated: September 28, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–23808 Filed 10–9–90; 8:45 am]

BILLING CODE 3510–DS–M

Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for several of the countries for which subsidies were identified in our last quarterly update to the annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: October 1, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (¢/lb.)	Net [2] subsidy (¢/lb.)
Belgium	European Community (EC) Restitution Payments	43.8	43.8
Canada	Export Assistance on Certain Types of Cheese	30.1	30.1
Denmark	EC Restitution Payments	56.7	56.7
Finland	Export Subsidy	142.1	142.1
France	EC Restitution Payments	52.9	52.9
Greece	do	36.1	36.1
Ireland	do	42.8	42.8
Italy	do	71.2	71.2
Luxembourg	do	43.8	43.8
Netherlands	do	43.7	43.7
Norway	Indirect (Milk) Subsidy	19.2	19.2
	Consumer Subsidy	42.5	42.5

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS—Continued

Country	Program(s)	Gross [1] subsidy (¢/lb.)	Net [2] subsidy (¢/lb.)
		61.7	61.7
Portugal	EC Restitution Payments	41.6	41.6
Spain	do	47.0	47.0
Switzerland	Deficiency Payments	104.0	104.0
U.K.	EC Restitution Payments	39.0	39.0
W. Germany	do	53.1	53.1

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 90-23810 Filed 10-9-90; 8:45 am]
BILLING CODE 3510-DS-M

[C-351-406]

Certain Round-Shaped Agricultural Tillage Tools (DISCS) From Brazil; Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances countervailing duty administrative review and intent not to revoke countervailing duty order.

SUMMARY: The Department of Commerce has conducted a changed circumstances administrative review of the countervailing duty order on certain round-shaped agricultural tillage tools from Brazil. We preliminarily determine that changed circumstances do not exist sufficient to warrant revocation of the countervailing duty order. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1985, the Department of Commerce (the Department) published in the **Federal Register** (50 FR 43008) a countervailing duty order on certain round-shaped agricultural tillage tools (discs) from Brazil.

On November 8, 1988, we received a request from Ingersoll Products Company (Ingersoll), a domestic producer, for revocation of the order based on changed circumstances. Ingersoll stated that, as the major U.S. producer of the subject merchandise, it was no longer interested in maintaining the order. On December 5, 1988, Osmundson Manufacturing Company (Osmundson), the only other known domestic producer, objected to revocation. On April 12, 1990, we received clarification that Marktill Corporation, the parent company of Ingersoll, is the party requesting revocation.

Based on the information submitted, the Department determined that changed circumstances may exist, sufficient to warrant initiation of a review in accordance with 19 CFR 355.22(h). On May 25, 1990, the Department published in the **Federal Register** (55 FR 21640) a notice of initiation of changed circumstances administrative review and consideration of revocation of the countervailing duty order on certain round-shaped agricultural tillage tools from Brazil to determine whether changed circumstances exist sufficient to warrant revocation of the countervailing duty order.

Scope of Review

Imports covered by this review are shipments from Brazil of certain round-shaped agricultural tillage tools (discs) with plain or notched edge such as colters and furrow-opener blades. This merchandise is currently classifiable under item numbers 5432.90.00, 8432.21.00 and 8432.90.00 of the Harmonized Tarriff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis

The requirements for revocation of a countervailing duty order are set forth in 19 CFR 355.25(d). Under § 355.25(d)(1), the Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties or that other changed circumstances exist sufficient to warrant revocation. The preamble to § 355.25(d) states that the opposition of one or more domestic parties should be evaluated in the context of the continuing requirement that the order have the support of the industry (53 FR 52333; December 27, 1988).

The Department has on numerous occasions revoked countervailing duty and antidumping orders on the basis of no industry interest. (*See, e.g.*, Canned Tuna from the Philippines; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order (58 FR 9788; March 25, 1988); Bricks from Mexico; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order (54 FR 53163; December 27, 1989) and Stainless Steel Plate from the United Kingdom; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order (51 FR 29144; August 14, 1986).) In only one instance has the Department revoked an order over the objection of a domestic producer (Carbon Steel Plate from Korea; Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order (51 FR 13042; April 17, 1986)). In that instance, the Department took into account the presence of an overriding national interest combined with a lack of interest on the part of a substantial majority of the domestic industry in maintaining the order and the compensatory effect of a Voluntary Restraint Agreement (VRA) as an alternative form of import relief.

In this proceeding, while one of the producers has submitted an affirmative statement of no interest in maintaining the order, the only other domestic producer strongly advocates the continuation of the protection granted to the domestic industry by the countervailing duty rate of 8.06 percent *ad valorem*. Unlike in Carbon Steel Plate from Korea, there is no overriding national interest involved, nor is there an alternative form of import relief in place, should the protection to the domestic industry provided by the order by removed.

Section 355.25(d)(4) further upholds the Department's requirement that no interested party be adversely affected by the revocation of an existing order when information on the record indicates the continued existence of countervailable subsidies. Under the so-called "sunset provision," the Department may revoke an order it no interested party has requested a review for five consecutive years. According to § 355.25(d)(4), the Department is required to publish a notice of intent to revoke an order when administrative review have not been requested for four consecutive anniversary months. At that time, an objection by any interested party is sufficient ground for the Department not to revoke the order. The objection of any interested party, without further qualification, represents "interest" sufficient to maintain the existing countervailing duty order. (*See, e.g.*, Certain Apparel from Thailand; Determination Not to Revoke Countervailing Duty Order (55 FR 22053; May 31, 1990) and Certain Textiles and Textile Products from Argentina; Determination Not to Revoke Countervailing Duty Order (55 FR 462; January 5, 1990).)

Furthermore, Osmundson has challenged the ability of Marktill to speak on behalf of the domestic industry, alleging a relationship between Marktill and the major Brazilian exporter of discs and alleging Marktill's increasing reliance on imports from Brazil. The Department has ascertained from information on the record in this review that Marktill is related to the largest U.S. importer of Brazilian discs and that Marktill has been increasing its role as an importer of Brazilian discs.

The preamble to § 355.25(d) of the Department's regulations states that if the parties take conflicting positions, the Department may find that circumstances have not changed sufficiently to warrant revocation of the order (53 FR 52333). In this review, we determine that in view of the opposition to revocation of this order by the only other domestic producer of discs and the evidence of Marktill's relationship with the major U.S. importer of Brazilian discs, the Department cannot conclude that Marktill's lack of interest constitutes lack of domestic industry interest in maintaining the countervailing duty order on Brazilian discs.

Preliminary Results of Review

As a result of our review, we preliminarily determine that changed circumstances do not exist sufficient to warrant revocation of the countervailing duty order on certain round-shaped agricultural tillage tools from Brazil. Therefore, we do not intend to revoke the countervailing duty order.

The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of the next administrative review.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). The Department will publish the final results of the review and its decision on revocation, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(b)(1) of the Tariff Act (19 U.S.C. 1675(b)(1)) and 19 CFR 355.22(h) and 355.25(d)(3).

Dated: October 1, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23809 Filed 10-9-90; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions, Availability for Licensing

United States Patent Application Serial Number 7-471,764, "Device and Method for Providing Accurate Time and/or Frequency" is owned by the Department of Commerce of the United States Government and is available for licensing in the United States in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. This concept provides the means for optimum control of a local clock through infrequent comparisons with a remotely located standard clock. Data acquired in the process of these infrequent comparisons is used to develop a model of the local clock performance. This model is then used continuously to improve upon the accuracy of the local clock. The automated process can be used to maximize the local clock performance or to achieve some fixed performance with a minimum number of comparisons. A broad range of software/hardware implementations of this concept are possible. Examples of potential areas of impact include personal computer and mainframe clocks, synchronization of networks, frequency and/or time measurement systems in standards laboratories, and consumer products including such items as appliance clocks, wall clocks, wrist watches and clocks in telephone handsets and television sets. Accuracy is limited by the characteristics of the clocks involved and the performance of the link between the local clock and the standard clock. A device synchronized in this way makes optimum use of the external calibration data and will therefore maintain the desired time and/or frequency tolerance at minimum cost.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, United States Department of Commerce, Post Office Box 1423, Springfield, Virginia 22151. A copy of the patent application may be purchased specifying the serial number, by writing the National Technical Information Service at 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the National Technical Information Service Sales Desk at (703) 487-4650.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service.

[FR Doc. 90-23795 Filed 10-9-90; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Draft Program Environmental Impact Statement for Future 404 Permit Actions by Valencia Co. in the Santa Clara River and its Associated Tributaries, Los Angeles County, CA

AGENCY: Department of Defense, Department of the Army, Corps of Engineers Los Angeles District Regulatory Branch.

ACTION: Notice of intent to prepare a Draft Program Environmental Impact Statement (DEIS).

SUMMARY: The Corps will prepare a program EIS on future 404 permit activities associated with the phased

development of the Valencia Master Plan along a portion of the Santa Clara River, Los Angeles County, California. The EIS will address cumulative impacts and less environmentally damaging project alternatives at a subregional level that will provide direction for future 404 permitting.

FOR FURTHER INFORMATION CONTACT: Mr. David Castanon, Regulatory Branch, CESPL–CO–R, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, CA 90053–2325, AC (213) 894–5606.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

Valencia Company is currently planning and constructing various component projects of the Valencia Master Plan along with Santa Clara River and Castaic Creek. Certain projects along the river and its tributaries may result in the discharge of fill or dredged material into waters of the United States as defined in 33 CFR 320–330 under provisions of section 404 of the Clean Water Act. These discharges will require a Department of the Army permit. Projects resulting in discharges include channel lining for flood control, drainage structures, bridges, drop structures, grading, mechanical vegetative clearing, fill or encroachment into the River or tributary thereof.

The Valencia Master Plan is a ten to fifteen year development of a planned community. It includes an orderly development of residential, commercial, industrial, and recreational land uses. Most of Valencia's planned development is in upland areas.

Until the EIS is complete, Valencia Company will not submit any 404 permit applications for Master Plan projects. Instead, the Corps has determined that an EIS should be completed prior to issuance of individual 404 permits for the Master Plan because: (1) There are significant wetland and endangered species resources along the river; (2) there is a need to evaluate cumulative impacts on such resources from many unrelated 404 discharges; and (3) the individual 404 permit process in the watershed has been substantially prolonged in the past due to such issues.

The objective of the EIS is to assist in an orderly, complete and timely NEPA review and 404 permit evaluation for projects associated with the Valencia Master Plan. This will be particularly useful for evaluating secondary and cumulative impacts on the aquatic resources in the area.

2. Study Area and 404 Projects

The study area for the EIS will include (1) the Santa Clara River and immediately adjacent lands from the upstream, eastern boundary of Valencia Company properties, downstream to the confluence with Castaic Creek; (2) the South fork of the Santa Clara River from its confluence with the River to a point 5.7 miles upstream; and (3) San Francisquito Creek from its confluence with the River to the northern boundary of Valencia Company property, a distance of about 4.9 miles.

3. Scope of Analysis in the EIS

A program EIS will be prepared pursuant to 40 CFR 1502.20 because much of the remaining portions of the Valencia Master Plan have only been designated to a conceptual level, and specific discharge activities have not been precisely identified or described. The scope of the EIS will follow the directives in 33 CFR 325, appendix B, section 7(b) that require the scope to be restricted to the impacts of the specific activities requiring a Corps permit and those portions of the entire project over which the Corps has sufficient control and responsibility to warrant Federal review. The latter include portions of the project beyond Corps jurisdiction where cumulative Federal involvement is sufficient to turn an essentially private action into a Federal one.

The EIS will address the project at a conceptual level and therefore will represent a Program EIS. The EIS will examine environmental impacts of the discharge activities as well as any related activities outside Corps jurisdiction which are clearly dependent on the discharge. Potentially significant issues to be addressed in the DEIS include:

a. Riparian habitat and wetlands—Future flood control activities could result in the loss of riparian vegetation. The EIS will include a delineation of existing wetlands and an evaluation of their values.

b. Endangered species—Riparian habitat along the Santa Clara River provides potentially suitable habitat for the Federally listed endangered least Bell's vireo (*Vireo belli pusillus*). In addition, much of the river supports the Federally listed endangered unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*). These species could be affected by loss of wetlands, change in hydrologic conditions upstream or within their habitat, and the increased discharge of urban stormwater runoff.

c. Hydrology and Water Quality—The effect of channel lining and upland development on hydrological conditions (discharge quantities and velocities) and water quality conditions of the Santa Clara River will be addressed.

d. Public Safety—The potential flood control benefits of the proposed channel improvements on the adjacent land development, utilities and roads will be evaluated.

e. Cultural Resources—The EIS will evaluate potential impacts to pre-historic and historic resources in areas where the Corps permit evaluation for impacts to waters will trigger federal review of cultural resources over the rest of the project, in accordance with 33 CFR 325 appendix C.

f. Cumulative Impacts—Potential cumulative impacts of the Valencia Master Plan with other projects both upstream and downstream of Valencia's holdings that involve discharges into U.S. waters along the Santa Clara River will be identified.

g. Alternatives—The EIS will address alternative methods of flood control, bank protection and floodplain development that may be less environmentally damaging. It will also explore alternative ways of mitigating unavoidable impacts.

4. Scoping

There are no plans at this time to conduct a scoping meeting. Federal, state and local agencies and other interested parties are encouraged to send written comments to the above addressee concerning the scope of the EIS.

5. Schedule

The draft program EIS is currently scheduled for public review at the end of 1990.

Charles S. Thomas,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 90–23793 Filed 10–9–90; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF ENERGY

Notice of Renewal of the Charter of The American Statistical Association Committee on Energy Statistics

Pursuant to the Federal Advisory Committee Act (Public Law 92–463), I hereby certify that the renewal of the charter of the American Statistical Association Committee on Energy Statistics is in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR 101–6.1029.

The purpose of the Committee is to provide advice on a continuing basis to the Administrator of the Energy Information Administration (EIA), including:

1. Periodic reviews of elements of EIA information collection and analysis

programs and the provision of recommendations;

2. Advice on priorities of technical and methodological issues in the planning, operation, and review of EIA statistical programs; and

3. Advice on matters concerning improved energy modeling and forecasting tools, particularly regarding their functioning, relevancy, and results.

Further information concerning this Committee can be obtained from Elinor Donnelly (202) 586–3448.

Issued in Washington, DC on: October 4, 1990.

J. Robert Franklin,

Deputy Advisory Committee, management Officer.

[FR Doc. 90–23867 Filed 10–9–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CI90–167–000, et al.]

Paragon Gas Corp., et al.; Natural Gas Certificate Filings

October 1, 1990.

Take notice that the followng filings have been made with the Commission:

1. Paragon Gas Corp.

[Docket No. CI90–167–000]

Take notice that on September 20, 1990, Paragon Gas Corporation (Paragon) of 520 Post Oak Boulevard, Suite 120, Houston, Texas 77027, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all NGPA categories of gas subject to the Commission's jurisdiction, including imported natural gas, liquified natural gas and gas purchased from suppliers other than producers (e.g., interstate pipeline system supply gas sold to marketers and others under Commission-approved interruptible sales service rate schedules), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: October 19, 1990, in accordance with Standard Paragraph J at the end of this notice.

2. Inland Steel Co.

[Docket No. CI90–150–000]

Take notice that on August 3, 1990, as supplemented on September 5, 1990, Inland Steel Company (Inland), c/o Inland Steel Industries, Inc., 30 West Monroe Street, Chicago, Illinois 60603, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of gas subject to the Commission's NGA jurisdiction, including gas imported from Canada and other sources, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: October 19, 1990, in accordance with Standard Paragraph J at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP90–2314–000]

Take notice that on September 27, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511 filed a request with the Commission in Docket No. CP90–2314–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate minor sales tap facilities needed to transport natural gas for Odeco Oil & Gas Company (Odeco), an end-user, under Tennessee's blanket certificates, issued in Docket Nos. CP82–413–000 and CP87–115–000, respectively, all as more fully set forth in the request which is open to public inspection.

Tennessee proposes a firm natural gas transportation service, under its FERC Rate Schedule FT–A, of 120 dekatherms on peak and average days, and 43,800 dekatherms annually for Odeco. Tennessee would receive the gas for Odeco's account in Ship Shoal Block 167, offshore Louisiana, and deliver equivalent volumes at a proposed facility located at Tennessee's Station Yard 523 (Cocodrie Station Yard), Terrebonne Parish, Louisiana. Tennessee estimates that it would spend $5,323 to construct and operate the proposed tie-in assembly to an existing blow-off valve and 800 feet of 2-inch pipeline between an existing measurement facility and the proposed tie-in assembly. Odeco would reimburse Tennessee for all construction costs.

Comment date: November 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Eastern Transmission Corp., et al.

[Docket No. CP90–2296–000, et al.]

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120–day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 15, 1990, in accordance with Standard Paragrah G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (Date filed)	Applicant	Shipper	Peak day,[1] average, annual	Points of		Start up date (Rate schedule)	Related dockets [2]
				Receipt	Delivery		
CP90-2296-000 (9-25-90)	Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252-2521.	Phibro Distributors Corporation.	400,000, 400,000 146,000,000	Various	Various	(IT-1)	CP88-136-000, ST90-4517-000
CP90-2297-000 (9-25-90)	U-T Offshore System, P.O. Box 1396, Houston, Texas 77251.	Arco Natural Gas Marketing, Inc..	1,400,000 Mcf 1,400,000 Mcf 511,000,000 Mcf	LA	LA	8/11/90, (IT)	Order 509, ST90-4704-000
CP90-2298-000 (9-25-90)	Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563.	Citrus Industrial Sales Co. Inc..	75,000 40,000 14,600,000	TX, LA, MS, AL..	AL	6/27/90, (IT)	CP88-316-000, ST90-4253-000
CP90-2299-000 (9-25-90)	Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563.	Citrus Industrial Sales Co., Inc..	75,000 40,000 14,000,000	TX, LA, MS, AL..	TX, LA	6/27/90, (IT)	CP88-316-000, ST90-4256-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Texas Gas Transmission Corp.

[Docket No. CP88-686-001]

Take notice that on September 24, 1990, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-686-001 pursuant to section 7(c) of the Natural Gas Act a petition to amend the order of September 15, 1988, 44 FERC ¶ 62,265, issuing to Texas Gas a blanket certificate of public convenience and necessity for certain transportation of natural gas pursuant to Order Nos. 436 and 500. Texas Gas states that the amendment requested herein would authorize the assignment of capacity by Texas Gas' FT Rate Schedule FT customers, to third parties, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Texas Gas states that FT customers would be allowed to assign the firm capacity available to them on the Texas Gas system to third parties, provided that such FT customers notify Texas Gas in writing of such assignment. Texas Gas states that FT customers would have the right for any length of time to assign any or all of their rights to tender gas for transportation under their FT service agreement(s) with Texas Gas, to any third parties, subject to the following conditions:

(1) FT customers and assignees agree that they will comply with all the terms and conditions of the amended blanket certificate issued by the Commission in this docket;

(2) The FT customer agrees (as assignor) to be responsible to Texas Gas for compliance with all terms and conditions of the Rate Schedule FT and service agreement, including nominations, balancing of receipts and deliveries of gas, and payment of any and all transportation related charges, penalties and fees, for the service rendered under the FT customer's service agreement, and to be responsible for requesting any amendment(s) to such FT service agreement.

(3) FT customers warrant that they or their assignees will have title to all the gas delivered to Texas Gas under the FT service agreements, free and clear of all liens, encumbrances and claims. FT customers agree, further, that they will protect, indemnify, and hold harmless Texas Gas against any damages, claims, demands or losses incurred by Texas Gas on account of such liens, encumbrances or claims; and

(4) FT customers agree to notify Texas Gas when scheduling firm transportation service pursuant to Article III of their FT service agreements, of the quantity of gas which is owned by the FT shipper and the quantity of gas which is owned by an assignee.

Texas Gas states that multiple reassignment of capacity would be allowed by assignees and that the maximum rate that may be charged for any assigned FT capacity may not exceed the total of the "as-billed" rates charged by Texas Gas to its FT customers under their FT service agreement(s). Texas Gas further states that with regard to FT customers receiving standby transportation service under Texas Gas' Rate Schedule FT, Texas Gas proposes to allow these customers to charge that portion of the D-1 or D-2 charge any portion of the D-1 or D-2 charge which represents the FT demand charge attributable to the transportation service. FT customers would not be allowed to charge any portion of the D-1 or D-2 charge which is attributable to standby sales service.

Texas Gas states that its capacity assignment program would allow all of its FT customers, including those FT customers who would receive standby transportation service pursuant to the standby option contained in Texas Gas' Sales Rate Schedules SGN, GN and CDN, to assign their firm capacity on Texas Gas' system, on a non-discriminatory basis, and thus share the benefit of their FT capacity with their customers or any third party, thereby promoting competition and increasing access to pipeline capacity.

Comment date: October 22, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. High Island Offshore System

[Docket No. CP90-2323-000, et al.]

Take notice that High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued by the Commissioner's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-82-

000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

[2] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by HIOS and is summarized in the attached appendix.

Comment date: November 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (Date filed)	Shipper name (Type)	Peak day, average day, annual Mcf	Points of		Contract date, rate schedule, service type	Related docket, start up date
			Receipt [1]	Dekivery		
CP90-2323-000 (9-27-90)	NGC Intrastate Pipeline Company (Intra PL).	2,800,000 2,800,000 1,022,000,000	OTX, OLA	OTX, OLA	4-1-90, IT, Interruptible.	ST90-4284-000 8-7-90
CP90-2324-000 (9-27-90)	Wisconsin Southern Gas Company (LDC).	75,000 75,000 27,375,000	OTX, OLA	OTX, OLA	4-1-90, IT, Interruptible.	ST90-4281-000 8-1-90
CP90-2325-000 (9-27-90)	Phillips Petroleum Company (Producer).	68,000 68,000 24,820,000	OTX	OLA	4-1-90, IT, Interruptible.	ST90-4280-000 8-7-90
CP90-2326-000 (9-27-90)	CNG Producing Company (Producer).	103,000 103,000 37,595,000	OTX	OTX, OLA	4-1-90, IT, Interruptible.	ST90-4279-000 8-1-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

7. KN Energy, Inc.

[Docket Nos. CP90-2330-000, CP90-2331-000]

Take notice that on September 28, 1990, KN Energy, Inc. (Applicant), P.O. Box 150265, Lakewood, Colorado 80215, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-1043-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: November 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (Date filed)	Shipper name	Peak day,[2] avg, annual	Points of [3]		Start up date, rate schedule, service type	Related [1] docket contract date
			Receipt	Delivery		
CP90-2330-000 (9-28-90)	Arkla Energy Marketing	35,000 35,000 12,775,000	OK, TX	TX	9-1-90, IT-1, IT-2, IT-3, Interruptible.	ST90-4823-000 8-31-90
CP90-2331-000 (9-28-90)	Coastal Gas Marketing Company	30,000 30,000 10,950,000	OK, TX	OK, TX	8-28-90, IT-1, IT-2, IT-3, Interruptible.	ST90-4822-000 8-10-90

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in Mcf.
[3] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.

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 requirements 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 there must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of

the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North 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, .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. 90-23825 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 28, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1990:

Fourth Revised Sheet Nos. 30D1 through 30D5
Fifth Revised Sheet Nos. 30G1 through 30G5

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket Nos. RP88-187, *et al.*, in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformatiou costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to supplement and modify its earlier filings in Docket Nos. RP88-187, *et al.*, to permit it to flow through revised take-or-pay and contract reformation costs from Texas Gas Transmission Corporation (Texas Gas) pursuant to a filing made on July 25, 1990, which was accepted by Commission order dated August 24, 1990 in Docket No. TM90-6-18. Copies of the filing were served upon Columbia's jurisdictional customers, interested state commissions, and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187, RP89-181, RP89-214, RP89-229, TM89-3-21, TM89-4-21, TM89-5-21, TM89-7-21, RP90-26, TM90-2-21, TM90-5-21, TM90-6-21, TM90-7-21, TM90-8-21, TM90-10-21, TM90-12-21 and TM90-13-21.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23826 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 2, 1990.

Take notice that on September 28, 1990, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective November 1, 1990:

FERC Gas Tariff, Second Revised Volume No. 1

Sixth Revised Sheet No. 8
First Revised Sheet No. 223
First Revised Sheet No. 227

Reason for Filing

FGT states that Sixth Revised Sheet No. 8 is being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 (Purchased Gas Adjustment Clause) of FGT's FERC Gas Tariff, Second Revised Volume No. 1 to reflect an increase in FGT's jurisdictional rates due to an increase in its average cost of gas purchased from that reflected in its Quarterly PGA filing, Docket No. TQ90-4-34-000 effective August 1, 1990, as revised by compliance filing dated July 13, 1990 in RP89-50, *et al.* to reflect FGT's conversion to a unit-of-sales PGA methodology and to reflect as-billed treatment of pipeline supplier demand costs on FGT's newly established demand-commodity rate design.

FGT's further states that projected purchase cost of gas for the period November 1, 1990 through January 31, 1991 represents an increase from $2.4420/MMBtu saturated, as reflected in FGT's PGA filing in Document No. TQ90-4-34-000 effective August 1, 1990, to $2.6654/MMBtu saturated in the instant filing.

FGT also states that is has included changes in First Revised Sheet Nos. 223 and 227 to update its Index of Entitlements pursuant to section 9 of the General Terms and Conditions of its tariff.

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 §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23827 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

October 2, 1990.

Take notice that on September 28, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Thirty-Ninth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on October 1, 1990.

According to Granite State, it filed its regular quarterly purchased gas cost adjustment on September 5, 1990 and,

since then, the costs for its projected purchases, particularly for spot gas, have risen sharply. It is stated that the rates on Thirty-Ninth Revised Sheet No. 7 reflect revised projected purchase gas costs applicable to the same estimated fourth quarter sales volumes on which the prior quarterly adjustment was based.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional wholesale services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determinig 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 intervent. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23828 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-15-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

October 2, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on September 28, 1990, tendered for filing First Revised Thirtieth Revised Sheet Nos. 57(i) and 57(ii) and First Revised Sixteenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

The above tariff sheets reflected revised current PGA rates for the months of September and October, 1990. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective September 1, 1990, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23829 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-161-002]

Northern Natural Gas Co. Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1990.

Take notice that on September 27, 1990, Northern Natural Gas Company, Division of Enron Corp., (Northern) tendered for filng to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

First Revised Sheet No. 52E.5

Northern states that such tariff sheet is being submitted in response to the Commission's Order dated September 13, 1990, in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23830 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-192-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 2, 1990.

Take notice that on September 28, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, FPC Gas Tariff, Original Volume No. 2, and FERC Gas Tariff, First Revised Volume No. 2-A, effective November 1, 1990:

FERC Gas Tariff, Original Volume No. 1

Ninth Revised Sheet No. 1
First Revised Sheet No. 3
First Revised Sheet No. 7
First Revised Sheet No. 99
First Revised Sheet No. 100
First Revised Sheet No. 101
First Revised Sheet No. 102
First Revised Sheet No. 140

FPC Gas Tariff, Original Volume No. 2

Fourth Revised Sheet No. 1-B
Third Revised Sheet No. 1-C
Third Revised Sheet No. 1-D
First Revised Sheet No. 1-E
First Revised Sheet No. 355
First Revised Sheet No. 915
First Revised Sheet No. 1097
First Revised Sheet No. 1153

FERC Gas Tariff, First Revised Volume No. 2-A

Original Sheet Nos. 1-208

The revised tariff sheets are being filed to correct minor errors in the Tables of Contents in Volume Nos. 1 and 2, as well as modify section 13 of the General Terms and Conditions of Volume No. 1 regarding requests for firm sales service and to cancel Rate Schedules X-32, X-73, X-84 and X-85 contained in Volume No. 2, effective December 22, 1989, by order issued on the same date in Docket No. CP89-1834. First Revised Volume No. 2-A is being filed to incorporate technical and administrative revisions to the provisions under which Texas Gas performs transportation service under Rate Schedules FT and IT.

Texas Gas notes that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23831 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-115-000; et al.]

Texas Gas Transmission Corp; Informal Settlement Conference

October 2, 1990.

Take notice that an informal settlement conference will be convened in this proceeding on October 30, 1990, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

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 Donald A. Heydt (202) 208-0248 or Joanne Leveque (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23832 Filed 10-9-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals Cases Filed With the Office of Hearings and Appeals During the Week of August 3 Through August 10, 1990

During the week of August 3 through August 10, 1990, the relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 3, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 3 through August 10, 1990]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 6, 1990	Aminoil USA, Inc./Jim Thomas Enterprises, Inc., St. Louis, MO.	RR139-72	Motion for Reconsideration. If Granted: The May 20, 1987 Decision and Order (RF139-107) issued to Jim Thomas Enterprises, Inc., would be modified regarding the firm's Application for Refund submitted in the Aminoil USA, Inc. refund proceeding.
Aug. 10, 1990	Texaco, Inc./Elks Texaco, Bedford, Virginia	RM321-13	Motion for Reconsideration. If Granted: The July 30, 1990 Decision and Order (RF321-5043 and RF321-6201) issued to Elks Texaco would be modified regarding the firm's Application for Refund submitted in the Texaco, Inc. proceeding.

REFUND APPLICATIONS RECEIVED

Dated received	Name of refund proceeding/Name of refund application	Case No.
7/20/90	Michal Kimak	RF304-11952.
8/3/90 thru 8/10/90	Crude Oil Refund, applications received	RF272-79542 thru RF272-79976.
8/3/90 thru 8/10/90	Texaco Oil refund, applications received	RF321-8614 thru RF321-8914.
8/3/90 thru8/10/90	Gulf Oil refund, applications received	RF300-11297 thru RF300-11402.
8/6/90	Amoco Oil Co	RF322-3.
8/6/90	Simmons Oil Corp	RF304-11953.
8/6/90	Whitaker Oil Company	RF307-10144.
8/7/90	Independence Crown	RF313-322.
8/10/90	Don Sheppard's Exxon	RF307-10145.
8/10/90	Waimalu Shell Service	RF315-10033.

[FR Doc. 90-23868 Filed 10-9-90; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 3, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507)

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 652–7513. Persons wishing to comment on this information collection should contact Bruce McConnell, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0225.

Title: Section 90.131(b), Amendment or dismissal of applications.

Action: Extension.

Respondents: Individuals or households, state or local governments, nonprofit institutions and businesses or other for-profit (including small businesses).

Frequency of Responses: On occasion.

Estimated Annual Burden: 25 responses; 10 minutes average burden per response; 4 hours total annual burden.

Needs and Uses: Section 90.131(b) enumerates the applicant's right to dismiss any pending application without prejudice by sending a written request for dismissal to the Commission. Enables FCC staff processing to be discontinued when an applicant no longer desires to pursue obtaining an authorization.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90–23906 Filed 10–9–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200416–001.

Title: Georgia Ports Authority/ Jugolinija Terminal Agreement.

Parties: Georgia Ports Authority, Jugolinija.

Synopsis: The Agreement provides a revised rate schedule reflecting rate increases for certain terminal services in accordance with the terms of the basic agreement.

By Order of the Federal Maritime Commission.

Dated: October 2, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90–23790 Filed 10–9–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200422.

Title: Virginia International Terminals, Inc./Concorde Shipping, Inc. Terminal Agreement.

Parties:

Virginia International Terminals, Inc.

Concorde Shipping, Inc. (Concorde).

Synopsis: The Agreement provides Concorde the non-exclusive use of the marine terminal facilities at Newport News Marine Terminals, VA. Terminal services and charges shall be as published in the Terminal Operators Conference of Hampton Roads Terminal Tariff No. 2, except for certain incentive rates that are indicated in the Agreement.

By Order of the Federal Maritime Commission.

Dated: October 4, 1990.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 90–23904 Filed 10–9–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Open Season; Thrift Savings Plan Elections

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) in its regulation at 5 CFR 1600.2 provides that notice will be given of the beginning and ending dates of all open seasons (as defined at 5 CFR 1600.1) which are subsequent to the open season ending on July 31, 1987. The Board's next open season will commence on November 15, 1990, and will end on January 31, 1991. The election period (as defined at 5 CFR 1600.1) covered by this open season extends from January 1 to January 31, 1991.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 523–6367.

Dated: October 2, 1990.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 90–23835 Filed 10–9–90; 8:45 am]

BILLING CODE 6760–01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authority

Notice is hereby given that on May 9, 1990, the Commissioner, Immigration and Naturalization Service, issued a memorandum CO 234–P, "Admission of Individuals Who are HIV Positive." The memorandum states that the Attorney General has determined that a waiver of the applicability of section 212(a)(6) of the Immigration and Nationality Act,

"Excludable Aliens" (8 U.S.C. 1182), with respect to HIV may be granted under the waiver provision of section 212(d)(3) whenever the Secretary of Health and Human Services advises that attendance at a scientific, professional, or academic conference in the United States is in the public interest.

I have delegated to the Assistant Secretary for Health, with authority to redelegate, the authority to designate attendance at a scientific, professional, or academic conference in the United States as being in the public interest and to advise the Immigration and Naturalization Service accordingly.

This delegation is effective immediately.

Dated: September 28, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-23883 Filed 10-9-90; 8:45 am]

BILLING CODE 4160-17-M

Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), 49 Federal Register 35247, September 6, 1984, is amended to include the Secretary's delegation to the Administrator, HCFA, the authority under section 429 of the Medicare Catastrophic Coverage Act (MCCA) of 1988. Although the Medicare Catastrophic Coverage Repeal Act of 1989 rescinded much of the legislation in the MCCA, section 429, as amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647), was unaffected. The delegation under this section authorizes HCFA to conduct at least five demonstration projects to review the appropriateness of classifying chronic ventilator-dependent units in hospitals as rehabilitation units under the Medicare program.

The specific change to part F. is described below:

EE. The authority under section 429 of the Medicare Catastrophic Coverage Act of 1988 Pub. L. 100-360, as amended by the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to provide for at least five demonstration projects, of at least 3 years each, to review the appropriateness of classifying chronic, ventilator-dependent units in hospitals as rehabilitation units. Such projects shall be conducted in consultation with the Prospective Payment Assessment Commission.

Dated: September 28, 1990.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 90-23884 Filed 10-9-90; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-150-4830-11-24 1A]

National Public Lands Advisory Council: Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for National Public Lands Advisory Council.

SUMMARY: The purpose of this notice is to call for nominations for seven memberships on the Bureau of Land Management's National Public Lands Advisory Council.

The Council consists of 21 members. Under the established staggered-term arrangement, the terms of seven members on the Council will expire on December 31, 1990. Current Council members may be reappointed or new members may be appointed. Terms of appointment will be for 3 years, beginning January 1, 1991, and expiring December 31, 1993.

Nominees for membership should be well qualified through education, training and experience to give informed and objective advice concerning land use and resource planning for the public lands.

DATES: Nominations should be received by the Bureau of Land Management by November 5, 1990.

ADDRESSES: Persons wishing to nominate individuals to serve on the Council should send biographical data that includes name, address, profession, and other relevant information about the candidate's qualifications to: Director (150), Bureau of Land Management, MS-5558, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The function of the Council is to advise the Secretary of the Interior, through the Director, Bureau of Land Management, on policies and programs of a national scope related to the resources and uses of public lands under the jurisdiction of the Bureau of Land Management.

The Council is expected to meet three times a year. Additional meetings may be called by the Director in connection with special needs for advice. Members will serve without salary, but will be reimbursed for travel and per diem expense rates prevailing for Government employees.

FOR FURTHER INFORMATION: Nan Morrison, Bureau of Land Management (150), MS-5558, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Telephone: (202) 208-5101.

Date Signed: October 4, 1990.

Cy Jamison,

Director.

[FR Doc. 90-23898 Filed 10-9-90; 8:45 am]

BILLING CODE 4310-84-M

[NV-060-00-4320-02]

Battle Mountain District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: In accordance with Public Law 94-579 and Section 3, Executive Order 12548 of February 14, 1986, a meeting of the Battle Mountain District Grazing Advisory Board will be held.

DATES: November 15, 1990, beginning at 10 a.m. in the Tonopah Convention Center, 301 Brougher St., Tonopah, Nevada.

SUPPLEMENTARY INFORMATION: The meeting agenda will include:

1. Election of Chairperson and Vice Chairperson,
2. Status of FY 90 range improvements and allotment evaluations/decisions,
3. FY 91 and 92 range improvements—review and recommendations,
4. FY 91 and 92 allotment evaluations/decisions—review and recommendations.

The meeting is open to the public. Interested persons may make oral statements to the board between 4 and 4:30 p.m. on November 15, 1990, or file written statements for the board's consideration. If you wish to make oral comments, please contact James D. Currivan by November 8, 1990.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone [702] 635-4000.

Dated: October 1, 1990.

James D. Currivan,

District Manager.

[FR Doc. 90-23812 Filed 10-9-90; 8:45 am]

BILLING CODE 4310-HC-M

[CO-920-90-4111-15; COC41602]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC41602 for lands in Routt County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from October 1, 1989, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective October 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 90–23870 Filed 10–9–90; 8:45 am]

BILLING CODE 4310–JB–M

[AK-070-00-4230-23; F86888]

Lease of Public Land; Pah River Flats, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal for a 16 year renewable lease to Gary Wayne Bamford. The lease is intended to authorize construction, maintenance and operation of a trapping cabin.

DATES: Comments and an application must be received by November 26, 1990.

ADDRESSES: Comments and an application must be submitted to the Kobuk District Manager, 1150 University Avenue, Fairbanks, Alaska 99709–3844.

FOR FURTHER INFORMATION CONTACT: Betsy Bonnell (907) 474–2337.

SUPPLEMENTARY INFORMATION: The site examined and found suitable for leasing under the provisions of section 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR part 2920, is described as within:

Sec. 12, T. 13 N., R. 15 E., Kateel River Meridian. An application will only be accepted from Gary Bamford who presently uses this area for trapping. The comments and application must include a reference to this notice. A category II processing fee of $300.00 must be submitted with the application and a monitoring fee of $75.00 will be due prior to issuance of the lease. Annual rental shall be fair market value as determined by appraisal.

Dated: July 31, 1990.

Helen M. Hankins,

Kobuk District Manager.

[FR Doc. 90–23925 Filed 10–9–90; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any enity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from November 1, 1990, through April 30, 1991. The list of Restricted Joint Bidders published in the **Federal Register** on April 9, 1990, at 55 FR 13197 covered the bidding period of May 1 through October 31, 1990.

Group I: Chevron Corp.; Chevron U.S.A. Inc.

Group II: Exxon Corp.; Exxon San Joaquin Production Co.

Group III: Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.

Group IV: Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobile Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group V: BP America Inc.; The Standard Oil Co.; BP Exploration Inc.; BP Exploration (Alaska) Inc.

Dated: October 2, 1990.

Barry Williamson,

Director, Minerals Management Service.

[FR Doc. 90–23905 Filed 10–9–90; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Deepwater, Aramid Mooring Line Joint Industry Project, Phase Two

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Omega Marine Services International, Inc. ("OMSI") on August 15, 1990, filed an additional written notification with the Attorney General and the Federal Trade Commission disclosing (1) the addition of a new party and the deletion of former parties to OMSI's Deepwater, Aramid Mooring Line Joint Industry Project and (2) the nature and objectives of phase two of the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following party has joined the Project: E.I. Du Pont de Nemours. The following are no longer participants in the Project: Chevron Corporation, Exxon Production Research Company, and Texaco Inc.

The purpose of phase two is laboratory testing of large aramid ropes. Cycles-to-failure testing in laboratory conditions of one-million-pound break strength aramid ropes is the primary thrust of phase two. This information is needed to permit use of aramid rope in future deepwater mooring designs.

The second effort of phase two is the design of the at-sea test of phase three.

On January 25, 1989, OMSI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 1989, 54 FR 8606–07. OMSI filed an additional notification on November 9, 1989, notice of which was published by the Department on January 18, 1990, 55 FR 1740–41.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90–23797 Filed 10–9–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 11 a.m. Tuesday, October 23, 1990, in room C–2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This ten member Working Group was formed by the Advisory Council to study issues relating to Enforcement for employee welfare plans covered by ERISA.

The purpose of the October 23, meeting is to invite and hear comments from interested groups and the general public concerning proposals to amend the current ERISA enforcement scheme. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and or groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 19, 1990, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting received on or before October 19, 1990.

Signed at Washington, DC, this 3rd day of October, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90–23876 Filed 10–9–90; 8:45 am]

BILLING CODE 4510–29–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix of this notice. Upon receipt of these petitons, 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 subdividion of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request 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 October 22, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 22, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 24th day of September 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AJK Mfg. Co., Inc. (Workers)	Alberta, VA	9/24/90	9/11/90	24,868	Clothing.
Cabinet Industries, Inc. (Workers)	Danville, PA	9/24/90	9/17/90	24,869	Entertainment Cabinets.
Cardinal Knitting Mills, Inc. (Workers)	Brooklyn, NY	9/24/90	9/05/90	24,870	Sweaters.
Fleck Inc. (Workers)	Fayette, MS	9/24/90	9/13/90	24,871	Wiring Harnesses.
Ford New Holland (Workers)	Troy, MI	9/24/90	9/10/90	24,872	Tractors.
Friedrich Refrigeration Co. (IUE)	San Antonio, TX	9/24/90	8/28/90	24,873	Refrigerators.
Friedrich Air Conditioning Co.	San Antonio, TX	9/24/90	8/28/90	24,874	Air Conditioners.
Hamilton Digital Controls, Inc. (Company)	Utica, NY	9/24/90	9/14/90	24,875	Magnetic Tape Heads.
Hamilton Production Equipment, Inc. (Company)	Midland, TX	9/24/90	9/11/90	24,876	Oilfield Equip.
Mayer China Co. (GMP)	Beaver Falls, PA	9/24/90	9/10/90	24,877	Tableware.
Oxford Industries (Workers)	Atlanta, GA	9/24/90	9/07/90	24,878	Sportswear.
Parker Gas Treating Co. (A&B Gas Plant) (Workers)	Ft. Stockton, TX	9/24/90	9/17/90	24,879	Oil & Gas.
Pincock, Allen & Holt, Inc. (Workers)	Lakewood, Co	9/24/90	9/12/90	24,880	Software.
Radel Leather Div. of Seton Co., Inc.	Newark, NJ	9/24/90	8/27/90	24,881	Dog Bones.
Randle Shake & Shingles (Company)	Randle, WA	9/24/90	8/29/90	24,882	Shakes & Shingles.
R.E. Dietz Co. (Workers)	Syracuse, NY	9/24/90	9/11/90	24,883	Auto Lights.
Rollic of Virginia (Workers)	Lawrenceville, VA	9/24/90	8/16/90	24,884	Clothing.
Sunbelt Specialized Services (Workers)	Roby, TX	9/24/90	9/05/90	24,885	Steel Coating.
Talon, Inc. (AMIMW)	Jersey City, NJ	9/24/90	8/13/90	24,886	Zippers.
Tektronix, Inc. (CRT)	Beaverton, OR	9/24/90	7/24/90	24,887	Oscilloscopes.
Unit Drilling & Exploration Co.	Tulsa, OK	9/24/90	9/13/90	24,888	Oil & Gas.
Webb-Rack Storage Systems Div. (Workers)	Port Huron, MI	9/24/90	9/07/90	24,889	Storage Racks.
W.R. Case & Sons Cutlery Co. (IAMAW)	Bradford, PA	9/24/90	9/13/90	24,890	Knives.

[FR Doc. 90–23899 Filed 10–9–90; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M-90-140-C]

Kenellis Energies, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kenellis Energies, Inc., Route 2, Box 74, Galatia, Illinois 62935-9620, has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Brushy Creek Mine (I.D. No. 11-02636) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures or areas and that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, the petitioner proposes to house permanent electrical installations in fireproof structures equipped with automatic fire suppression, an automatic alarm system, and two-way communication between the surface and the affected working sections.

4. The proposed alternate method would provide the same degree of safety for the workers as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 9, 1990. Copies of the petition are available for inspection at that address.

Dated: October 1, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-23900 Filed 10-9-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-18-M]

Kennecott Utah Copper; Petition for Modification of Application of Mandatory Safety Standard

Kennecott Utah Copper Corporation, 8362 West 10200 South, Bingham Canyon, Utah 84006-0525, has filed a petition to modify the application of 30 CFR 56.14211 (blocking equipment in a raised position) to its Copperton Concentrator (I.D. No. 42-01996) and Bingham Canyon Mine (I.D. No. 42-00149) located in Salt Lake County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that equipment be blocked in a raised position.

2. The application of this standard would result in a diminution of safety.

3. As an alternate method, the petitioner proposes to use friction or hydraulic cranes or derricks to hoist work platforms.

4. In support of this request, the petitioner states that:

(a) Suspended work platforms will be used only in unique work situations where their use will afford the least hazardous exposure to employees.

(b) Workers will use a body belt/harness system with lanyard appropriately attached to the load block or other structural part of the work platform capable of supporting full impact.

(c) Only a work platform that has been properly certified will be used. The work platform will be securely attached to the crane hook.

(d) No lifts will be made on another of the crane load lines while workers are suspended on a platform.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 9, 1990. Copies of the petition are available for inspection at that address.

Dated: October 1, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-23901 Filed 10-9-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-141-C]

Shamrock Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Shamrock Coal Company, P.O. Box 130, Manchester, Kentucky 40962-0130 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high voltage cables and transformers) to its Beech Fork Mine (I.D. No. 15-02502) located in Leslie County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that high-voltage cables be kept at least 150 feet from pillar workings and not be located inby the last open crosscut.

2. The longwall system requires 3,800 horsepower. In order to supply this horsepower limited to medium voltage (1,000 volts), the following problems arise:

(a) The ampacity requirements at 1,000 volts are such that very large and heavy cables are required. These large, heavy cables can cause congested work space, handling problems, and accidents associated with sprains and strains;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be supplied to the face conveyor; and

(c) At 1,000 volts, the interrupting limits of the available circuit breakers are approached resulting in a diminished safety factor.

3. As an alternate method, petitioner proposes to continue using high-voltage (2,400 volt) cables to supply power to longwall mining equipment inby the last open crosscut and within 150 feet of pillar workings. The petitioner outlines specific equipment and procedures in the petition.

4. In support of this request, petitioner states that the cables used would have a grounded metallic shield conductor, be at least 5,000 V, and have an MSHA approved outer jacket.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or

received in that office on or before November 9, 1990. Copies of the petition are available for inspection at that address.

Dated: October 1, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-23902 Filed 10-9-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-143-C]

Tara K Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Tara K Coal, Inc., P.O. Box 558, Norton, Virginia 24273 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-06425) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summer of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Due to soft and uneven bottom, the use of canopies would result in a diminution of safety because canopies would:

(a) Dislodge roof support;

(b) Tear down check or line curtains;

(c) Decrease the operator's visibility; and

(d) Create discomfort to the operator.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 9, 1990. Copies of the petition are available for inspection at that address.

Dated: October 2, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-23903 Filed 10-9-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before November 9, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington DC 20506, (202-786-0494), and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3201, Washington, DC 20503, (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506, (202-786-0494), from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is used by NEH and contains the following information: (1) The title of the form: (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension

Title: Information Survey Form and Instructions for Panelists and Reviewers.

Form Number: 3136-0123.

Frequency of Collection: Ad Hoc.

Respondents: Individuals: academic scholars, writers, teachers, and other experts in the humanities.

Use: Peer review process and application evaluation.

Estimated Number of Respondents: 600.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 0.25 per respondent.

Estimated Total Annual Reporting and Recording Burden: 200.

Thomas S. Kingston,

Assistant Chairman for Operation.

[FR Doc. 90-23888 Filed 10-9-90; 8:45 am]

BILLING CODE 7536-01-M

Meetings; Opera-Musical Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Panel (New American Works Pre-screening Section) to the National Council on the Arts will be held on October 23-25, 1990 from 9 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, as amended these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: September 24, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-23791 Filed 10-9-90; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the

Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On June 29, 1990, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to Gerald L. Kooyman on October 2, 1990.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 90-23811 Filed 10-9-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-603, Docket No. 50-604, License No. CPEP-1, License No. CPEP-2]

All Chemical Isotope Enrichment, Inc.; Order Revoking Construction Permits

By Order dated August 18, 1989, All Chemical Isotope Enrichment, Inc. (the licensee) was ordered to show cause why the above referenced licenses should not be revoked (54 FR 35544-35546, August 28, 1989). The licensee had been ordered to show cause why its Construction Permit No. CPEP-1, allowing modification on an existing U.S. Department of Energy (DOE) facility at Oak Ridge, Tennessee, for operation as a stable isotope enrichment production plant and Construction Permit No. CPEP-2, allowing construction of an additional facility at Oliver Springs, Tennessee, using DOE furnished equipment for the same production purpose, should not be revoked.

Pursuant to 10 CFR 2.202, the licensee filed its Response to the Order Modifying Licenses and Order To Show Cause Why Licenses Should Not Be Revoked and a Request for Hearing (docketed on September 13, 1989).

On May 18, 1990, the NRC staff filed a motion for summary disposition and dismissal of the proceeding. The licensee did not file a response to this motion.

By Memorandum and Order (Ruling on NRC Staff Motion for Summary Disposition and Dismissal of Proceeding), dated July 24, 1990, the Atomic Safety and Licensing Board ruled as follows:

"That Staff's Motion for summary disposition is granted.

That an order revoking Construction Permits CPEP-1 and CPEP-2 shall be sustained, and

That the proceeding is dismissed."

In view of the foregoing Licensing Board Order and pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in 10 CFR parts 2 and 50, it is hereby ordered that:

Construction Permit No. CPEP-1, dated February 10, 1989, and amended on June 20, 1989, is revoked.

Construction Permit No. CPEP-2, dated February 10, 1989, is revoked.

For the Nuclear Regulatory Commission.2

Dated at Rockville, Maryland, this 1st day of October 1990.

Robert M. Bernero, Director,

Office of Nuclear Material Safety and Safeguards.

[FR Doc. 90-23878 Filed 10-9-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District, Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-54 issued to Sacramento Municipal Utility District (the licensee) (the District), for operation of the Rancho Seco Nuclear Generating Station located in Sacramento County, California. The request for amendment was submitted by letter dated April 26, 1990.

A notice of the licensee's proposed amendment was previously published in the **Federal Register** on September 5, 1990 (55 FR 36349); however, this notice contained inadvertent errors. This notice corrects the September 5, 1990 notice in its entirety.

The licensee has decided to permanently cease operations at the Rancho Seco Nuclear Generating Station. The Rancho Seco Reactor has been defueled and the reactor fuel is currently stored in the on-site spent fuel pool. The proposed amendment would modify the license to a possess-but-not-operated status ("possession only license"). This proposed amendment would allow the licensee to possess special nuclear material, but not operate the nuclear reactor by removing the authority to operate.

Additionally, the licensee submitted a status report on the prelimiary planning for decommissioning the Rancho Seco Nuclear Generating Station.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application.

This proposed amendment to the Facility Operating License prohibits operation of the Rancho Seco Reactor at any power level. The District has no intention of taking the reactor critical again. Existing analyses address potential accident scenarios from a reactor shutdown condition through power operation. Maintaining the fuel subcritical results in an increase in margins of safety from an accident analysis standpoint. No new accidents or failure modes are created by maintaining the reactor in the defueled mode.

The District has reviewed this proposed amendment against each of the criteria of 10 CFR 50.92 and concludes that this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated since it imposes additional operation restrictions while not modifying the present plant protection systems and controls necessary to preserve and protect the integrity of the spent fuel and spent fuel pool; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated since it does not modify the facility or permit activities of a different kind than those that are presently allowed; or (3) involve a significant reduction in a margin of safety since it allows no new activities, and adds additional conservative restrictions on plant operations.

Therefore, the District concludes that proposed amendment * * * involves no significant hazards consideration.

The Commission has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed

determination. Any comments received within 30 days after the date of publication of tis notice will be considered in making any final determination. The Commission will not normally make a final detemination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 8, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding insofar as such interest may be affected by the corrections made by this notice, and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95882. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325-6000 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jan Schori, Sacramento

Municipal Utility District, 6201 S Street, P.O. Box 15870, Sacramento, California 95813, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 26, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95882.

Dated at Rockville, Maryland, this 2nd day of October 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulations.

[FR Doc. 90–23877 Filed 10–9–90; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purpose of this document is to publish notice of a new system of records, USPS 150.030, Records and Information Management Records—Computer Logon ID Records. This system is a collection of information linking a user of a Postal Service computer to an assigned computer logon ID for the purpose of controlling access to computer data and/or files.

DATES: This proposal will become effective without further notice 60 days from the date of this publication (December 10, 1990) unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Comments may be mailed to the Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5010, or delivered to room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Comments received also may be inspected during the above hours in Room 10670.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing to establish a new system of records, USPS 150.030, Records and Information Management Records—Computer Logon ID Records, pursuant to the Privacy Act. The system will contain identifying information about persons (users) who have been authorized access to USPS computer systems, the computer logon ID assigned to those persons, and the level of access granted to them. The computer logon ID is a code that identifies an individual as an authorized user, programmer, or operator to a computer system for use in conducting Postal Service business. To obtain access to a computer system, a user completes a Request for Computer Logon ID., After all necessary approvals are obtained, the request is submitted to a facility Computer Systems Security Officer (CSSO) for processing. The CSSO enters the information provided into a new system of records (database) and uses the supplied information in formulating the user's computer access requirements and assignments. The CSSO is required to maintain the source document in a secured area that restricts access by others. The CSSO uses access assignments to protect against unauthorized access to Postal Service computer data and resources. The CSSO is charged with the responsibility of maintaining the currency of information and the security of the database(s), which is protected by an authorized access code accessible and alterable only by the CSSO. Read access may also be given to authorized Inspection Service personnel for auditing purposes. Further, the Social Security Number of the computer user will be compared with records within the system to establish positive identification when resolving access problems by phone.

The Postal Service does not expect use of this system to have any effect on individual privacy rights. Personal information collected within the system is generally limited to the name, address and Social Security Number of the individual who is granted computer access privileges. Other information maintained about the individual relates to his or her official duty status and level of access permitted. Nevertheless, the information will be maintained as a Privacy Act system of records. Protection of the privacy interests of persons covered by the system will be enhanced by the Postal Service's need to control access to logon ID assignments for computer security reasons.

A new system report, as required by subsection (r) of the Privacy Act (5 U.S.C. 552a) is being submitted pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

The Postal Service has established and applied to most of its systems of records general routine use statements representing potential uses of information in the conduct of official business. These routine uses, referenced in the proposed system notice, appear in the Postal Service's last published compilation of its records systems at 54 FR 43654 dated October 26, 1989.

It is proposed that the following new system of records be adopted:

USPS 150.030

SYSTEM NAME:

Records and Information Management Records—Computer Logon ID Records, 150.030.

SYSTEM LOCATION:

Computer logon ID records are maintained at all postal facilities and certain contractor sites that access USPS computers. However, primary postal ADP sites are the Postal Data Centers, the National Information Systems Support Center in Raleigh, NC, the Address Information Center in Memphis, TN, the National Test Administration Center in Alexandria, VA, and the Materiel Distribution Centers in Topeka, KS and Somerville, NJ. In addition, these records are part of a database of an internal computer security package that uses them in conjunction with rules to control access.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of USPS computer systems who sign on with a computer logon ID. These are primarily USPS employees (including temporary and casual) and contractor employees, but may include nonpostal persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for computer access and for computer logon ID and other access control records. These records contain identifying user information such as name, Social Security Number, job title, BA Code, work telephone number and address; employing facility finance number; the name of the data or application systems the user may

access, and the level of access granted; user screening and/or security clearances; verification of status of contractor employee; and approvals by ADP security personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401; Pub. L. 100–235, Computer Security Act of 1987.

PURPOSES:

To assign computer logon IDs by which access to data and/or files on computer systems is limited to authorized persons through the use of computer security access control products. Used by computer security officers in determining various schemes and control of user computer logon IDs; as a positive user identifier in resloving access problems by phone; and by Postal Inspectors and authorized personnel in auditing compliance with access rules.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

General routine use statements A, B, C, D, E, F, G, H, J, K, L, and M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records that include preprinted forms and lists. Summary information from paper records is stored on magnetic disks or tapes in ADP equipment.

RETRIEVABILITY:

Name, logon ID, and Social Security Number of individual who has been assigned a computer logon ID.

SAFEGUARDS:

Hardcopy records are maintained within lockable filing cabinets under the general scrutiny of designated postal personnel (such as CSSOs) responsible for security of the ADP system to which they pertain. Access to automated records is restricted by authorized access code (password).

RETENTION AND DISPOSAL:

Retained for one year after computer access privileges are cancelled and then destroyed by shredding (paper records) or deletion (automated records).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Postmaster General Information Resource Management Department Headquarters, 475 L Enfant Plaza SW., Washington DC 20260–4200.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility that manages the ADP system to which they have been given access. Inquiries should contain full name, Social Security Number, and logon ID. Headquarters employees should submit requests to: Assistant Computer Systems Security Officer, Office of Information Services Information Resource Management Department Headquarters, 475 L Enfant Plaza SW., Washington DC 20260–1550.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is furnished by record subjects requesting access to computer files or data and a computer logon ID, and by postal personnel charged with ADP security responsibilities.

Stanley F. Mires,

Assistant General Counsel Legislative Division.

[FR Doc. 90–23799 Filed 10–9–90; 8:45 am]

BILLING CODE 7710–12–M

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purpose of this document is to publish notice of a new system of records, USPS 0.40.040, Customer Programs—Customer Holiday Address List File. This system is a collection of names and addresses of customers who have submitted their holiday mailing lists for conversion to pre-barcoded mailing labels as part of a limited test.

DATES: This proposal will become effective without further notice 30 days from the date of this publication (November 9, 1990) unless comments are received on or before that date which result in a contrary determination, or unless a waiver request of the 60-day period is denied by the Office of Management and Budget.

ADDRESSES: Comments may be mailed to the Records Officer RM 10670, USPS, 475 L'Enfant Plaza SW., Washington, DC 20260–5010, or delivered to Room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Comments received also may be inspected during the above hours in Room 10670.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: Holidays, particularly Christmas, are peak household mail volume periods for the Postal Service. The volume of mail with handwritten addresses and colored envelopes increases significantly during these periods. Because this mail will not "read" on our automated equipment, the non-OCR readable mail will increase mechanized and manual processing at our busiest times. The proposed system is developed in connection with a test program under which the Postal Service will assist customers in the preparation of their holiday mail for acceptance by our automated equipment.

Customers will submit their mailing lists to the Postal Service for conversion to pre-barcoded mailing lables formatted using Postal Service-approved addressing standards. The Postal Service will match the customer's address list against its address database, use the address standards, and convert the addresses to pre-barcoded mailing labels. The list will be returned to the customer with the labels and instructions to deposit correspondence during a particular time period. Deposit during the designated period will help the Postal Service handle the increased volume, and the pre-barcoded labels will permit automated processing rather than mechanized or manual distribution of the mailpieces. The expected results are more efficient use of resources, better productivity, and improved holiday service.

To ensure use of deliverable addresses, the Postal Service will generate labels only where a valid address match has been found and will notify the customer of those addresses which cannot be matched to the Address Management System database for ZIP+4 assignment. Correction action is expressly limited to that notification and the Postal Service will *not* otherwise correct, supplement, or verify name or address information on the list.

The original list submitted by the customer will not be copied and will be returned to the customer after conversion. One copy of the converted list will be maintained on magnetic media to be stored "off-line" under secured conditions and used only by authorized postal personnel for updating

and further processing at the customer's request. Lists may be updated annually using information supplied by the customer; the Postal Service will not compile or supplement a customer's mailing list. Controls have been established to track internal handling of the lists. Other than the converted list, the only information kept about the ordering customer will be name and address. The system is not maintained in a manner that permits retrieval of information about individuals on the customer lists. Under these conditions, the Postal Service does not expect use of this system to have any effect on individual privacy rights.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views or arguments on this proposal. A report of the proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation. Because the Postal Service plans to collect data within 040.040 for customers' 1990 Christmas mailings, a waiver of the 60-day advance period, pursuant to OMB Circular A–130, has been requested. If the waiver is granted, and unless comments suggest the need for revisions, it is expected that the system of records will become effective as proposed below upon expiration of the 30-day comment period.

USPS 040.040

SYSTEM NAME:

Customer Programs—Customer Holiday Address List File, 040.040.

SYSTEM LOCATION:

Maintained temporarily at the National Address Information Center in Memphis, TN for data entry and label creation; stored "off line" on magnetic media at post offices participating in program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who provide holiday address lists to be converted to pre-barcoded address labels.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, phone number, and USPS-assigned customer number of customer ordering address labels; address list provided by the customer for conversion to address labels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

1. To prepare pre-barcoded mailing lables for customers from their holiday address lists;

2. To improve service and reduce operating costs through increased use of automation in peak volume periods; and

3. To provide management with statistical data to resolve operations problems created by peak volume periods.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records from this system may be disclosed to the Department of Justice or to other counsel representing the Postal Service, or may be disclosed in a proceeding before a court or adjudicative body before which the Postal Service is authorized to appear, when (a) the Postal Service; or (b) any postal employee in his or her official capacity; or (c) any postal employee in his or her individual capacity whom the Department of Justice has agreed to represent; or (d) the United States when it is determined that the Postal Service is likely to be affected by the litigation, is a party to litigation or has an interest in such litigation, and such records are determined by the Postal Service or its counsel to be arguably relevant to the litigation, provided, however, that in each case, the Postal Service determines that disclosure of the records is a use of the information that is compatible with the purpose for which it was collected.

This routine use specifically contemplates that information may be released in response to relevant discovery and that any manner of response allowed by the rules of the forum may be employed.

2. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the prompting of that individual.

3. Records or information from this system may be disclosed to an expert, consultant, or other person who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any person with whom the Postal Service contracts to reproduce, by typing, photocopy or other means, any record for use by Postal Service officials in connection with their official duties or to any person who performs clerical or stenographic functions relating to the official business of the Postal Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records that include an order form and address list submitted by customer will be kept only until list is converted to mailing labels. Name, address, and address list of ordering customer will be automated during conversion and then stored off-line on magnetic media.

RETRIEVABILITY:

USPS-assigned account number and customer name.

SAFEGUARDS:

Access to these records is limited to those persons whose official duties require such access. Access to automated records is restricted by authorized access codes. Contractors who perform data-entry conversion are forbidden by contract to use information collected by the system for any purpose other than to produce mailing labels for the Postal Service. Hard copy records are maintained within lockable filing cabinets.

RETENTION AND DISPOSAL:

Information is maintained indefinitely as long as the customer places an order at least once annually. Information will be destroyed two years from the date the customer last placed an order if no order has been made in that time period. Destruction will be by electronic erasure.

SYSTEM MANAGER(S) AND ADDRESS:

USPS Headquarters, Director, Office of Address Information Systems, 475 L'Enfant Plaza SW, Washington, DC 20260–5902.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility at which they submitted their holiday address list order. Inquiries should contain name, address, and customer number, if known.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURE:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is furnished by record subjects (customers) requesting

conversion of their holiday address lists to mailing labels.

Stanely F. Mires,

Assistant General Counsel Legislative Division.

[FR Doc. 90-23800 Filed 10-9-90; 8:45 am]

BILLING CODE 7710-12-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting; Subcommittee on Hospital Productivity and Cost-Effectiveness

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, October 23-24, 1990, at The Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Subcommittee on Hospital Productivity and Cost-Effectiveness will meet in Executive Chambers 1, 2 and 3 at 9 a.m. on Tuesday, October 23, 1990. The Subcommittee on Diagnostic and Therapeutic Practices will convene its meeting at 9 a.m. on Tuesday, October 23, 1990 at 9 a.m. in the Arlington Room.

The Full Commission will meet on Wednesday, October 24, 1990 at 9 a.m. in Executive Chambers 1, 2 and 3.

All meetings are open to the public.

Donald A. Young, MD

Executive Director.

[FR Doc. 90-23813 Filed 10-9-90; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28497; International Series Release No. 161; File No. SR-BSE-90-12]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Listing and Trading of Index Warrants Based on the Financial Times-Stock Exchange 100 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1990, the Boston Stock Exchange ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its rules to allow the Exchange to trade, both on a listed as well as an Unlisted Trading Privileges ("UTP") basis, index warrants based on the Financial Times-Stock Exchange 100 Index ("FT-SE 100" or "Index").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The BSE is submitting the proposed rule change in order to allow the Exchange to trade index warrants based on the FT-SE 100 Index. The FT-SE 100 Index is an internationally recognized, capitalization-weighted stock index based on the prices of 100 of the most highly capitalized and actively traded British stocks traded on the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE"). The Commission has approved the listing of FT-SE 100 Index warrants on the American Stock Exchange ("AMEX"),[1] the Pacific Stock Exchange ("PSE"),[2] and the New York Stock Exchange ("NYSE").[3]

Each of the FT-SE 100 warrant issues will conform to the BSE listing guidelines proposed in BSE filing SR-BSE-90-2,[4] which provide that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the financial listing criteria of the BSE; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and shall have an aggregate market value of $4,000,000. In addition, warrants which have been approved for trading on another national securities exchange would be eligible for listing.

FT-SE 100 Index warrants will be direct obligations of their issuer subject to cash settlement during their term, and either exercisable throughout their life (*i.e.*, American-style) or exercisable only on their expiration date (*i.e.*, European-style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the related index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the related index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Trading in the index warrants would be subject to several safeguards designed to ensure investor protection. In filing SR-BSE-90-2, the BSE proposed amendments to adopt options suitability rules which will apply to recommendations to buy or sell index warrants. The suitability standard will require that the member or member organization have reasonable grounds to believe that the recommended index warrant transaction is suitable for the customer and that the customer is able to evaluate and bear the risk of the proposed transaction. For warrants based on the FT-SE 100 Index, the BSE also recommends that these warrants be sold only to options-approved accounts. In addition, the BSE is requiring that all index warrant transactions in discretionary accounts be approved and initialled by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP") on the day it is executed. Due to the fact that the BSE is not the Designated Options Examining Authority ("DOEA") for any of its member firms, BSE membes with public customers trading in FT-SE 100 warrants will be required to have a SROP and ROP designated and qualified in accordance with the rules of the self-

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[1] *See* Securities Exchange Act Release No. 27769 (March 6, 1990), 55 FR 9380 (order approving File No. SR-AMEX-90-3).

[2] *See* Securities Exchange Act Release No. 28106 (June 12, 1990), 55 FR 24955 (order approving File No. SR-PSE-90-15).

[3] *See* Securities Exchange Act Release No. 28399 (August 30, 1990), 55 FR 37390 (order approving File No. SR-NYSE-90-37).

[4] *See* Securities Exchange Act Release No. 28288 (July 30, 1990), 55 FR 31920 (notice of filing of proposed index warrant listing guidelines).

regulatory organization ("SRO") that is the DOEA for the BSE member. Accordingly, BSE members with public customers must have a DOEA in order to trade index warrants on behalf of their customers. This will ensure that BSE members with public customers trading index warrants will have an options compliance infrastructure in place to ensure compliance with the warrants' suitability and account opening requirements. This requirement will also ensure that BSE members trading warrants will be subject to oversight by an SRO experienced in regulating options. Finally, prior to the commencement of trading in FT–SE warrants, the BSE will distribute a circular to its membership calling attention to the specific risks associated with FT–SE warrants.

The Commission has noted that the trading of warrants based on a foreign index requires an adequate mechanism for sharing surveillance information with respect to the index's component securities. In this regard, the BSE is in the process of ensuring that there will be an adquate mechanism for the sharing of surveillance information with respect to the FR–SE 100's component stocks. This will comply with and reflect the same obligations imposed upon the AMEX, the PSE and the NYSE when their applications for FR–SE 100 Index warrants were approved. The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the rules governing the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will:

(a) By order approve the proposed rule change, or

(b) Institute proceedngs to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should filed six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the commission's Public Reference Section, 450 Fifth Street NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 1, 1990.

[FR Doc. 90–23815 Filed 10–9–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28498; International Series Release No. 162; File No. SR–CBOE–90–23]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Cooperative Agreements With Domestic and Foreign Self-Regulatory Organizations.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 29, 1990, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a new rule codifying the Exchange's authority to enter into surveillance-sharing agreements with domestic and foreign self-regulatory organizations ("SROs"), associations and contract markets, and the regulators of such marketplaces. This proposed rule is consistent with the Exchange's existing policy with respect to cooperation with these organizations and associations.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to adopt new Rule 15.9 which sets out Exchange policy concerning cooperation with domestic and foreign SROs, associations and contract markets and the regulators of such marketplaces. The Exchange states that the need to develop a surveillance system that is appropriate to the realities of today's international and domestic securities and contract markets and associations requires close cooperation between the Exchange and such other markets and regulators. The Exchange represents that for this reason, the Exchange routinely shares surveillance and investigative information with several of such marketplaces and regulators pursuant to

the agreement between the members of the Intermarket Surveillance Group, and has entered into bilateral information-sharing agreements for regulatory purposes with other domestic and foreign exchanges, associations and regulators. The Exchange intends for the proposed rule to set forth this policy of cooperation by specifically codifying the Exchange's authority to enter into agreements with domestic and foreign SROs, associations and contract markets and the regulators of such marketplaces for the exchange of information and other regulatory purposes.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating transactions in such marketplaces.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[1] The Commission has stated before that it believes that U.S. national securities exchanges have the authority to enter into surveillance-sharing agreements with foreign SROs, and the Commission encourages the development of such agreements.[2] Thus, while the Commission believes the CBOE already has the authority to enter into such agreements, the proposed rule change will clarify the Exchange's authority to coordinate with domestic and foreign SROs in developing a surveillance system appropriate to today's increasingly linked and globalized markets. In this regard, the Commission notes that codification of the Exchange's authority to enter into bilateral surveillance agreements furthers the protection of investors and the public interest because it will ensure that the Exchange is able to conduct prompt investigations into possible trading violations and other regulatory improprieties. Specifically, the Commission believes that the exercise of this authority will enhance the CBOE's surveillance program and help to provide the Exchange with sufficient information for it to carry out its oversight responsibilities required by the Act with respect to enforcement-related matters in an efficient and expeditious manner.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can enter into bilateral information-sharing agreements with foreign SROs without delay. In addition, the CBOE's proposed rule change is virtually identical to a proposal by the American Stock Exchange that was approved January 10, 1989, and one by the New York Stock Exchange that was approved April 4, 1990.[3] Further, the Commission did not receive any comments in connection with these filings. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commisison's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 31, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [4] that the proposed rule change (SR-CBOE-90-23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: October 1, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23816 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28496; File No. SR-MCC-90-05]

Self-Regulatory Organizations; Midwest Clearing Corporation; Proposed Rule Change Relating to the Clearance of Securities Transactions Executed on the Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1990, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an Agreement between the Chicago Board Options Exchange, Inc. ("CBOE") and MCC that permits MCC participants to clear and settle transactions at MCC in "Eligible Securities" (as the term is defined in MCC's rules) effected on the CBOE. The Agreement will cover the

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[1] 15 U.S.C. 78f(b)(5) (1982).

[2] *See* Securities Exchange Act Release No. 26436 (January 10, 1989), 54 FR 1629 (January 17, 1989) (order approving File No. SR-Amex-88-27).

[3] *See* Securities Exchange Act Release Nos. 26436, *supra* note 2, and 27877 (April 4, 1990) 55 FR 13344 (April 10, 1990) (order approving File No. SR-NYSE-90-14).

[4] 15 U.S.C. 78s(b) (1982).

[5] 17 CFR 200.30-3(a)(12) (1989).

CBOE's submission of Super Shares traded on the CBOE, as well as any other MCC Eligible Security traded on the CBOE. MCC attached the text of the proposed Agreement as Exhibit A to the proposal filed with the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to file the Agreement between the CBOE and MCC that permits participants of MCC to clear and settle transactions at MCC in "Eligible Securities" (as the term is defined in MCC's rules) effected on the CBOE. The Agreement will cover the CBOE's submission of Super Shares traded on the CBOE, as well as any other MCC Eligible Security traded on the CBOE.

Pursuant to MCC's rules, including MCC Article II, Rule 1 § 2, MCC may accept Contract Data reflecting securities trades (by or on behalf of participants) executed on the floor of any exchange, including contracts that have been pre-compared on such exchange. The MCC/CBOE Agreement reflects contracts executed at the CBOE between MCC participants, as well as such contracts between a MCC participant and a participant of another interfacing clearing corporation. Contracts regarding the latter will settle pursuant to the terms of the Interregional Interface Agreement entered into between MCC and the interfacing clearing corporation.

Finally, the CBOE-submitted trades will settle in the same manner as is the case for trades submitted to MCC by other exchanges or self-regulatory organizaitons. The trades are considered pre-compared, locked-in trades and will be reflected on a Participant's Purchase and Sales Reports.

The proposed rule change is consistent with section 17A of the Act in that it facilitates the prompt and accurate settlement of securities transactions by providing an efficient mechanism to clear and settle MCC eligible securities transactions that are executed on the CBOE, a national registered securities exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate, and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to file number SR-MCC-90-05 and should be submitted by October 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 28, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23817 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28505; File No. SR-NYSE-90-04]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Permanent Approval of a Proposed Rule Change Adding Five Rules to the List of Exchange Rule Violations and Fines Under Rule 476A and Amending Minor Rule Violation Enforcement and Reporting Plan

I. Introduction

On January 31, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to renew until October 5, 1990 the operation of the Exchange's pilot program under which the Commission approved the addition of five substantive rules (NYSE Rules 408(a), 432(a), 451, 452, and 726) to the NYSE Rule 476A violations list. In addition, the Exchange requested that the Commission approve this proposal on a permanent basis upon expiration of the pilot program.[3]

In Securities Exchange Act Release No. 27702 (February 12, 1990), 55 FR 6139 (February 21, 1990) the Commission granted partial approval to the proposal in order to renew the operation of the pilot program until October 5, 1990, while at the same time noticing the Exchange's proposal for permanent approval of the proposed rule change. No comments were received on the proposal, and the Commission now grants permanent approval of the proposal.

II. Background

On July 10, 1986, the Exchange submitted its original proposal to add NYSE Rules 408(a), 432(a), 451, 452 and

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The NYSE also has requested approval, under Rule 19d-1(c)(2), 17 CFR 240.19d-1(c)(2), to amend its Rule 19d-1 minor rule violation enforcement and reporting plan ("Plan") to include these five rules. *See* letter from James E. Buck, Secretary, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, SEC, dated July 6, 1986.

726, as well as certain other NYSE Rules, to the violations list of Exchange Rule 476A.[4] Specifically, these five rules deal with the following important investor safeguards: Rule 408(a) sets forth requirements which represent essential customer protection safeguards against unauthorized trading; Rule 432(a) serves as part of an overall scheme of margin regulation designed to protect the markets, and specifically the margin purchaser, by preventing the purchase of securities with insufficient margin; Rules 451 and 452 require NYSE members to transmit proxy materials to beneficial owners of stock and establish procedures for delivery of proxies by a member organization for stock registered in its name; and, finally, Rule 726 mandates delivery to a customer of the current Options Disclosure Document at or prior to approval of the customer's account.

On October 5, 1987, the Commission approved the addition of the above-mentioned rules to the list for a pilot period of two years, ending October 5, 1989. During the two year pilot period, the Exchange was to submit two reports to the Commission on compliance activities concerning these five rules: one report submitted at the mid-point of the pilot and the other prior to the pilot's expiration.

According to the Exchange's reports, no violations of the five rules were handled pursuant to the provisions of NYSE Rule 476A during the two year pilot program.[5] Nevertheless, the Exchange believed that inclusion of the rules on the Rule 476A violations list provided a valuable enforcement tool and served a valid regulatory purpose during the two year period. Accordingly, the Exchange submitted a proposal to extend the pilot period for an additional year, until October 5, 1990, and to make the five rules a permanent part of the violations list after the pilot's expiration.

The Commission granted approval to the portion of the proposal which requested a renewal of the pilot period until October 5, 1990.[6] In so doing, the Commission noted that the renewal of the pilot furthers the protection of investors and the public interest by allowing for the pilot program to operate while the Commission considers the Exchange's request for permanent approval. In addition, during the extension, the Commission determined to continue its examination of whether summary disposition and quarterly reporting of violations of the above-cited rule enhances the NYSE disciplinary program and provides the Commission sufficient information by which to carry out its oversight responsibilities concerning the enforcement and disciplinary activities of the NYSE.[7] To aid in that examination, the NYSE agreed to submit a report to the Commission on disciplinary activities concerning these five rules. With regard to Rule 408(a), the report stated that in 1988 twelve decisions were rendered in connection with Exchange disciplinary proceedings, twenty-seven such decisions were rendered in 1989, and ten disciplinary proceedings were pending as of December 31, 1989.[8] With regard to the remaining four rules [NYSE Rules 432(a), 451, 452 and 726], there were no decisions rendered in either 1988 or 1989, nor any pending disciplinary proceedings as of December 31, 1989. Moreover, during the pilot program, no fines were imposed for violations of any of these five rules pursuant to the provisions of NYSE Rule 476A.

III. Commission Findings

The Commission finds that the proposal to make NYSE Rules 408(a) 432(a) 451, 452 and 726 a permanent part of the violations list of NYSE Rule 476A and to amend the Plan to include these five rules is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of sections 6(b)(1), (6), and (7), 6(d)(1) and 19(d).[9] The proposal is consistent with the section 6(b)(6) requirement that the rules of the exchange provide that its members and persons associated with its members shall be appropriately disciplined for violation of the rules of the exchange. In this regard, the proposal will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate.[10] Furthermore, because the Plan provides procedural rights to the person fined and permits a disciplined person to request a full disciplinary hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members which is consistent with sections 6(b)(7) and 6(d)(1) of the Act.

When the Commission originally decided to approve on a temporary basis the addition of the five rules to the NYSE Rule 476A list for a pilot period of two years, it had concerns over whether these rules were appropriate for a minor rule violation plan. In fact, when promulgating Rule 19d–1, the Commission expressed concern that the SROs would use the provision for the disposition of increasingly more significant violations.[11]

During the course of the pilot program, however, the Commission has become convinced that the inclusion on the violations list of the above-cited five rules provides a net benefit to the NYSE's enforcement efforts. The Commission has reviewed the enforcement record of these rules during the pilot period. While no enforcement actions were brought for most of these rules, 39 decisions were rendered for Rule 408(a) violations. The NYSE handling of all of these actions under regular disciplinary procedures indicates that the NYSE has been using its Rule 476A authority with respect to

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[4] *See* Securities Exchange Act Release No. 24985 (October 5, 1987), 52 FR 38296 (October 15, 1987) (order approving File No. SR–NYSE–86–21). As a background note, in Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600, the Commission approved an NYSE Plan for the abbreviated reporting of minor rule violations pursuant to Rule 19d–1(c) under the Act. The Plan relieves the NYSE of the current reporting requirements imposed under section 19(d)(1) for violations listed in Rule 476A. The NYSE Plan, as embodied in NYSE Rule 476A, provides that the Exchange may designate violations of certain rules as minor rule violations. The Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a violation of the delineated rules by issuing a citation with the specified penalty. Such person can either accept the penalty, or force a full disciplinary hearing on the matter. Fines assessed pursuant to NYSE Rule 476A in excess of $2,500 are not considered pursuant to the Plan and must be reported in a manner consistent with the current reporting requirements of section 19(d)(1) of the Act. Furthermore, the Exchange retains the option of bringing violations of rules included under NYSE Rule 476A to full disciplinary proceedings.

[5] *See* letters from Donald van Weezel, Managing Director, Regulatory Affairs, NYSE to Sharon Lawson, Branch Chief, Exchange Regulation, SEC, dated December 7, 1988, and Mary Revell, Branch Chief, Exchange Regulation, SEC, dated October 25, 1989.

[6] *See* note 3, *supra*.

[7] The reporting of violations by self-regulatory organizations ("SROs") to the Commission is an essential means of SRO oversight that supplements the information obtained through inspections.

[8] *See* letter from Donald van Weezel, Managing Director, Regulatory Affairs, NYSE to Mary Revell, Branch Chief, Exchange Regulation, SEC, dated July 27, 1990.

[9] 15 U.S.C. 78f(b)(1), (6), and (7), 78f(d)(1) and 78s(d) (1982).

[10] The Commission notes that the NYSE retains the discretion to bring full disciplinary proceedings for violations of the rules listed in Rule 476A and should do so when appropriate for the particular violation(s) involved.

[11] Indeed, in an attempt to limit the use of these plans to "matters of minimal regulatory concern," the Commission specifically rejected a recommendation made by the Chicago Board Options Exchange to raise the fine ceiling to $10,000. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984).

these rules in a manner that is sensitive to the underlying goal of Rule 19d–1.

The Commission also believes that the proposal provides in alternate means by which to deter potential violations of the specified rules, thus furthering the purposes of section 6(b)(1) of the Act. An exchange's ability to enforce effectively compliance by its members and member organizations with Commission and exchange rules is central to its self-regulatory functions. In this regard, the Commission believes that the inclusion of the above-cited five rules on the violations list of NYSE Rule 476A will provide a more effective means of deterrence than would the alternative system of either verbal or written cautions for lesser violations of the five rules.[12]

Even though the five rules are designed to provide important investor safeguards,[13] a particular violation of such rules may or may not rise to the level which would justify a full disciplinary proceeding. In addition, relying on the fact that the NYSE retains the discretion to bring a full disciplinary proceeding for any violation of these five rules, the Commission believes that adding these rules to its minor disciplinary plan only will enhance, rather than reduce, the NYSE's enforcement capabilities regarding such rules. Finally, the Commission believes that inclusion of these rules on the violations list will prove to be an effective alternative response to a violation when the initiation of full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation, if not the category of violation.

Although the Commission is approving the Rule 476A procedures for the five rules, this should not be interpreted as signalling the appropriateness of these procedures for any SRO rule. Moreover, the additional experience the NYSE gains in the future from use of these rules will be extremely valuable to the Commission in evaluating the necessity and usefulness of the Rule 476A procedures for violations of other similar types of rules.

It is therefore ordered, pursuant to section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[14] that the proposed rule change, and proposed amendments to the Plan, be, and hereby are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Dated: October 2, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23818 Filed 10–9–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28499; File No. SR–Phlx–90–29]

Self-Regulatory Organizations; Notice of Filing and Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Rule 60, Regulation 6, Governing Dress Code for Exchange Personnel

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 17, 1990, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the dress code for Exchange personnel as set forth under Phlx Rule 60, Regulation 6.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to maintain the proper transaction of business on the Exchange's trading floors, and to preserve the safety of members and Exchange personnel on the floors, it is necessary to impose rules of order and decorum. Consequently, the Phlx previously submitted a proposed rule change to the Commission which amended various rules of order and decorum.[2] Regulation 6, which relates to the dress requirement for Exchange floor personnel, was omitted inadvertently from this filing. Accordingly, the Phlx presently seeks to amend Regulation 6.

Specifically, the Phlx proposes to delete reference to the cloak room, in which outdoor clothing was required to be kept, because such room is no longer in existence at the Exchange. Second, the dress code currently is effective from 8 a.m. to 4:15 p.m., but the Exchange has extended hours of trading on its foreign currency options floor. Accordingly, the Phlx proposes to render the dress code applicable "for any floor open for trading" in order to encompass these extended hours of trading.

Third, the proposed amendments to Regulation 6 delete the requirement that floor personnel wear identification badges because Regulation 3 currently addresses the issues of floor access and security. Lastly, the Phlx proposes to amend Regulation 6 to indicate that upon the 5th occurrence (or any occurrence thereafter) of a violation of such regulation, the sanction imposed will be at the discretion of the Business Conduct Committee of the Exchange. Currently, Regulation 6 provides for a $400 fine upon a 5th violation and a $500

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[12] Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan not only can reduce reporting burdens of an SRO but also can make its disciplinary system more efficient in prosecuting violations of these rules.

[13] For example, Rules 451 and 452 require NYSE members to transmit proxy materials to beneficial owners of stock and establish procedures for delivery of proxies by a member organization for stock registered in its name. Strict compliance with these two rules is necessary to ensure that the member organization is in compliance with Section 14 of the Act and the rules and regulations promulgated thereunder (15 U.S.C. 78n (1982)).

[14] 15 U.S.C. 78s(b)(2) (1982) and 17 CFR 240.19d–1(c)(2) (1989).

[15] 17 CFR 200.30–3(a)(12) (1989).

[1] Regulation 6 is an implementation of Phlx Rule 60, which provides that a Floor Official or exchange official may impose on members and member organizations assessments not to exceed $1,000.00 per occurrence for breaches by members or their employees of regulations which relate to the administration of order, decorum, health, safety and welfare on the exchange, or two Floor Officials may refer the matter to the Business Conduct Committee where such committee shall proceed in accordance with Phlx Rules 960.1–960.12 and higher fines and sanctions may be imposed.

[2] *See* Securities Exchange Act Release No. 27072 (July 28, 1989), 54 FR 32550 (notice of filing and immediate effectiveness of File No. SR–Phlx–89–41).

fine upon a 6th violation of this regulation.

The proposed rule change is consistent with section 6(b)(6) of the Act in that members of the Exchange shall be appropriately disciplined for violation of the rules of the Exchange. Additionally, the proposed rule change is consistent with, and is an implementation of, Phlx Rule 60, pertaining to regulations governing the administration of order, decorum, health, safety and welfare on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-90-29 and should be submitted by October 31, 1990.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

After careful review, the Commission has determined that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder pertaining to a national securities exchange, and in particular, Section 6 of the Act. Specifically, the Commission believes that the proposal to amend Phlx Rule 60, Regulation 6 is consistent with the requirements of section 6(b)(5) and (6) which provide that a national securities exchange have rules designed to promote just and equitable principles of trade, and, in general, protect investors and the public interest, and for the appropriate discipline of members for violations of the rules of the Exchange.

The order and decorum rules are an important means of maintaining the proper transaction of business on the Phlx's Floor. The Commission believes, therefore, that the portion of the proposal to apply Regulation 6 to the recently extended hours of trading on the floor will ensure the continued, necessary identification of active floor members and clerical employees, a result which will aid in the preservation of order on the floor.

In addition, the proposal is consistent with section 6(b)(6) of the Act in that members or the Exchange shall be appropriately disciplined for violation of the rules of the Exchange. Furthermore, because any fines assessed shall not exceed $1,000 per occurrence for violations by members of their employees of regulations which relate to the administration of order, decorum, health, safety and welfare on the Exchange, and because higher fines and sanctions may be imposed only by the Phlx Business Conduct Committee, the Commission finds that the proposed rule change is consistent with existing Phlx Rule 60.[3]

The Commission finds that there is good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The Commission notes that those portions of the proposal which merely delete obsolete provisions (*i.e.*, the reference to the cloak room) or are presently covered by another Regulation (*i.e.*, the requirement that floor personnel wear identification badges) are not substantive changes. Accordingly, the Commission believes that these portions of the proposal warrant approval in the absence of prior public notice.

Additionally, the Commission agrees with the Exchange that there exists good cause for accelerated approval of the remainder of the proposed rule change. There is a compelling need to approve, as quickly as possible, that portion of the proposal which provides for the dress code to be in effect "for any floor open to trading." Because the hours of trading recently have been extended on the Phlx's foreign currency options floor, there is an urgent need to amend Regulation 6 to reflect this change.

Finally, the Commission believes that the portion of the proposal which would amend the table of fines for Regulation 6 violations should be granted accelerated approval. As discussed above, on July 28, 1989, the Commission published a notice of filing and immediate effectiveness of the Phlx's proposed rule change to adopt Regulations 1–5.[4] The table of fines for violations of these Regulations all provide that the sanction be assessed by the Business Conduct Committee upon either the 4th or 5th occurrence. This procedure has been in effect since July 10, 1989, on which date the Phlx filed the proposed rule change with the Commission, and no comments have been received to date on this proposal. Because the Phlx's proposal to amend the table of fines and sanctions under Regulation 6 will merely provide for conformity with Phlx Regulations 1–5, the Commission believes that the proposal should be granted accelerated approval.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the above mentioned proposed rule change be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: October 1, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23819 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17767; 812-7539]

The 59 Wall Street Fund, Inc.; Notice of Application

September 28, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 ("Act").

APPLICANT: The 59 Wall Street Fund, Inc.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and Rule 12d3-1.

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived

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[3] *See* note 1, *supra*.

[4] *See* note 2, *supra*.

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1989).

more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to Rule 12d3–1.

FILING DATE: The application was filed on September 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 1990, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 6 St. James Avenue, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Maryland corporation and is an open-end management investment company registered under the Act. Applicant's investment adviser is Brown Brothers Harriman & Co., a New York limited partnership licensed under the New York Banking Law.

2. Applicant seeks to diversify its portfolio further by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

3. Applicant seeks relief from section 12(d)(3) of the Act and Rule 12d3–1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to Rule 12d3–1. *See* Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Proposed amended Rule 12d3–1 would, among other things, facilitate the acquisition by applicant of equity securities issued by foreign securities companies. Applicant's proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of proposed amended Rule 12d3–1.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of Rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one which is traded in the United States markets, securities issued by many foreign securities firms would not meet this test. Accordingly, applicant seeks an exemption from the "margin security" requirements of Rule 12d3–1.

2. Proposed amended Rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

Applicant agrees to the following condition in connection with the relief requested:

> Applicant will comply with the provisions of the proposed amendments to Rule 12d3–1 (Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)), and as such amendments may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–23820 Filed 10–9–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17771; 812–7561]

Daily Money Fund, et al.; Notice of Application

October 2, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Daily Money Fund; Daily Tax-Exempt Money Fund; Equity Portfolio; Growth; Equity Portfolio: Income; Fidelity California Municipal Trust; Fidelity Capital Trust; Fidelity Cash Reserves; Fidelity Charles Street Fund; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Trust; Fidelity Court Street Trust; Fidelity Union Street Trust; Fidelity Destiny Portfolios; Fidelity Devonshire Trust; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Fund; Fidelity Government Securities Fund (a limited partnership); Fidelity Growth Company Fund; Fidelity Income Fund; Fidelity Institutional Cash Portfolios; Fidelity Institutional Tax-Exempt Cash Portfolios; Fidelity Commonwealth Trust; Fidelity Investment Trust; Fidelity Limited Term Municipals; Fidelity Magellan Fund; Fidelity Massachusetts Tax-Free Fund; Fidelity Money Market Trust; Fidelity Municipal Trust; Fidelity New York Municipal Trust; Fidelity Puritan Trust; Fidelity Qualified Dividend Fund; Fidelity Securities Fund; Fidelity Select Portfolios; Fidelity Special Situations Fund; Fidelity Sterling Performance Portfolio, L.P.; Fidelity Summer Street Trust; Fidelity Beacon Street Trust; Fidelity Trend Fund; Fidelity U.S. Investments: Government Securities Fund, L.P.; Fidelity U.S. Treasury Money Market Fund, L.P.; Financial Reserves Fund; Income Portfolios; Plymouth Fund; Plymouth Investment Series; Plymouth Securities Trust; Tax-Exempt Portfolios; Variable Insurance Products Fund; Variable Insurance Products Fund II; Fidelity Yen Perfomance Portfolio, L.P.; Zero Coupon Bond Fund; and Fidelity Management & Research Company.

RELEVANT ACT SECTION: Section 45(a).

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 45(a) of the Act declaring that public disclosure of sections II through V of a report entitled "Fidelity Group of Funds Interfund Lending Facility Design Report," dated March 3, 1990, is neither necessary nor appropriate in the public interest or for the protection of investors.

FILING DATE: The application was filed on July 13, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 29, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263 or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicants' Representations

1. Each Fund is a business trust formed under the laws of Massachusetts or a partnership formed under the laws of Nebraska or Delaware that has entered into a management or advisory and service contract with Fidelity Management & Research Company ("FMR").

2. On January 11, 1990, the SEC issued an order under sections 6(c) and 17(b) of the Act granting the Funds and FMR exemptions from the provisions of sections 12(d)(1), 17(a)(1), 17(a)(3), 17(d), 18(f), and 21(b) of the Act, and rule 17d–1 thereunder, to enable the Funds and FMR to establish a facility through which Funds having uninvested cash could, under certain circumstances, loan that cash to Funds seeking to borrow cash on a temporary basis (the "Interfund Lending Facility" or "Facility"). *Daily Money Fund,* Investment Company Act Release Nos. 17257 (December 8, 1989) (notice) and 17303 (January 11, 1990) (order).

3. As a condition to the order, FMR and the Funds agreed to prepare and submit to the Funds' boards of directors or general partners an initial special report on the design of the Interfund Lending Facility, including a report by their independent public accountants. FMR and the Funds further agreed that, following review of the initial report, the next individual Fund required to file its Form N–SAR would file the report as an exhibit and the other Funds would incorporate the report by reference in their next Form N–SAR filings.

4. In satisfaction of the above condition, Fidelity Select Portfolios designated the report as an exhibit to its Form N–SAR for the period ending April 30, 1990. The other Funds have incorporated or will incorporate the report by reference in their next Form N–SAR.

5. Applicants now request an order under section 6(c) and 45(a) of the Act granting confidential treatment to the report.[1]

6. Section II of the report describes the criteria used by the Funds and FMR to determine whether and when it would be appropriate for a Fund to make use of the Interfund Lending Facility. It outlines the preliminary steps taken by FMR to establish the managerial, legal, and operational controls, describes the computer hardware and software used, and the backup and record keeping systems. It also describes the responsibilities of each group within FMR or the Funds in implementing these controls.

7. Section III of the report summarizes the control objectives and the procedures used to accomplish each objective. It identifies the documentation required at each step, as well as the managerial, legal, and operational approvals required.

8. Section IV of the report describes in detail the management control procedures used to assure compliance with each of the control objectives. It describes in greater detail than sections II and III the legal and managerial approvals required, the documentation necessary, and the parties responsible for carrying out each step.

9. Section V of the report describes in detail the operational procedures devised by the Funds and FMR to help ensure compliance with each of the control objectives. It describes in greater detail than sections II and III the operational steps required and the parties responsible for each step.

10. The report has been and continues to be maintained by the Funds on a strictly confidential, non-public, need-to-know basis.

11. The Funds generated the report within the last year. As a result, the report reflects current methods and capabilities of management and control.

Applicants' Legal Analysis

12. Section 45(a) of the Act provides that the information contained in any application filed with the SEC under the Act shall be made available to the public, unless and except insofar as the SEC finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.

13. Applicants state that public disclosure of the report is not necessary to inform shareholders or potential investors in the Funds of the material facts regarding the Funds' participation in the Interfund Lending Facility. Each Fund participating in the Facility has added disclosures to its prospectus concerning the Facility and the Fund's participation therein.

14. The Freedom of Information Act, 5 U.S.C. 552, provides various exceptions to the general rule that all information provided to or generated by the government should be made available to the public.[2] One such exception is for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4).

15. Applicants state that the information contained in the report fits within the above mentioned exception because it has been obtained from a person, is both commercial and financial in nature, and is, and has been treated as, confidential.

16. Applicants state that becasue they are engaged in a highly competitive business, they would likely lose a significant competitive advantage as a result of the disclosure of the information contained in the report. The Interfund Lending Facility allows both borrowing and lending Funds to obtain a

[1] It is the Division of Investment Management's view that the requested treatment can be ordered under section 45(a) alone and that relief under section 6(c) is not necessary. Thus, any relief granted on this application will be under section 45(a) only.

[2] The Division of Investment Management recognizes that any order granting the confidential treatment requested by applicants will be issued under section 45(a) only, and that any such order will not be dispositive of any Freedom of Information Act request filed by a third party.

higher return for shareholders than they could obtain in the absence of such a facility. As the Interfund Lending Facility is the first and only facility of its kind to be permitted by the SEC, the Funds and FMR believe that no other investment company group has yet undertaken to develop similar operational and control procedures. The report documents each of the steps necessary to establish such a system, and thus would enable other investment company complexes to develop such a system in a much shorter time and with far greater confidence in its soundness than they might have absent the report.

17. Applicants believe the report would be extraordinarily useful to their major competitors. The report as a whole would provide competitors a blueprint for the establishment and monitoring of an interfund lending facility. Operation of the facility is highly complex. The development of the Facility required FMR to review its entire system to identify problems that might occur in the operation of the Facility, develop controls to help insure that such problems would not occur, develop procedures to implement such controls, develop computer and manual techniques for carrying out these procedures, and instruct the relevant personnel in how to carry them out. This process required in excess of 12 months and cost approximately $100,000 to complete, and involved numerous meetings of FMR staff, as well as input from the Fund's auditors, counsel, and custodians.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23821 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17766; 811-6092]

India Fund, Inc.; Application for Deregistration

September 28, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: The India Fund, Inc.

RELEVANT TO SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application on Form N-8F was filed on September 19, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 1990, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 500 Plaza Drive, Secaucus, NJ 07094.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of the state of New Jersey. On April 20, 1990, applicant filed a Notification of Registration on Form N-8A pursuant to section 8(a) of the Act. Applicant did not file a registration statement pursuant to section 8(b) of the Act. Applicant has never made a public offering of its securities.

2. Applicant has no shareholders and no assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23822 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17776; 812-7573]

Provident Mutual Life Insurance Company of Philadelphia et al.

October 1, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (The "Act".

APPLICANTS: Provident Mutual Life Insurance Company of Philadelphia ("PMLIC") and Provident Mutual Variable Growth Separate Account ("Separate Account I"), Provident Mutual Variable Money Market Separate Account ("Separate Account II"), Provident Mutual Variable Bond Separate Account ("Separate Account III"), Provident Mutual Variable Managed Separate Account ("Separate Account IV"), Provident Mutual Variable Zero Coupon Bond Separate Account ("Separate Account V"), and Provident Mutual Variable Aggressive Growth Separate Account ("Separate Account VI") (collectively, the "Separate Accounts").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) exempting the Separate Accounts from the provisions of Rule 6e-2(a)(2) and Rule 6e-2(b)(15).

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) exempting the Separate Accounts from the provisions of Rule 6e-2(a)(2) and Rule 6e-2(b)(15) to the extent necessary to permit them to issue flexible premium variable life insurance policies in reliance upon the exemptions provided by Rule 6e-3(T) without the Separate Accounts losing their ability to rely on the exemptions provided by Rule 6e-2 with respect to the continued maintenance and issuance of certain other variable life insurance policies currently or previously issued by the Separate Accounts.

FILING DATE: The application was filed on August 3, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the Securities and Exchange Commission (the "SEC" or "Commission") by 5:30 p.m. on October 26, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the

SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; the Applicants, c/o Edward W. Diffin, Jr., Esq., Provident Mutual Life Insurance Company, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa, (202) 275–2622, or Heidi Stam, Assistant Chief, (202) 272–2060 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. PMLIC, a mutual life insurance company, established Separate Accounts I, II, III, IV, V and VI under the provisions of the Pennsylvania Insurance Law. The six Accounts are collectively registered under the Act as a single unit investment trust. Separate Account V, through its three subaccounts, invests exclusively in units of interests of The Stripped U.S. Treasury Securities Fund, Provident Mutual Series A, a unit investment trust registered under the Act. The remaining five separate accounts each invest exclusively in corresponding shares of the Market Street Fund, Inc., an open-end investment company registered under the Act.

2. PMLIC currently offers one variable life insurance policy, a modified premium variable life insurance policy (the "Modified Premium Policy"), proposes to offer one or more versions of flexible premium variable life insurance policies ("Flexible Premium Policies"), and has previously offered two other types of variable life insurance policies: a single premium variable life insurance policy ("Single Premium Policy") and a scheduled premium variable life insurance policy ("Scheduled Premium Policy") (collectively, the "Policies"). In the future, PMLIC may offer other versions of modified, scheduled, single, or flexible premium variable life insurance policies.

3. The Modified Premium Policy provides a scheduled premium feature, but also allows payment of unscheduled premiums and permits an owner to skip premium payments under certain circumstances. The amount of the insurance coverage and the cash values under the Modified Premium Policy may increase or decrease depending on the premiums paid and the investment performance of the chosen Separate Accounts. PMLIC guarantees that the Policy will remain in force and that the death benefit will never be less than the initial face amount if scheduled premiums are paid and if there are no outstanding policy loans.

4. The Single Premium Policy, which is no longer offered, is a variable life insurance policy that provides for a single premium payment. The premium amount depends on the Policy's face amount and the insured's sex and insurance age. The amount of the insurance coverge and the cash values under the Single Premium Policy may increase or decrease depending on the investment performance of the chosen Separate Accounts. While there is no guaranteed minimum cash value for this Policy, the Policy will remain in force and the death benefit will never be less than the initial face amount, so long as there is no outstanding policy loan.

5. The Scheduled Premium Policy, which is no longer offered, is a variable life insurance policy which provides for scheduled, level premiums payable for life. The amount of the scheduled premiums payable depends upon the Policy's initial face amount and the insured's sex, age and risk classification at the time of issue. While there is no guaranteed minimum cash value for a Scheduled Premium Policy, the Policy cannot lapse nor will the guaranteed death benefit ever be less than the initial face amount, even if adverse investment experience results in a negative or zero cash value, so long as all scheduled premiums are paid when due and there are no outstanding policy loans.

6. The proposed Flexible Premium Policy or Policies will be variable life insurance policies for which the amount and timing of premium payments typically will not be fixed. However, there ordinarily will be no guarantee that the Policy will remain in force or that any minimum death benefit will be received by the owner. The cash values and the death benefits of the Flexible Premium Policies may vary to reflect the investment performance of the selected Separate Accounts. The insured will bear the risk that the investment performance of the selected Separate Accounts may cause the cash value of a Flexible Premium Policy to fall below the level needed to support periodic fees and thereby cause the Policy to lapse.

Applicants' Legal Analysis and Conclusions

1. The Separate Accounts currently rely on Rule 6e–2 for exemptions from certain provisions of the Act under section (b) of the Rule. For a separate account to rely on Rule 6e–2, paragraph (a)(2) of the Rule prescribes that, other than advances made by a life insurance company to establish and maintain the separate account, the assets of the separate account must be derived solely from the sale of variable life insurance contracts as defined in Rule 6e–2.

2. Rule 6e–2's definition of variable life insurance contracts arguably does not include flexible premium variable life insurance contracts such as the Flexible Premium Policies. Rule 6e–2(c)(1)(ii) defines a variable life insurance contract for purposes of the Rule as one which provides a guaranteed minimum death benefit. Flexible premium variable life insurance contracts as defined in Rule 6e–3(T)(c)(1) are not required to provide any guranteed minimum death benefit.

3. Applicants assert that Flexible Premium Polices meeting the Rule 6e–3(T) definition might not meet the definition of variable life insurance contracts as defined in paragraph (c)(1) of Rule 6e–2. As a result, Separate Accounts issuing, and thereby deriving funds from, flexible premium variable life insurance contracts (like the Flexible Premium Policies) permitted by Rule 6e–3(T) might be unable to rely on the Rule 6e–2 exemptions to the extent necessary to continue to derive funds from Scheduled, Single and Modified Premium Policies.

4. Paragraph (b)(15) of Rule 6e–2 provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act to the Separate Account, their sponsor or depositor and principal underwriter. The Separate Accounts and their affiliates rely on such relief in connection with the issuance of the Single, Scheduled, and Modified Premium Policies. The exemptions provided by paragraph (b)(15) are available only to separate accounts, the assets of which consist of shares of mutual funds which offer their shares exclusively to variable life insurance separate accounts. The Separate Accounts might be deemed not to be variable life insurance separate accounts (defined in paragraph (a)(2)) because they will issue the Flexible Premium Policies. Those Policies arguably do not meet the Rule 6e–2 (c)(1) definition of variable life insurance contracts invoked by paragraph (a)(2). If the Separate Accounts were deemed not

to be variable life insurance separate accounts under Rule 6e-2(b)(15), the Separate Accounts would lose the ability to rely on the exemptions granted by that paragraph.

5. Therefore, using the same Separate Accounts to support the Scheduled, Single, and Modified Premium Policies on the one hand, as well as the Flexible Premium Policies on the other hand, may bring into question the continued qualification of the Separate Accounts for the Rule 6e-2 exemptions.

6. Applicants submit that there is no reason why the Separate Accounts should be prohibited from issuing Policies qualifying under Rule 6e-2 as well as Policies qualifying under Rule 6e-3(T). The interests of Single, Scheduled, and Modified Premium Policy holders and Flexible Premium Policy holders, PMLIC's interests with respect to the two types of Policies, and the regulatory frameworks for the two types of Policies are sufficiently parallel that funding all Policies through a single set of separate accounts should not prejudice any Policy holder. Furthermore, the increased pooling, diversification, and economies of scale in expenses realized from the use of a single set of Separate Accounts should benefit all Policy holders.

7. Furthermore, Applicants state there are no apparent conflicts of interest that would arise as a result of one Policy having a single, scheduled, or modified premium feature and another having a flexible premium feature. In adopting Rule 6e-3(T), the Commission placed on restriction on separate accounts' ability to issue both types of policies, and such use is presently allowed under Rule 6e-3(T). In addition, the Commission has proposed an amendment to Rule 6e-2 to permit the use of the same separate account for both types of contracts. Finally, the Commission has granted identical relief to other separate accounts in the past. Therefore, Applicants submit that the funding of all Policies with a single set of separate accounts should be permitted.

8. For the reasons stated above, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23823 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17768; 812-7555]

Salmon Brothers Fund, Inc., et al.; Notice of Application

October 1, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Salomon Brothers Fund, Inc., Salomon Brothers Capital Fund, Inc., Salomon Brothers Investors Fund, Inc., and Thomas F. Schlafly.

RELEVANT ACT SECTIONS: Order requested under section 6(c) that would grant an exemption from section 2(a)(19)(B)(iv) for the purposes of section 15(f).

SUMMARY OF APPLICATION: Applicants seek an order exempting Mr. Thomas F. Schlafly from the definition of "interested person" in section 2(a)(19)(B)(iv) of the Act solely for the purpose of determining whether, under section 15(f) of the Act, 75% of the members of the board of directors of certain registered investment companies are not "interested persons" of the predecessor or successor investment adviser.

FILING DATE: The application was filed on July 5, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 29, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 55 Water Street, New York, NY 10041.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3022 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300.

Applicants' Representations

1. Each of Salomon Brothers Fund, Inc. ("SBF"), Salomon Brothers Capital Fund, Inc. ("SB Capital"), and Salomon Brothers Investors Fund, Inc. ("SB Investors") (collectively, the "Funds") is registered as a management investment company.

2. On March 14, 1990, Shearson Lehman Hutton, Inc. ("SLH") and Salomon Brothers Asset Management, Inc. ("SBAM") entered into an agreement which provided for the purchase by SBAM of substantially all of the business and assets of the Lehman Management Co. ("LEMCO") division of SLH, which was the Funds' investment adviser at the time.

3. In accordance with the requirements of section 15(a)(4) of the Act, the investment advisory contracts under which LEMCO rendered services to the Funds provided that they would terminate in the event of an assignment. The consummation of the acquisition resulted in an assignment, as that term is used in the Act.

4. Following approval by the Funds' directors, on March 15, 1990, and by the Funds' shareholders, on April 30, 1990, of a new advisory contract between each of the Funds and SBAM and a related change in each of the Funds' names, the acquisition was consummated on May 1, 1990.

5. Mr. Thomas F. Schlafly has been a member of the board of directors of SB Investors since 1983, SB Capital since 1984, and SBF since 1986. Since 1984, Mr. Schlafly also has served in an "of counsel" capacity with the law firm of Peper, Martin, Jensen, Maichel & Hetlage ("Peper Martin") of St. Louis, Missouri.

6. Peper Martin has rendered legal services to and received legal fees from SLH for various litigation matters primarily associated with retail brokerage, such as questions of suitability, churning, and collections. None of these matters relate in any way to SLH's prior services as an adviser to the Funds or to the business of the Funds, and Peper Martin has never provided legal services to or received legal fees from any of the Funds. Mr. Schlafly has represented that the fees paid to Peper Martin by SLH have represented less than 1 percent of the firm's total revenues in each of the last three years and that Peper Martin anticipates that the total revenues received from SLH in each year in the foreseeable future will not vary significantly from prior years. Mr.

Schlafly has advised the directors of the Funds that he is not involved in, responsible for, or (other than in general terms) familiar with, any matter relating to representation of SLH, and that all SLH matters are handled by another individual who is a partner of Peper Martin.

7. Section 15(f) of the Act provides, in essence, that an investment adviser of a registered investment company may make a profit from the sale of its advisory business to another investment adviser, provided that (a) for the three years following the sale, at least 75% of the investment company's directors are not "interested persons" of either the predecessor or successor investment adviser, and (b) neither the transaction nor any express or implied term, condition, or understanding applicable thereto imposed an unfair burden on the investment company. Applicants do not seek any finding concerning whether the acquisition imposes an unfair burden on the Funds within the meaning of Section 15(f).

8. Section 2(a)(19)(B)(iv) of the Act provides that any person, or any partner or employee of that person, who has provided legal services to an investment adviser since the beginning of the last two completed fiscal years is an interested person of that investment adviser. Because Mr. Schlafly is employed by a law firm that provides legal services to SLH, he is an "interested person" of SLH.

9. At present, the board of each Fund meets the 75% requirement of section 15(f)(1)(A). However, each board wishes to add Mr. Michael F. Holland (the chairman, chief executive officer, and president of SBAM) to the board. Absent exemptive relief with respect to Mr. Schlafly's status, Mr. Holland cannot be added to the boards at this time since each of the Funds would have nine directors, only six of which would not be interested persons of the investment adviser or predecessor investment adviser.

10. The concept of "interested person" was added to the Act in 1970 because the definition of "affiliated person" was deemed insufficient to supply an independent check on management and to provide a means for the representation of shareholder interests in investment company affairs. However, the legislative history of section 2(a)(19) indicates that Congress intended that the Commission exercise its exemptive authority flexibly upon a showing that a person is in a position to act independently on behalf of the investment company and its shareholders.

11. The non-interested directors of the Funds have concluded that the interests of the Funds and their shareholders would be enhanced by a change in the status of Mr. Schlafly for the purpose of section 15(f). Peper Martin has never represented LEMCO or any of the Funds in question. Mr. Schlafly has never worked on a matter for SLH, and is not entitled to any share in the profits of Peper Martin. Applicants submit that Mr. Schlafly does not have the kind of ties to either SLH or SBAM that were of concern to the Congress and is in a position to act independently on behalf of the Funds and their shareholders.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23824 Filed 10-9-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1 - Motor vehicle, 2 - Rail freight, 3 - Cargo vessel, 4 - Cargo-only aircraft, 5 - Passenger-carrying aircraft.

DATES: Comments must be received on or before November 9, 1990.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW. Washington, DC

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10469-N	ICI Americas, Inc., Wilmington, DE	49 CFR 173.271(a)(11)	To authorize the transportation of phosphorous trichloride, classed as corrosive material, in DOT Specification 105J300 tank cars with safety relief valves prescribed for corrosive material service. (mode 2)
10470-N	Buckeye International, Inc., Maryland Heights, MO.	49 CFR 178.21, 178.24, 178.27, 178.35, 178.35(a).	To authorize the shipment of compound, cleaning, liquid, classed as corrosive material, in an inner ply double-wall polyethylene bag with a wall thickness of 2 mils overpacked in a non-DOT specification fiberboard box. (mode 1)
10471-N	Chevron Resources Company, Hobson, TX.	49 CFR 174.67(b)(3)(i)(j)	To authorize tank cars containing sulfuric and spent sulfuric acids to remain standing with unloading connections attached. (mode 2)
10472-N	General Chemical Corporation, Parsippany, NJ.	49 CFR 173.274	To authorize the transportation of fluosulfonic acid, classed as corrosive material, in DOT Specification 111A60W7 stainless steel tank cars. (mode 2)
10473-N	Progressive Technologies, Inc., Omaha, NE.	49 CFR 173.12, 173.25, 173.3(c), 175.3, 178.16, 178.19, 49 CFR part 173, subpart D, E, F, and H.	To authorize the manufacture, marking and sale of non-DOT specification polyethylene twin-walled 85 gallon capacity drum to be used as a salvage drum, lab pack container and sole use container for shipment of those hazardous materials authorized in DOT Specification 34 or 35 container. (modes 1, 2, 3, 4)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10475-N	General Cylinder/Div. of Manchester Tank & Equip., Dallas, TX.	49 CFR 178.50-15, 178.50-16, 178.51-15, 178.61-15, 178.61-18.	To authorize the rebuilding and repairing of DOT Specification 4B, 4BA and 4BW steel cylinders, in sizes from 1 pound to 420 pounds, to be used for transportation of flammable gases. (mode 1)
10476-N	Syn-Tex B. A. G., Winnipeg, Manitoba, Canada.	49 CFR 172.245	To authorize the manufacture, marking and sale of bulk containers of woven polypropylene with polyethylene liner for transportation of commodities classed as oxidizers and corrosive solids. (modes 1, 2, 3)
10477-N	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 175.3, 178.57-21	To authorize the transportation of a non-DOT specification cylinder comparable to a DOT 4L cylinder, except the inner vessel is constructed of 304 material, to be used for shipment of materials classed as nonflammable gases. (modes 1, 2, 3, 4)
10478-N	Davis Engineering Company, Fresno, CA.	49 CFR 178.3409-3(a)(1)	To authorize the construction of a combination cargo tank trailer built to the specifications of MC-306 AL design with alternative aluminum used for shell, heads and baffles with bracing for transportation of combustible and flammable liquids. (mode 1)
10479-N	Premier Air Center, Inc., East Alton, IL	49 CFR 172.101, 175.3	To authorize the transportation of ammunition for cannon with empty projectile which is forbidden for shipment aboard cargo aircraft. (mode 4)
10480-N	Air Products and Chemicals, Inc., Bethlehem, PA.	49 CFR 173.318(a), 176.76(h)(4)	To authorize the use of a non-DOT specification 3,000 gallon portable tank for shipment of helium, refrigerated liquid. (modes 1, 3)
10481-N	M1 Engineering, Limited, Bradford, West Yorkshire, England.	49 CFR 178.338-10(c)(d), 178.338-13(1)(c), 178.338-14(c), 178.338-2(e).	To authorize the manufacture, marking and sale of cyrogenic portable tanks for shipment of liquefied oxygen, nitrogen and argon. (modes 1, 2, 3)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Material Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 3, 1990.

Joseph T. Horning,

Chief, Exemptions and Approvals Division, Office of Hazardous Materials.

[FR Doc. 90-23857 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Notice of Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before October 25, 1990.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
3095-X	Dowell Schlumberger, Inc., Tulsa, OK	3095
4453-X	Mining Services International Corporation (MSI) Salt Lake City, UT	4453
4453-X	Atlas Power Company Dallas, TX	4453
4453-X	Reed Explosives, Inc, Blountsville, AL	4453
4453-X	A. M. Contracting, Grove City, PA	4453
4726-X	U.S. Department of Energy, Washington, DC	4726
4803-X	Dowell Schlumberger, Inc., Tulsa, OK	4803
5206-X	El Dorado Chemical Company, St. Louis, MO	5206
5206-X	Austin Powder Company, Cleveland, OH	5206
6126-X	Phone-Poulenc, Inc., Princeton, NJ	6126
6773-X	E. I. du Pont de Nemours and Company, Inc., Wilmington, DE	6773
6963-X	ISC Chemicals Limited, Bristol, England	6963
7070-X	American Chemical & Refining Company, Inc., Waterbury, CT	7070
7413-X	Chilton Metal Products Division, Chilton, WI	7413

Application No.	Applicant	Renewal of exemption
7446-X	Kaiser Aluminum and Chemical Corporation, Erie, PA	7446
7517-X	Trinity Industries, Inc., Dallas, TX	7517
7607-X	Dynamac Corporation, Fort Lee, NJ	7607
7721-X	Applied Companies, San Fernando, CA	7721
7808-X	Whitmire Research Laboratories, Inc., Saint Louis, MO	7808
7835-X	Linde Gases of Florida, Inc. Tampa, FL	7835
7835-X	Liquid Carbonic Specialty Gas Corporation, Chicago, IL	7835
7835-X	Scott Specialty Gases, Inc., Plumsteadville, PA	7835
7835-X	Matheson Gas Products, Inc., Secaucus, NJ	7835
7835-X	Air Products and Chemicals, Inc., Allentown, PA	7835
7835-X	Union Carbide Industrial Gases, Inc., Danbury, CT	7835
7835-X	Linde Gases of the Midwest, Inc., Hillside, IL	7835
7835-X	Liquid Air Corporation, Walnut Creek, CA	7835
7862-X	General Electric Company, Milwaukee, WI	7862
8126-X	Compagnie des Containers Reservoirs, Paris, France	8126
8214-X	Ford Motor Company, Dearborn, MI	8214
8236-X	Ford Motor Company, Dearborn, MI	8236
8450-X	LTV Aerospace and Defense Company, Dallas, TX [1]	8450
8480-X	Gillette Company, Boston, MA	8480
8498-X	Hunter Drums, Limited, Bramalea, Ontario, Canada	8498
8518-X	Unocal Oil & Gas Division, Vetura, CA	8518
8518-X	Shields Industries, Fontana, CA	8518
8518-X	Crosby & Overton, Inc., Long Beach, CA	8518
8518-X	Gallighen, Inc., Ventura, CA	8518
8555-X	Thiokol Corporation, Brigham City, UT	8555
8569-X	U.S. Department of the Army, Falls Church, VA	8569
8757-X	Y-Z Industries, Inc., Snyder, TX	8757
8815-X	Atlas Power Company, Dallas, TX	8815
8878-X	Amalgamet Canada—Division of Premetalco, Inc., Toronto, Ontario, Canada [2]	8878
8906-X	FMC Corporation, Philadelphia, PA	8906
8977-X	Eurotainer, USA, Somerset, NJ [3]	8977
8988-X	Dresser Industries, Inc., Houston, TX	8968
9010-X	United Technologies, Corporation, San Jose, CA	9010
9034-X	Airco, The BOC Group, Inc., Murray Hill, NJ	9034
9168-X	All-Pak, Inc., Buffalo, NY [4]	9168
9168-X	All-Pak, Inc., Pittsburgh, PA	9168
9220-X	Custom Packaging System, Inc., Manistee, MI	9220
9377-X	Atlas Power Company, Dallas, TX	9377
9387-X	Hub States Corporation, Indianapolis, IN	9387
9426-X	Rheem Container Corporation, Danbury, CT [5]	9426
9463-X	Guzzler Manufacturing, Inc., Birmingham, AL	9463
9507-X	Air Products and Chemicals, Inc., Allentown, PA	9507
9507-X	Liquid Air Corporation, Walnut Creek, CA	9507
9507-X	Linde Gasses of Florida, Inc., Tampa, FL	9507
9507-X	Union Carbide Industrial Gases, Inc., Danbury, CT	9507
9603-X	Tennessee Eastman Company, Kingsport, TN	9603
9628-X	Degussa Corporation, Ridgefield Park, NJ	9628
9654-X	Interox America, Houston, TX	9654
9654-X	Degussa Corporation, Ridgefield Park, NJ	9654
9946-X	Linde Gases of the Mid-Atlantic, Inc., Moorestown, NJ	9946
9953-X	Fore Way Express, Inc., Wausau, WI	9953
9985-X	Taylor-Wharton Cryogenics, Theodore, AL	9985
10001-X	Airco, The BOC Group, Inc., Murray Hill, NJ	10001
10040-X	Atlas Power Company, Dallas, TX	10040
10046-X	Eveready Battery Company, Inc., Cleveland, OH	10046
10047-X	Taylor-Wharton Cylinders, Harrisburg, PA	10047
10085-X	E. I. du Pont de Nemours and Company, Inc., Wilmington, DE	10085

[1] To modify a non-DOT specification container used for shipment of rocket motors by drilling six 2-inch drain holes in the bottom to prevent accumulation of rainwater.

[2] To authorize an additionally designed steel outerpack for use in transporting corrosive liquids.

[3] To authorize an additional commodity classed as flammable gas.

[4] To authorize a DOT-Specification 12A fiberboard box as an additional outer container for shipment of flammable liquids, flammable solids and a corrosive material.

[5] To authorize a different cover design for removable head polyethylene drums for shipment of certain corrosive materials and flammable liquids.

Application No.	Applicant	Parties to exemption
3330-P	United Nuclear Corporation, Uncasville, CT	3330
7052-P	Ross Laboratories, Inc., Seattle, WA	7052
7060-P	Ronson Aviation, Inc., Trenton, NJ	7060
8526-P	Ranger Transportation, Inc., Jacksonville, FL	8526
8554-P	Diversified Speader Services, Centerville, UT	8554
9881-P	LND, Inc., Oceanside, NY	9881
9887-P	Containers and Vessels, Ltd., of Ireland, Monaghan, Ireland	9887
10239-P	Vista Chemical Company, Baltimore, MD	10239

This notice is receipt of applications for renewal of exemption and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 3, 1990.

Joseph T. Horning,

Chief, Exemptions and Approval Division, Office of Hazardous Materials Transportation.

[FR Doc. 90-23858 Filed 10-9-90; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 63-90, Benefits for Blind Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does section 614, title 38, United States Code permit the furnishing of mechanical or electronic equipment to eligible blind veterans for the purpose of aiding them to overcome the economic handicap of blindness or is such equipment limited to that which will aid blind veterans in overcoming the physical handicap of blindness?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6 (e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 984, dated December 16, 1963, is reissued as a Precedent Opinion pursuant to 38 CFR 2. 6(e) (9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 63-90, Benefits for Blind Veterans Under 38 U.S.C. 614, requested by The Department, is as follows:

Held: Any mechanical or electronic equipment which, as determined by the proper authorites in the Veterans Administration, will aid otherwise eligible blind veterans to overcome the handicap of blindness may be furnished such veteran under the provisions of 38 U.S.C. 614. No distinction is to be drawn between "physical" or "economic" handicap in determining the need for such equipment but its intended use must, of course, be found to be an aid in overcoming the handicap of blindness. To the extent that earlier opinions may be in conflict with this holding, they are modified to accord herewith . Op. Sol. 116-47 is hereby overruled. (Opinion of the General Counsel, dated December 10, 1963, approved December 16, 1963, C-XXXXXXXXXX). [This decision is hereby promulgated for observance by all officials and employees of the Veterans Administration.]

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23852 Filed 10-9-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 56-90, Combination Correspondence-Residence Courses

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Should VA Regulation 14279 be cancelled and rescinded as being in conflict with sections 1652(b) and 1786(a) of title 38, United States Code.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW.; Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 1-77, dated July 16, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 56-90, Combination Correspondence-Residence Courses, requested by Chief Benefits Director, is as follows:

HELD: We see no basis for cancelling VAR 14279 as being in conflict with either section 1652(b) or section 1786(a) of title 38.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23845 Filed 10-9-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 65-90, Concurrent Payment of Employees' Compensation to Widow and Dependency and Indemnity Compensation to Child When He Attains Age 18

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether a child who is between the ages of 18 and 21 and attending school is eligible to receive dependency and indemnity compensation when the widow has elected and is receiving compensation from the Bureau of Employees' Compensation based on the veteran's military service.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 974, dated February 3, 1961, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 65-90, Concurrent Payment of Employees' Compensation to Widow and Dependency and Indemnity Compensation to Child When He Attains Age 18, requested by The Department, is as follows:

Held: Dependency and indemnity compensation benefits provided by 38 U.S.C. 413 for children of veterans are payable only in the event there is no widow with eligibility for dependency and indemnity compensation. Widow's eligibility may be terminated by death or remarriage; but receipt of Bureau of Employees' Compensation benefits does not terminate widow's basic eligibility for dependency and indemnity compensation.

Held Further: The dependency and indemnity compensation benefit authorized by 38 U.S.C. 414(c) may be properly paid to a school child, if the child is otherwise eligible, notwithstanding the continuing receipt of Bureau of Employees' Compensation benefits by the widow. (Opinion of the General Counsel, dated December 13, 1960, approved observance by all officers and employees of the Veterans Administration.)

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23854 Filed 10-9-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 66-90, Protection of Disability Ratings Assigned Under Superceded Criteria

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—a. Whether it is legally appropriate to revise the rating schedule as it applies to evaluating defective hearing while at the same time requiring by memorandum that the change in rating methods results in no decrease in any evaluation assigned under the old criteria, regardless of the results of current audiometric testing under the new criteria. b. Whether the Board of Veterans Appeals must maintain the prior rating levels under the old criteria if the audiometric findings under the new criteria would result in a reduction or discontinuance of compensation benefits.

EFFECTIVE DATES: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 11-88, dated October 27, 1988, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to

assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 66–90, Protection of Disability Ratings Assigned Under Superceded Criteria, requested by Chairman, Board of Veterans Appeals, is as follows: HELD: The manual provision that purports to protect disability evaluations assigned under superceded regulations on defective hearing is neither legally appropriate nor binding upon the Board of Veterans Appeals.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23855 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 59–90, Power of Attorney to Flight School to Cash Government Checks for Educational Assistance Allowance

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does a requirement by a flight school for veteran-students enrolled in flight training under chapter 34 of title 38 to execute a power of attorney authorizing the school to cash their Government checks for educational assistance allowance violate the provisions of section 3101 of title 38, United States Code?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 3–69, dated September 3, 1969, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 59–90, Power of Attorney to Flight School to Cash Government Checks for Educational Assistance Allowance, requested by Controller and Chief Benefits Director, is as follows:

Held: The combination of circumstances existing in the present cases, i.e., the direction by the veteran to mail his check in care of the flying school and his execution of a "special power of attorney" or an "assignment and power of attorney" authorizing the flying school to negotiate such check, results in what is tantamount to an assignment of veterans educational assistance allowance to the flying school in contravention of section 3101 of title 38, United States Code.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23846 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 64–90, Payment Provision of Section 2, Public Law 87–574

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May incompetent patients and members in VA hospitals and domiciliaries for whom guardians have been appointed, whose services are utilized for therapeutic and rehabilitation purposes, be paid directly the nominal remuneration authorized as payable under section 618 of title 38, United States Code, added by section 2, of Public Law 87–574, or is the VA accountable to the guardian for the amounts payable, if the State law so requires?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorizes the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 982, dated December 27, 1962, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such

opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 64–90, Payment Provision of Section 2, Public Law 87–574, requested by The Department, is as follows:

Held: The provision for utilization of the services of patients and members in VA hospitals and domiciliaries, at nominal remuneration, contemplates that, when medically indicated, payments will be made directly to the veterans as part of the cost of the therapeutic and rehabilitation program of VA and that, in such event, the guardian of an incompetent patient or member would have no right to demand these payments, irrespective of any provision of the guardianship laws of the State in which the guardian was appointed. [Opinion of the General Counsel dated December 21, 1962, approved December 27, 1962.] [This decision is hereby promulgated for observance by all officers and employees of the Veterans Administration.]

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23853 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 61–90, Reconsideration of General Counsel's Opinion 15–56 that Minor Stepchild Serving in Armed Forces not Considered Member of Veteran's Household

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Reconsideration of General Counsel's Opinion 15–56 that Minor Stepchild Serving in Armed Forces not Considered Member of Veteran's Household.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulations or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 7–63, dated May 14, 1963, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 61–90, Reconsideration of General Counsel's Opinion 15–56 that Minor Stepchild Serving in Armed Forces not considered Member of Veteran's Household, requested by Chief Benefits Director, is as follows:

[Held:] Since the question whether the stepchild is a member of the stepparent's household must be determined in each instance on the basis of the facts in the individual case, it is not feasible to state any inflexible rules. As was noted, however, in AD 626, legislation such as that here considered is beneficial in character and should be liberally construed. While the bare relationship of stepchild and stepparent does not provide eligibility, we regard our precedents and those in decided cases where the courts have given a broader meaning to the applicable language respecting household, as justifying considerable liberally based on the intent of the parties in determining status as a member of a veteran's household. Accordingly, it would not be unreasonable to assume that status as a member of a veteran's household, once established, will be considered as continuing the absence of affirmative evidence to the contrary.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23850 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 62–90, Waiver of National Service Life Insurance Premiums

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal intepretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether waiver of National Service Life Insurance premiums may be granted under 38 U.S.C. 712 for a total disability commencing while insurance was "deemed not to have lapsed" under subsection 602(m)(2) of the National Service Life Insurance Act of 1940, as amended.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a

superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 990, dated February 16, 1968, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 62–90, Waiver of National Service Life Insurance Premiums Under 38 U.S.C. 712, requested by The Department, is as follows:

Held: A total disability which commenced while an insured's National Service Life Insurance policy was deemed not to have lapsed by reason of provisions of subsection 602(m)(2) must be treated as one commencing while the insurance was in force under premium-paying conditions within the purview of subsection 602(n) of the National Service Life Insurance Act (38 U.S.C. 712). Op. Sol. 241–51 is overruled to the extent that it is inconsistent with this conclusion. (Opinion of the General Counsel dated February 9, 1968, approved February 16, 1968, C–XXXXXXXXX.) [This opinion is hereby promulgated for observance by all officers and employees of the Veterans Administration".]

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23851 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 58–90, War Orphans Benefits for the Children of New Philippine Scouts Who Have Elected To Receive Lump-sum BEC Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans's benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claims matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May the deceased veteran's widow and children be paid dependents' educational assistance allowance provided by chapter 35 of title 38, United States Code under the facts stated below?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 4–69, dated November 6, 1969, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 58–90, War Orphans Benefits for the Children of New Philippine Scouts Who Have Elected to Receive Lump-sum BEC Benefits, requested by Chief Benefit Director, is as follows:

Held: (a) That the widow of the deceased veteran has no entitlement to educational assistance under chapter 35 of title 38, in force on November 6, 1969 (b) That the election by the widow, effective January 31, 1955, to receive on behalf of hereself and her children a lump-sum payment of FECA benefits would not bar payment of benefits under chapter 35 of title 38 to an otherwise eligible child over age 18.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23847 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 57–90, Definition of "Proprietary Educational Institution" in Section 1673(d) of Title 38, United States Code, Excludes Military Aero Flight Clubs Operated as Federal Instrumentalities

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Are those aero flight clubs which are organized, operated, and controlled pursuant to military regulations, "proprietary educational institutions" and subject to the student ratio requirements under section 1673(d) of title 38, United States Code, requiring that the Administrator shall not approve enrollment in a course given by a proprietary institution where more than 85 percent of the students enrolled in the course are receiving veterans' educational benefits?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving

veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 15–71, dated October 20, 1971, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 57–90, Definition of "proprietary educational institution" in section 1673(d) of title 38, United States Code, excludes military aero flight clubs operated as Federal instrumentalities, requested by Chief Benefits Director, is as follows:

Held: Aero flying clubs formed and operated pursuant to service department regulations as nonappropriated sundry fund activities (excluding those clubs established as private associations) are federal governmental instrumentalities, and in regard to those flight training and other related instrumental programs of education offered, the clubs are not "proprietary educational institutions" subject to the 85–15 student ratio requirements in section 1673(d) of title 38, United States Code.

Further, while the Administrator has the responsibility under section 1772(b) for approval of the flight training and other related educational programs of the clubs, there is authority under sections 213, 1773 and 1774 of title 38, United States Code, for the Administrator to either contract with, or accept uncompensated services of, state approving agencies for inspection and supervisory visits to the training facilities and to obtain the recommendations of the state agencies for his approval or disapproval of the courses.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23846 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 60–90, Entitlement to Special Monthly Compensation Pursuant to 38 U.S.C. 314; Specially Adapted Housing Pursuant to 38 U.S.C. 801; and Automobiles and Adaptive Equipment Pursuant to 38 U.S.C. 1901

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(a) Does a functional (as distinguished from organic) loss of use of lower extremities meet the statutory requirement of loss of use? (b) Does such functional loss of use satisfy the requisite standard of permanence?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as Administrator's Decision 994, dated June 10, 1974, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 60–90, Entitlement to Special Monthly Compensation Pursuant to 38 U.S.C. 314; Specially Adapted Housing Pursuant to 38 U.S.C. 801; and Automobiles and Adaptive Equipment Pursuant to 38 U.S.C. 1901, requested by the Department, is as follows:

Held: In view of the foregoing, it is therefore, held: (1) When the requisite determination of "loss of use" is made with regard to a particular VA benefit, it controls respecting eligibility irrespective of whether such loss is functional or organic in origin. (2) The submitted assumption "that the prognosis for reversal is virtually nil from a medical standpoint" meets the requirements of permanence applicable to entitlement to the benefits in question. This opinion is hereby promulgated for observance by all officers and employees of the Veterans Administration.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23849 Filed 10–9–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 196

Wednesday, October 10, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Closed Meeting

October 3, 1990.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–4109), 5 U.S.C. 552b:

DATE AND TIME: October 10, 1990, 8:30 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Project No. 2640–006, Flambeau Paper Company

(2) Docket No. E–7319–001, Wolverine Power Company

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400

Lois D. Cashell,

Secretary.

[FR Doc. 90–23924 Filed 10–5–90; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATORY COMMISSION

Notice

October 3, 1990.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–49), 5 U.S.C. 552B:

DATE AND TIME: October 10, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E.,* Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

This a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 924th Meeting—October 10, 1990, Regular Meeting (10:00 a.m.)

CAH–1.
Project Nos. 10675–002, 10676–002, 10677–002 and 10678–002, Western Massachusetts Electric Company
Project Nos. 10731–002, 10732–002, 10733–002 and 10734–002, South Hadley Electric Light Department and Massachusetts Municipal Wholesale Electric Company

CAH–2.
Project No. 10845–001, Parcoal Energy, Inc.

CAH–3.
Project No. 10912–001, Bit River Hydro, Inc.

CAH–4.
Omitted.

CAH–5.
Project No. 2531–009, Central Maine Power Company.

CAH–6.
Project No. 2788–005, F.W.E. Stapenhorst, Inc.

CAH–7.
Docket No. UL89–24–001, City of Albany, Oregon.

CAH–8.
Docket No. EL89–20–001, Mauna Kea Power, Inc.

CAH–9.
Project No. 9022–005, JDJ Energy Company

CAH–10.
Omitted

CAH–11.
Project No. 2090–000, Green Mountain Power Corporation

Consent Agenda—Electric

CAE–1.
Docket No. ER90–540–000, Virginia Electric and Power Company

CAE–2.
Docket No. ER90–164–001, TECO Power Services Corporation and Tampa Electric Company

CAE–3.
Docket No. ER85–477–006, Southwestern Public Service Company

CAE–4.
Omitted

CAE–5.
Omitted

CAE–6.
Docket No. ER85–290–014, Connecticut Light and Power Company

Docket No. ER85–707–009, Western Massachusetts Electric Company

Docket No. ER85–689–009, Holyoke Water Power Company and Holyoke Power and Electric Company

CAE–7.
Docket No. EL90–38–000, Interstate Power Company

CAE–8.
Docket No. QF85–199–002, Vulcan/BN Geothermal Power Company

Docket No. QF86–727–003, Del Ranch, L.P.

Docket No. QF86–1043–001, Desert Power Company

Docket Nos. QF87–511–002 and QF89–297–001, Earth Energy, Inc.

CAE–9.
Docket No. QF88–295–004, Tenaska III Texas Partners

CAE–10.
Docket No. QF86–39–003, Turner Falls Limited Partnership

CAE–11.
Docket Nos. ER89–265 and EL 89–26–004, Arizona Public Service Company

CAE–12.
Docket No. ER90–284–002, New England Power Company

CAE–13.
Docket No. RM87–26–003, Revision of Rate Schedule Filings under Section 205 and 206 of the Federal Power Act

CAE–14.
Docket No. ER88–439–001, Central Illinois Public Service Company

CAE–15.
Docket No. ER89–571–001, Southwestern Electric Power Company

CAE–16.
Docket No. ER88–527–001, Union Electric Company

CAE–17.
Docket No. ER90–142–001, Arizona Public Service Company

CAE–18.
Docket No. ER90–127–001, Southwestern Electric Power Company

Consent Agenda—Gas and Oil

CAG–1.
Docket No. TA91–1–40–000, Raton Gas Transmission Company

CAG–2.
Docket No. RP90–186–000, Northwest Pipeline Corporation

CAG–3.
Docket Nos. TM90–13–22–002 and 003, CNG Transmission Corporation

CAG–4.
Docket No. GT90–46–000, Tennessee Gas Pipeline Company

CAG–5.
Docket No. RP90–132–002, United Gas Pipe Line Company

CAG–6.
Docket No. RP90–167–000, ANR Pipeline Company

CAG–7.
Docket Nos. RP88–27–024, 025, RP88–264–020, 021, RP89–138–009, 010, United Gas Pipe Line Company

CAG–8.
Docket Nos. RP90–145–001, RP89–33–003, 007 and 009, Northern Border Pipeline Company

CAG–9.
Docket Nos. RP90–12–005 and CP89–1554–004, Colorado Interstate Gas Company

CAG–10.

Docket Nos. RP89-38-000, RP89-99-000 and CP76-118-000, U-T Offshore System
CAG-11.
Docket No. PR90-6-000, Dow Intrastate Gas Company
CAG-12.
Docket No. RP90-153-002, El Paso Natural Gas Company
CAG-13.
Docket No. RP90-143-001, CNG Transmission Corporation
CAG-14.
Docket No. RP90-148-002, Williston Basin Interstate Pipeline Company
CAG-15.
Docket No. TM90-14-28-001, Panhandle Eastern Pipe Line Company
CAG-16.
Docket Nos. CP86-578-031, CP89-1740-005 and RP90-147-001, Northewest Pipeline Corporation
CAG-17.
Docket Nos. RP90-139-003, RP89-224-002 and RP89-203-005, Southern Natural Gas Company
CAG-18.
Docket Nos. RP90-124-003, RP88-259-035 and CP89-1227-004, Northern Natural Gas Company
CAG-19.
Docket Nos. RP87-33-010 and TA88-1-43-004, Williams Natural Gas Company
CAG-20.
Docket Nos. RP88-115-009, CP89-31-001, CP88-818-001 and CP89-59-002, Texas Gas Transmission Corporation
CAG-21.
Docket No. RP90-158-000, Trunkline, Gas Company
CAG-22.
Docket Nos. RP86-136-000, RP89-49-010, RP90-14-000 and CP89-1582-002, National Fuel Gas Supply Corporation
CAG-23.
Docket Nos. RP89-37-000, RP89-82-000, CP90-406-000 and CP75-104-055, High Island Offshore System
CAG-24.
Docket No. IS90-11-001, Amerada Hess Pipeline Corporation
Docket No. IS90-12-001, ARCO Pipeline Company
Docket No. IS90-13-001, BP Pipeline (Alaska) Inc.
Docket No. IS90-14-001, Exxon Pipeline Company
Docket No. IS90-15-001, Mobil Alaska Pipeline Company
Docket No. IS90-16-001, Phillips Alaska Pipeline Company
Docket No. IS90-17-001, Unocal Pipeline Company
CAG-25.
Docket Nos. G-4579-064 and G-2758-003, Mobil Exploration and Producing North America Inc., Texaco Inc. and Texaco Producing Inc., and OXY USA Inc.
Docket No. G-3244-000, Cabot Petroleum Corporation
Docket No. CI63-1045-000, Samson Resources Company
Docket No. G-4579-040, Cities Service Oil and Gas Corporation
Docket Nos. G-8751-000, G-12015-000 and CI60-580-000, The George R. Brown Partnership
Docket No. CI64-1392-002, BHP Petroleum Company Inc.
Docket No. CI77-735-003, Odeco Oil & Gas Company
Docket No. CI85-32-001, Mobil Exploration and Producing North America Inc.
Docket Nos. CI88-256-000 and CI88-386-000, Amoco Production Company
Docket No. CI86-506-000, Phillips Petroleum Company
Docket No. CI86-613-000, BHP Petroleum (Americas) Inc.
Docket No. CI87-186-000, TXO Production Corp.
Docket Nos. CI87-234-000 and CI87-235-000, Chevron U.S.A. Inc.
Docket No. CI87-312-000, CNG Producing Company
Docket No. CI87-313-000, Texaco Inc.
Docket Nos. CI87-333-000 and CI87-351-000, Texaco Producing Inc.
Docket No. CI87-377-000, Amoco Production Company
Docket No. CI87-393-000, Cabot Petroleum Corporation
Docket Nos. CI88-695-000 and CI88-726-000, Amoco Production Company
Docket Nos. CI87-571-000, CI87-575-000 and CI87-576-000, Texaco Producing Inc.
Docket No. CI87-647-000, Exxon Corporation
Docket No. CI66-769-000, Amoco Production Company
Docket No. CI87-193-000, Koch Exploration Company
Docket Nos. CI87-32-000, CI87-33-000, CI87-34-000, CI87-35-000, CI87-36-000, CI87-37-000, CI87-38-000, CI87-39-000, CI87-40-000, CI87-41-000, CI87-42-000, CI87-43-000 and CI87-44-000, ONEOK Exploration, Inc.
Docket No. CI87-775-000, Cities Service Oil and Gas Corporation
Docket Nos. CI87-274-000, CI87-275-000, CI87-276-000, CI87-277-000, CI87-278-000, CI87-279-000, CI87-280-000, CI87-281-000, CI87-282-000, CI87-283-000, CI87-284-000, CI87-285-000 and CI87-286-000, Anadarko Petroleum Corporation
Docket Nos. G-5044-000 and CI66-426-000, Samson Resources Company
Docket Nos. CI87-885-000 and CI87-886-000, Cities Service Oil and Gas Corporation
Docket No. CI88-197-000, Tenneco Oil Company
Docket No. CI88-263-000, Amoco Production Company
Docket No. CI88-312-000, Mobil Oil Exploration & Producing Southeast Inc.
Docket No. G-4579-049, Cities Service Oil and Gas Corporation
Docket No. CI65-749-000, Amoco Production Company
Docket No. CI88-361-000, Tenneco Oil Company
Docket No. CI88-483-000, Cabot Petroleum Corporation
Docket No. CI88-50-000, Anadarko Petroleum Corporation
Docket No. CI88-230-000, Mobil Producing Texas & New Mexico Inc.
Docket Nos. CI86-452-000, CI86-453-000, CI86-454-000, CI86-455-000, CI86-456-000, CI86-457-000, CI86-458-000, CI86-459-000, CI86-460-000, CI86-461-000, CI86-462-000, CI86-463-000, CI86-464-000, CI86-465-000, CI86-466-000, CI86-467-000, CI86-468-000, CI86-469-000, CI86-470-000, CI86-471-000, CI86-472-000, CI86-473-000, CI86-474-000, CI86-475-000, CI86-476-000, CI86-477-000, CI86-478-000, CI86-479-000, CI86-480-000, CI86-481-000, CI86-482-000, CI86-483-000, CI86-484-000, CI86-485-000, CI86-486-000, CI86-487-000, CI86-488-000, CI86-489-000, CI86-490-000, CI86-491-000, CI86-492-000, CI86-493-000, CI86-494-000, CI86-495-000, CI86-496-000, CI86-497-000, CI86-498-000 and CI86-499-000, Marathon Oil Company
Docket No. G-4579-050 OXY USA Inc. (formerly Cities Service Oil and Gas Corporation)
Docket No. G-8123-000, Shell Western E&P Inc.
Docket No. CI61-945-000, Pennzoil Products Company
Docket Nos. CI84-295-000 and CI84-323-001, Mesa Operating Limited Partnership
Docket Nos. CI88-639-000 and CI88-430-000, Amoco Production Company
Docket No. CI83-502-000, Terra Resources, Inc.
Docket Nos. CI89-67-000, CI89-68-000 and CI89-69-000. Amoco Production Company
Docket Nos. CI89-35-000 and CI84-283-000, Mesa Operating Limited Partnership
Docket No. CI89-197-000, Helmerich & Payne, Inc.
Docket No. CI61-1791-000, Mitchell Energy Corporation
Docket No. CI89-153-000, Amoco Production Company
Docket No. CI89-203-000, Samedan Oil Company
Docket No. CI89-287-000, CI89-288-000, CI89-289-000, CI89-290-000, CI89-291-000, CI89-292-000, CI89-293-000 and CI89-298-000, ARCO Oil and Gas Company, Division of Atlantic Richfield Company
Docket No. CI89-436-000, Exxon Corporation
CAG-26.
Docket No. CI85-513-012, Tenngasco Gas Supply Company v. Southland Royalty Company
CAG-27.
Docket No. CP90-1380-001, National Fuel Gas Supply Corporation
CAG-28.
Docket No. CP88-683-001, East Tennessee Natural Gas Company
CAG-29.
Docket No. CP89-1929-001, Columbia Gas Transmission Corporation
CAG-30.
Docket Nos. CP84-474-013 and CP86-263-005, American Distribution Company (Alabama Division)
CAG-31.
Docket No. CP89-2067-001, Southern Natural Gas Company
CAG-32.
Docket No. CP90-1391-000, Arcadian Company v. Southern Natural Gas Company
CAG-33.

Docket No. CP90–139–000, Texas Gas Transmission Corporation
CAG–34.
Docket No. CP90–1354–000, Northern Natural Gas Company
CAG–35.
Docket No. CP89–1496–000, Upper Cumberland Gas Utility District of Cumberland County, Tennessee
CAG–36.
Docket No. CP90–772–000, Northwest Pipeline Corporation
CAG–37.
Docket No. TQ90–3–27–001, North Penn Gas Company
CAG–38.
Docket No. CP90–2345–000, Algonquin Gas Transmission Company
CAG–39.
Docket No. CP89–1684–001, Steuben Gas Storage Company
Docket No. CP90–177–001, CNG Transmission Corporation
Docket No. CP89–685–001, Transcontinental Gas Pipeline Corporation

Hydro Agenda

H–1.
Project No. 9556–002, Kamargo Corporation
Project No. 9557–002, Black River Hydro Corporation
Project No. 9564–002, Norwood Hydro Corporation
Project No. 9565–002, Raymondville Hydro Corporation
Project No. 9566–002, East Norfolk Hydro Corporation
Project No. 9553–002, School Street Hydro Corporation
Project No. 9563–002, Herrings Hydro Corporation
Project No. 9552–002, Deferiet Corporation
Project No. 9554–002, Colton Hydro Corporation
Project No. 9555–002, Higley Corporation
Project No. 9567–002, Hannawa Corporation
Project Nos. 2320, 2330, 2539 and 2569, Niagara Mohawk Power Corporation. Order on remand.
H–2.
Project No. 9554–002, Colton Hydro Corporation. Order on application for preliminary permit.
H–3.
Project No. 9555–002, Higley Corporation. Order on application for preliminary permit.
H–4.
Project No. 9552–002, Deferiet Corporation. Order on application for preliminary permit.
H–5.
Project No. 9567–002, Hannawa Corporation. Order on application for preliminary permit.

Electric Agenda

E–1.
Docket No. EC90–16–000, Kansas City Power & Light Company. Order on request for authorization and approval of merger.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket Nos. RP89–183–000, 002 and TC89–8–000, Williams Natural Gas Company. Order on interlocutory appeal concerning the application of Rule 602 and the Commission's decision in *Arkansas Louisiana Gas. Co.*, 48 FERC 61,062 (1989).

II. Producer Matters

PF–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Docket Nos. CP89–2047–003, CP89–2048–003, CP89–1794–000, CP89–1795–000, CP89–1796–000, CP89–1797–000, CP89–1798–000, CP89–1799–000, CP89–1800–000, CP89–1801–000, CP89–1802–000, CP89–1803–000, CP89–1804–000, CP89–1805–000, CP89–1806–000, CP89–1807–000, CP89–1808–000, CP89–1809–000, and CP89–1810–000, Kern River Pipeline Company. Order on compliance filing and prior notice request.
PC–2.
Docket No. RM90–14–001, Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities. Order on requests for rehearing and/or clarification.
PC–3.
Docket No. RM90–13–001, Interim Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates. Order on requests for rehearing and/or clarification.

Lois D. Cashell,

Secretary.

[FR Doc. 90–23926 Filed 10–5–90; 9:29 am]

BILLING CODE 6717–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, October 15, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR. Doc. 90–24000 Filed 10–5–90; 1:34 p.m.]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 55, No. 196
Wednesday, October 10, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP88-27-024, RP88-264-020, and RP89-138-009]

United Gas Pipe Line Co.; Tarriff Filing

Correction

In notice document 90-20659 appearing on page 35950 in the issue of Tuesday, September 4, 1990, the **Federal Register** document number at the end of the document should have appeared as set forth herein.

BILLING CODE 1505-01-D

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 615, 616, 618, and 619

RIN 3052-AA94

Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Coordination; General Provisions; Definitions

Correction

In rule document 90-13862 beginning on page 24861 in the issue of Tuesday, June 19, 1990. make the following correction:

On page 24862, in the first column, beginning in the third line, the **DATES** paragraph should read as follows:

"**DATES:** These regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81N-0257]

Studies of Adverse Effects of Marketed Drugs; Availability of Cooperative Agreements; Request for Applications

Correction

In notice document 90-16938 beginning on page 29669 in the issue of Friday, July 20, 1990, make the following correction:

On page 29669, in the third column, at "**SUPPLEMENTARY INFORMATION**", starting in the seventh line, the last sentence should read:

"Applications submitted under this program are not subject to the requirements of Executive Order 12372 and are exempted from regulation 45 CFR part 46—Protection of Human Subjects."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

Correction

In notice document 90-23309 appearing on page 40450 in the issue of Wednesday, October 3, 1990, at the end of the document "FR Doc. 90-23369" should read "FR Doc. 90-23309".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-030-00-4212-13; WYW-113713]

Realty Action; Exchange; Wyoming

Correction

In notice document 90-20322 beginning on page 35368 in the issue of Wednesday, August 29, 1990, at the beginning of the document, the docket line should read as set forth above and at the end of the document (page 35369, second column), "FR Doc. 90-20822" should read "FR Doc. 90-20322".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 25885; Amdt. 29-31]

RIN 2120-AC27

Rotorcraft Airworthiness Amendments Based on European Joint Airworthiness Requirements Proposals

Correction

In rule document 90-22421 beginning on page 38964 in the issue of Friday, September 21, 1990, make the following corrections:

§ 29.903 [Corrected]

1. On page 38967, in the first column, in the first line of § 29.903(c), "*Category A:*" should read "*Category A;*".

Appendix B to Part 29 [Corrected]

2. On the same page, in the third column, under appendix section VIII(c), in the fourth line, "while" should read "white".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-20; Notice 1]

RIN 2127-AD03

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Brake Failure Warning Indicators

Correction

In proposed rule document 90-21314 beginning on page 37497 in the issue of Wednesday, September 12, 1990, make the following corrections:

1. On page 37498, in the third column, in the first full paragraph, in the third line, "instrument" was misspelled.

2. On the same page, in the same column, in the last line "qualify" should read "quantify".

3. On page 37499, in the first column, in the fifth line, "along" and "placed" should read "alone" and "replaced", respectively.

4. On the same page, in the third column, in the eighth line, "Interested" should begin a new paragraph.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8310]

RIN 1545-AL64

Consolidated Return Regulations; Coordination With Section 833

Correction

In rule document 90-20790 beginning on page 36274 in the issue of Wednesday, September 5, 1990, in § 1.1502-75T, on page 36276 make the following corrections:

§ 1.1502-75T [Corrected]

1. In the first column, in paragraph (d)(5)(ii), in the next-to-last line, insert a closing parenthesis after "not".

2. In the second column, in paragraph (d)(5)(iii)(B)(*1*), in the fourth line, insert a comma after "1986".

3. In the third column, in paragraph (d)(5)(v), in the seventh line "of" should read "on".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8312]

RIN 1545-AM07

Extension of Time To File for Taxpayers Outside the United States and Puerto Rico

Correction

In rule document 90-21107 beginning on page 37226 in the issue of Monday, September 10, 1990, make the following correction:

§ 1.6081-5 [Corrected]

On page 37227, in § 1.6081-5(a)(1), in the 2nd column, in the 10th line insert "the" after "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-62-89]

RIN 1545-AO11

Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards

Correction

In proposed rule document 90-20984 beginning on page 36657 in the issue of Thursday, September 6, 1990, the heading of the document should read as set forth above, and in the third column, in the 13th line from the bottom, the section number should read "§ 1.382-2T".

BILLING CODE 1505-01-D

federal register

Wednesday
October 10, 1990

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251, 252, and 255

Termination of the Multifamily Coinsurance Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251, 252, and 255

[Docket No. R-90-1471; FR-2763-F-02] RIN 2502-AE85

Termination of the Multifamily Coinsurance Program

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

ACTION: Final rule.

SUMMARY: This rule terminates the authority of the FHA Commissioner, currently set out at 24 CFR parts 251, 252 and 255, to insure mortgage loans made for the construction and rehabilitation of multifamily housing and related facilities on a coinsurance basis. The rule also provides for a phased closedown of the coinsurance program to permit applications already in lenders' workload at the same time the program is terminated to be processed for coinsured mortgages, but with required precommitment review by the Department. The purpose of the rule is to terminate a program that has been found by the Department, after extensive analysis, to be structually flawed and fundamentally unsound.

EFFECTIVE DATE: November 12, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Acting Director, Office of Multifamily Housing Development, room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; (voice) (202) 708-3000; (TDD) (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Coinsurance was authorized under the Housing and Urban Development Act of 1974, which added section 244 to the National Housing Act but not until 1983 that coinsurance became operational for HUD's multifamily programs. In May of that year, HUD implemented the section 223(f) coinsurance program (24 CFR part 255) for the purchase or refinancing and limited repair of existing projects. In October 1984, HUD extended coinsurance to the section 221(d) program (24 CFR part 251) for new construction and substantial rehabilitation of rental housing. In October 1988, HUD extended coinsurance to the section 232 program (24 CFR part 252) for new construction and substantial rehabilitation of nursing homes, intermediate care facilities and board and care homes. This program also allows loans for acquisition or refinancing of existing, fully insured facilities.

Coinsurance was intended to function as a joint venture between the private and public sectors, in which lenders and HUD would share mortgage insurance risk, thereby providing an alternative to traditional HUD full insurance financing. It was intended to augment, rather than replace, HUD's full insurance programs, and to serve as a means of encouraging the production and preservation of moderate-income rental housing and residential health care facilities.

Program Activity

Since 1983, more than 100 lenders have applied to participate in one or more of the multifamily coinsurance programs. However, only 39 lenders were fully approved to participate in one or more programs. Since 1983, close to 1,600 projects, with a total mortgage value of approximately $10 billion, have been coinsured. The following table provides a cumulative breakout of coinsured loans closed by program.

COINSURED LOANS CLOSED AS OF JUNE 30, 1990

Program	Projects	Units	Mortgage amount
223(f)	1,304	311,414	$7,568,710,475
221(d)	286	55,533	2,748,301,100
232	7	986	51,810,800
Total	1,597	367,933	10,368,822,375

Program Losses

While HUD's coinsurance programs have provided financing for a significant number of multifamily projects and units, the programs have been plagued by an unacceptable level of loan defaults and losses to the FHA General Insurance Fund. The Fiscal Year 1988 General Accounting Office Audit of the FHA Insurance Funds, prepared by Price Waterhouse, estimated that, in addition to coinsurance claims already paid, FHA would sustain losses of $960 million on coinsured loans closed through September 30, 1988. These losses are attributable to poor underwriting by the coinsuring lenders, as well as weak monitoring and enforcement by HUD. The GAO audit indicated that additional losses are likely from additional defaults of mortgages originated before Fiscal Year 1989. While the Fiscal Year 1989 audit results are not yet available, HUD expects the ultimate loss figure to be significantly higher than $960 million.

Since September 1988, ten coinsuring lenders with total coinsured portfolios of approximately $4.8 billion have experienced severe financial difficulties as a result of coinsured loan defaults and have either defaulted on their obligations to holders of Mortgage Backed Securities (MBS) guaranteed by the Government National Mortgage Association (GNMA) or have been unable to fund scheduled draws on construction loans. The financial collapse of these coinsuring lenders resulted from a combination of imprudent lending and under-capitalization. GNMA has been obligated, under its Guaranty Agreements, to take over the portfolios of these defaulted lenders and to make the required payments to securities holders. GNMA is authorized by HUD to assign defaulted loans to FHA (HUD) for full indemnity. These lender defaults have, in effect, raised HUD's exposure on their coinsured loans from approximately 80 percent to 100 percent.

The following table shows coinsured loan defaults as of June 30, 1990 and cumulative claim amounts paid through June 30, 1990. These figures confirm the GAO/Price Waterhouse estimates cited above.

COINSURED LOAN DEFAULTS AND CUMULATIVE CLAIM AMOUNTS PAID AS OF JUNE 30, 1990

Program	Defaults		Claims paid	
	Projects	Mortgage amount	Projects	Amount paid
223(f)	210	$1,226,485,700	68	$350,715,133
221(d)	33	402,995,000	2	28,488,458
232	0	0	0	0
Total	243	1,629,480,700	70	379,203,591

Efforts to Evaluate and Reform Coinsurance

Since taking office, Secretary Kemp has taken steps to evaluate coinsurance and to reduce HUD's financial exposure. On May 5, 1989, he ordered a comprehensive evaluation of the program and placed a moratorium on new entrants into the program. During this evaluation period, HUD increased its monitoring of all coinsuring lenders and reviewed lenders' processing and underwriting for all coinsured loans. In addition to reviewing current commitments, HUD evaluated the overall performance of all participating lenders to identify those who should be placed under close scrutiny or be made subject to administrative sanctions. As a result of this evaluation, eleven lenders were suspended and eleven others have been placed on probation to date.

HUD also engaged the accounting firm of Price Waterhouse to review the coinsurance programs' capital and financial reporting requirements. Price Waterhouse found that ". . . given presently apparent loss levels, system-wide capital is considered insufficient and, in our view, must be raised, at least on an interim basis, if the programs are to be continued." Price Waterhouse recommended that HUD establish capital requirements at a level no less than that required by the Federal National Mortgage Association (FNMA) under its Delegated Underwriting and Servicing (DUS) program. The accounting firm also found that the coinsurance programs "currently suffer from a lack of reliable financial information." Price Waterhouse recommended that HUD institute a quarterly call reporting requirement (similar to that required by the federal financial regulatory agencies from banks and savings and loan associations), with financial information reported in accordance with a uniform chart of accounts.

Material Weakness Finding and Intention to Terminate the Program

As a consequence of audit reports by HUD's Office of Inspector General, a GAO audit, the Price Waterhouse study and HUD's internal control reviews pursuant to the Federal Managers' Financial Integrity Act of 1982, Secretary Kemp, in a December 29, 1989 report to the President, identified coinsurance as HUD's "top material weakness." The report cited, as specific program defects: weak program standards which enabled inexperienced and undercapitalized lenders to participate; weak underwriting standards; ineffective monitoring; and lack of enforcement.

On January 17, 1990, Secretary Kemp announced publicly his intention to terminate the coinsurance program and to restructure the full insurance program. Secretary Kemp said at that time: "The coinsurance method is structurally flawed and fundamentally unsound as well as administratively unfixable."

On March 27, 1990, the Department published a proposed rule at 55 FR 11332 announcing its intention to terminate the coinsurance programs. The Preamble to that proposed rule and the Preamble of a companion rule, to establish precommitment review requirements for coinsuring lenders during the period until termination (55 FR 11342, March 27, 1990) give further information on HUD's rationale for this termination decision.

Public Comments on the Proposed Rule

A total of 20 written comments were received from the public on the March 27, 1990 proposed rule. None of the comments was favorable to the proposed rule as drafted. Commenters included: current coinsuring lenders; other private companies having an interest in the multifamily mortgage market; trade associations (Mortgage Bankers Association of America and the House Study Group); and law firms. What follows is a description of the major issues raised by these commenters and HUD's responses to them. Wherever feasible, the description of each issue is provided by directly quoting one or more of these commenters.

1. *HUD has failed to demonstrate that the coinsurance program has been other than profitable for the FHA insurance fund.*

Eight commenters raised this issue in greater or lesser detail. The most detailed comment set forth the issue as follows:

It is stated that the co-insurance programs have had "an unacceptable level of loan defaults and losses" with over $72 million in claims having been paid. This doesn't give any intelligent person any sense of whether claims have been excessive, because no mention is made of insurance premiums paid into the insurance fund.

This issue would generally be viewed in context of premiums paid relative to claims. The insurance fund receives a 0.65% premium in the first year, plus an on-going lesser premium annually. The proposed rule [chart] notes that $9.9 billion has been co-insured since 1983. To use some simplifying assumptions to guage whether losses really are obviously excessive, one might assume that FHA has received:

(a) Initial premium 0.65% on $9.9 billion is	$64,350,000
(b) Annual premium (assume 3 year average) (3 years (0.40% yr.) ($9.9 billion)) is	118,800,000
Total premium to FHA (about)	183,150,000
Claims paid	72,797,000
Net "profit" to FHA	$110,353,000

Consequently, it is difficult to conclude that the loss rate is unacceptable if premiums have been more than double the claims. While it is true that additional claims will be forthcoming, it is also true that additional premiums continue to be paid, and that the loss experience has been front-end loaded by some poorly performing participants who are not longer in the co-insurance business. With the improvement that has occurred in credit quality, it is likely that the co-insurance premiums paid to FHA always have and always will exceed the claims, period.

* * * * *

We also do not agree that the default level has been unacceptable. The real measure should be claims in the context of premiums. A secondary measure should be programmatic experience of full insurance versus co-insurance, for similar types of properties in similar geographic areas originated in the same time period. Such an examination would indicate that co-insurance default experience has been comparable to or better than full insurance,

with a few highly visible exceptions: Texas, and new construction of adult care facilities.

HUD Response: The multifamily coinsurance programs have not been "profitable" to FHA. As the following chart shows, while cumulative mortgage insurance premiums through September 30, 1989 slightly exceeded claims received and expenses incurred through that date, projected losses, even on a discounted basis after considering future income, will approximate $1.4 billion:

ESTIMATE OF FHA LOSSES RESULTING FROM MULTIFAMILY COINSURANCE ACTIVITIES

	($ Millions)
Estimated Cumulative Premiums (through September 30, 1989)	$138
Less:	
Cumulative Losses on Claims Received (through September 30, 1989)	120
Estimated Cumulative Administrative Expenses (though September 30, 1989)	16
Estimated Surplus	$2
Present Value of Future Income Less Future Losses and Expenses (based on Insurance-In-Force as of September 30, 1989)	($1,385)
Estimated Deficit (as of September 30, 1989)	($1,383)

During Fiscal Year 1990, HUD experienced a geometric increase in coinsured defaults and claims. In the first nine months of Fiscal Year 1990, HUD received more than twice the dollar amount of claims that it had received cumulatively through Fiscal Year 1989. By the end of August 1990, coinsurance claims for Fiscal Year 1990 has risen to almost four times the amount received prior to this Fiscal Year. This phenomenal surge in claims confirms the GAO loss projections previously cited, as well as independent loss projections developed by HUD's actuarial staff.

2. *HUD has failed to demonstrate that administrative reforms currently in place are not adequate to assure a viable and prudent coinsurance program.*

Eight comenters made this argument. Typical was the following:

A comparison of full and co-insurance experience would make it readily apparent that the principal underwriting deficiences were fully remedied by HUD prior to the end of 1989, by the imposition of market reviews on a prior approval basis (curing the soft loan problems by preventing new loans in such locations), and by elimination of the ACLF program.

We believe that reforms that have already been made have been adequate to safeguard the on-going credit risk, and that termination based on 'unacceptable risk' to the insurance fund is an action completely and totally without any demonstration factual basis.

Another typical comment stated:

It should also be noted, particularly in context of the Price Waterhouse study, that losses don't yet exceed premiums, only because it takes some time to convert expected losses into realized losses, and that yearly loss experience had demonstrated that losses will ultimately exceed premiums. Any such discussion should be put into context. Early on, there were four major risk exposures: a few "bad apples", lack of HUD enforcement action, the absence of a market determination by HUD to preclude lending in soft markets, and inadequate forethought to the financing for adult congregate facilities. All four risk areas have now been remedied. Most of the insurance provided through the co-insurance delivery system was sound from the beginning, and will continue to pay premiums. If new business was allowed under co-insurance, it too would now generally be sound. To extrapolate from early loss experience is inherently unrealistic, because the early loss experience has in it the losses incurred by the very worst loans before the major risk areas were addressed by reform which is now complete.

HUD response: While commenters argue that HUD reform actions have "remedied" the four areas of "major risk exposure," the facts do not support this argument.

First, the list of risk exposure areas overlooks two of the most significant program flaws: delegation of underwriting/insurance commitment authority to entities that did not have HUD interests at heart; and under capitalization of participating lenders. HUD efforts to increase capital requirements were rejected by a substantial portion of the coinsuring lender community. Similarly, when HUD attempted to exercise control over lenders' underwriting through program-wide precommitment reviews, lenders successfully sued to enjoin HUD from such activity.

Second, review of what has happened in the four listed risk areas reveals that HUD's actions have not remedied the problems. If we consider the "bad apples" to be lenders that have defaulted on their obligations to GNMA securities holders, that number has grown from five, with loans totalling close to $2 billion in March 1990 when the proposed termination rule was published, to seven, with loans in excess of $4.3 billion (close to half of the coinsurance in force) as of the end of July 1990. HUD's enforcement actions have resulted in suspension or probation of 22 (56 percent) of the 39 lenders fully approved to participate. HUD's "market review" requirements do not apply to all loans, and have not precluded lending in soft markets. Finally, lenders successfully sued to enjoin HUD from enforcing a coinsuring lender letter that sought to halt new coinsurance commitments for Retirement Service Centers (ReSCs). Thus, ReSCs have continued to be a source of risk for HUD.

If we assume, for the sake of argument, that HUD's reform and enforcement actions were sufficient to remedy its exposure to risk, this should have been reflected in the quality of loans submitted for precommitment and post-endorsement review since the end of 1989. However, these reviews identified a significant number of loans which were not properly underwritten. The inescapable conclusion from these reviews is that HUD cannot prudently delegate its underwriting authority.

3. *Terminating coinsurance is especially ill advised at present, given the near-crisis situation in multifamily housing finance generally.*

Seven commenters made this point. Most specific was the following comment.

The Federal Register comments grossly understate the impact on mortgage markets. There is today nearly a panic about the lack of multi-family finance programs, driven by an unprecedented combination of these adverse factors:

(1) Lending by Savings and Loans. Traditionally a mainstay for apartment lending, FIRREA prompted a mass exodus from multifamily finance due to:

(a) Massively reduced loan to one borrower limits

(b) Increased capital requirements, generally prompting reductions in size as a survival strategy

(c) Higher risk weighted capital requirements for such loans.

(2) The current wholesale retreat of commercial banks from real estate lending, prompted in larger part by much greater regulatory pressure and increasingly unrealistic loan classifications, typified by the new substandard category of the "performing nonperforming loan".

(3) The withdrawal of Freddie Mac as a viable multi-family financing source. The effective result in the marketplace was the termination of a principal source.

(4) The swamping of FNMA. While some of the slack was taken up by FNMA, they have limited capacity to do more than they are presently doing.

(5) Inadequate staffing for FHA full insurance. Most FHA offices simply don't have the multi-family staff to handle any volume.

(6) Closing off co-insurance. The announced termination has largely shut down this delivery system.

In addition, the impact is not uniform across the multi-family spectrum, but keenly focused. Life insurance companies and

FNMA do provide a reasonable alternative for term loans on relatively new, well located, suburban upper-end apartments. Conversely, there are areas which will be essentially unserved. These include:

(1) New construction. Not done by Freddie Mac or Fannie Mae. Very rarely done by life companies or other institution sources. No longer done very much by banks or thrifts. Further, because of the ripple effect of new construction on other industries such as lumber and durable goods, the lack of financing alternatives will have a large multiplier effect in slowing the national economy.

(2) Rehabilitation. With the withdrawal of the banks and thrifts, FHA insurance is the primary remaining source.

(3) Older properties. Properties over 10 or 15 years old (bread and butter housing for many Americans) were most commonly financed by thrifts, Freddie Mac, and FHA insurance. This area is also now nearly devoid of viable sources.

(4) Health Care Facilities. FHA insurance and thrifts were again the mainstays.

In these four areas, the termination of the co-insurance delivery system in advance of implementation of an alternative program for FHA insurance creates not a minor effect, but nearly a ruinous one, and does so at exactly the time that FHA insurance ought to be playing a larger role (not a smaller role!) to provide counter-cyclical support for the national economy.

HUD response: HUD acknowledges that there may be a reduction in the availability of financing for multifamily projects in many markets. This is, in large part, the predictable result of: (1) A great deal of overbuilding in those markets, with rental vacancy rates running at 20-year highs; (2) extensive overmortgaging stemming from an oversupply of "easy credit"; and (3) resultant unacceptable levels of defaults and losses to the sources of financing and credit enhancement (banks, S&L's, insurance companies, Freddie Mac, FNMA and FHA). A temporary construction of the credit supply for multifamily housing will permit demand to catch up with supply in overbuilt markets and will discourage the churning and overmortgaging of existing projects. However, HUD has concern that some of the reduction may be the result of overreaction by lenders to the new regulations and monitoring made necessary by the very costly lending excesses of imprudent and in some cases corrupt thrifts. Secretary Kemp has warned against such an overreaction, and Comptroller of the Currency Robert Clarke and Federal Reserve Chairman Alan Greenspan have sought to assure the financial system that government regulators have no intention of discouraging solvent lenders from making sound loans for real estate and other purposes.

In addition, the Office of Thrift Supervision has published rules which will slow the transition to new requirements bringing the maximum amount a solvent thrift may lend to any one borrower in line with the limits that have long applied to commercial banks. This should give builders ample time to complete projects or to establish new sources of financing.

Moreover, the Federal Reserve has announced its intention to increase reserves to the banking system, which should have the effect of lowering interest rates somewhat.

HUD's full insurance programs continue to be available for needed and credit-worthy projects. Already, full insurance has begun to absorb some of the demand resulting from the reduced availability of coinsurance. During the first six months of 1990, HUD full insurance commitments under sections 223(f), 221(d) and 232 totalled $309,790,600, a 48 percent increase over the $208,715,000 of full insurance mortgage commitments issued during the first six months of 1989.

4. *Major rule question.*

Five commenters asserted that it is inconceivable that the annual effect on the economy of this termination rule will not be well in excess of $100 million, thus subjecting the rule to a regulatory impact analysis under the Executive Order on Federal Regulation issued by the President on February 17, 1981.

HUD Response: There are three sources of possible economic impact arising from termination of the coinsurance program.

a. *Some multifamily rental units that might have been built or substantially rehabilitated under the program would not be built at all.* In 1988, it is estimated that under section 221(d) coinsurance program, more than 14,000 units were under construction with a total cost of more than $900 million. However, the Department plans to substitute a delegated processing system for the coinsurance program, and it is anticipated that the new system will have the capability of insuring from 50,000 to 60,000 units per year. This program allows for the purchase or refinancing of existing projects, as well as new construction or substantial rehabilitation, and will have the capability of absorbing the volume of new construction which would have taken place under the coinsurance program. Accordingly, it can be expected that terminating the coinsurance program will have no impact on the level of multifamily construction.

b. *A second source of economic impact would occur if the processing of mortgage loans were delayed in transition to the new system.* Since its inception, the coinsurance program insured an average of $1.4 billion in new mortgage loans each year. If this level of demand were to continue, a delay of a month would affect almost $120 million in mortgage loans. However, construction and lending activity are currently at the lowest levels since the 1982 recession, and there are many soft rental markets with high vacancy rates. Thus, the demand for new mortgage loans can be expected to be weak, and the delegated processing system should be able to bear the processing burden easily. Although HUD expects multifamily loan demand to be weak during the next 12 months, the Final Rule implements certain provisions to ease the transition from coinsurance to delegated processing. (See response to public comment 5 and the section entitled "Applications in Process", below.)

It should also be noted that there is a large reservoir of skilled real estate finance, valuation, architecture/engineering and other specialists developed during the booming multifamily construction and finance markets of the mid-1980s. This reservoir of talent will be available to undertake various delegated processing duties; the transition to delegated processing procedures should be smooth and undue delays should not occur. Even in the absence of a delegated processing structure, HUD's full insurance programs remain available, and will be expanded to meet shifts in credit demand.

c. *Certain high-risk projects that were financed under the coinsurance program will not be financed under the full insurance program.* This is true not because of a lack of capacity to conduct processing, but because of the excessive risk. While there may exist some socially worthy projects among the high-risk projects that will not now be insured, it is not the function of the FHA General Insurance Fund to take such risks. Furthermore, avoiding these losses will benefit not only the insurance fund, but also the economy generally. Housing and other credit will be allocated more efficiently, and the housing market will not longer suffer the disastrous effects of failed projects that should never have been undertaken.

Thus, on net, major economic losses will be averted through the termination of the coinsurance programs.

5. *Any program termination should terminate only authority to take coinsurance applications, so as to allow the orderly disposition of the good*

business presently enjoying contract rights in the fee-paid pipeline of coinsurers.

Four commenters asserted that the proposed rule is grievously deficient in its treatment of the fee-paid coinsurance pipeline. Two commenters state:

> Co-insurers take contract applications from sponsors seeking FHA insurance. I understand that about $1 billion of proposed loans is presently in this stage. The co-insurer then has the unavoidable legal obligation to process the application. The sponsor always incurs significant costs and time commitment during this process.
>
> Any program termination must allow this pipline of contract business to be processed to a conclusion, without undue delay or additional cost. Failure to do so will in many cases certainly cause economic injury to the sponsors, and therefore give rise to meritorious litigation against the co-insurer and against HUD for damages. This can be easily addressed by amending this proposed rule to terminate the authority of co-insurers to accept any new applications, rather than terminating the ability to issue commitments. The ultimate result is identical, with a complete avoidance of disruption, litigation, and loss which can be expected were the rule changes implemented as drafted.

HUD response: HUD accepts this comment and has revised the Final Rule accordingly. The Final Rule permits lenders to accept applications until the effective date, but required HUD precommitment review for all commitments to be issued on or after the effective date. These provisions will: (1) Enable lenders in an orderly manner, to clear their "pipelines" of pending cases; (2) ease the transition from coinsurance to delegated processing; and (3) provide HUD need protection for coinsurance commitments issued during the "phase down" period.

6. *The conversion of coinsurance portfolios is not addressed at all in the proposed rule.*

Four commenters raised this issue. Stating that such a conversion should be part of any termination and asserting that

> . . . co-insurers became involved in the program in the first place because HUD offered the ability to build a good business over time using the delegated authority. The cost, however, was quite high, always requiring at least $1.5 million in capital and almost always indirectly causing the co-insurer to sustain several hundred thousand dollars more in start-up losses (due to the structure of the licensing requirements, with staff and premises costs incurred long in advance of approval).
>
> The further requirement was that the $1.5 million continue to be invested as capital for as long as even one co-insured loan was left on the books—which would be 35 to 40 years. HUD now proposes to break its contract with co-insurers (those proven performers who are left) and take away the delegation which was the sole reason that capital was committed irrevocably for such a tremendously long time period. There surely exists either a legal obligation or at least a moral obligation to release the co-insurer from its contract obligations in favor of HUD if HUD is to rescind its contract obligations to the co-insurer.
>
> This can be best accomplished by allowing co-insurers to convert their portfolios from co-insurance to full insurance status. That would release the 40 year capital claim. Further, such a conversion (at no cost, or at nominal cost) would serve as a proxy for reasonable liquidated damages. If HUD wishes to rescind its contract obligations, some provision for liquidated damages is reasonable. Conversion of the portfolios has no direct dollar cost to HUD, and so is not a budget item. It does have value to the co-insurers, in freeing up capital and in giving economic value to the mortgage servicing rights.

HUD response: HUD's termination of coinsurance as a delivery mechanism for providing multifamily mortgage insurance does not involve the breaking of any contract with coinsuring lenders. HUD's contract obligation, as set forth in the regulations, is to insure 85 percent (72.25 percent in certain cases involving reinsurance) of any loss remaining after the 5 percent lender deductible. HUD is committed to honoring its insurance obligations on all outstanding loans. Furthermore, HUD is obligated to honor all legally binding coinsurance commitments issued before the effective date of this final rule.

When HUD approved lenders to participate in the coinsurance program, there was no assurance, either written or implied, that HUD would continue the coinsurance delivery mechanism forever. However, as a condition for approval, lenders had to agree to establish and "maintain for the period of coinsurance" Sound Capital Resources (25 CFR 251.102(b)(2), 252.102(b)(2) and 255.102(b)(2)).

HUD approved coinsuring lenders to originate, process, underwrite, close and service loans and to share the risk with HUD. Lenders were compensated by being allowed to collect various application, financing, inspection and placement fees and a portion of the initial and annual mortgage insurance premiums. Termination of coinsurance does not alter these risk sharing and compensation arrangements. Lenders with sound loans will continue to receive compensation for their risk sharing and servicing through the lender's share of annual mortgage insurance premiums (MIP) and optional lender premiums.

Since HUD is not rescinding its contract obligations, it has no obligation to pay liquidated damages to lenders who chose to praticipate in the coinsurance program. Lenders have no basis for expecting HUD to convert their coinsured loans to fully insured loans. Conversion would indeed have a cost to HUD, since HUD—

(1) Has foregone most of the "front-end" fees it would normally collect on fully insured loans;

(2) Would be significantly increasing its insurance obligation; and

(3) Would be required by such an arrangement to assume responsibility for the acquisition, management and disposition of defaulted projects.

7. *Coinsuring Lenders Letters 90–1 and 90–2 and HUD "Good Faith".*

One commenter observed that the Preamble to the proposed rule quotes Secretary Kemp as saying that: the program is "administratively unfixable." The commenter then asks, if so, what was the purpose of the Secretary issuing Coinsuring Lender Letters 90–1 and 90–2? The commenter goes on to observe that the Secretary has already shut down the "bad apples" in the industry. "Their loans were closed a long time ago and will not be affected by the new rules. Loan losses affected by future regional economic changes will affect both full and coinsurance alike. The Secretary bargained in bad faith with the industry, leading people to believe new capital rules were to be promulgated when an end to the program was actually prepared instead. I suggest that 90–1 and 90–2 are administrative measures that can protect the legitimate interests of both HUD and the industry until a new program can be developed at a later date."

HUD response: Coinsuring Lender Letters 90–1 and 90–2 were not intended to be adminstrative "fixes". These letters were issued in conjunction with Secretary Kemp's announcement of his intention to initiate rulemaking to terminate insurance. The purpose of the precommitment reviews required by these letters was to afford HUD some measure of protection against further losses caused by improper underwriting on commitments issued following the Secretary's announcement and before the effective date of a final rule terminating the program.

While precommitment reviews added only about 45 days to the time it took a lender to issue a commitment, a group of coinsuring lenders sued to enjoin HUD from imposing such requirements via Coinsuring Lender Letters 90–1 and 90–2 and an Interim Final Rule, which was published March 27, 1990, *Housing Study Group* et al v. *Kemp*, Civ. Action No. 90–2044–JHG (D.D.C.). On April 25, 1990, the U.S. District Court for the

District of Columbia issued a preliminary injunction enjoining HUD from enforcing the lender letters and a temporary restraining order staying the effectiveness of the Interim Rule. On May 6, 1990, the Court issued permanent injunctions to the same effect.

Secretary Kemp did not bargain "in bad faith" or deliberately mislead the industry concerning coinsurance. On the contrary, he made every effort to evaluate the program objectively, and considered a variety of options to reform it. In May 1989, the Secretary launched a comprehensive evaluation of the program. One of the first steps in this evaluation was to engage Price Waterhouse to review the program's capital and financial reporting requirements.

Price Waterhouse recommended that, if the coinsurance programs were to be continued, HUD should: (1) Raise lenders' capital and liquidity requirements, at a minimum, to the levels required by the FNMA "DUS" program; (2) substantially increase coinsuring lenders' financial reporting requirements; and (3) strengthen all aspects of its monitoring of coinsurance lenders.

In September 1989, following receipt of the draft Price Waterhouse report, Secretary Kemp acknowledged the critical importance of adequate capitalization and announced that establishing higher capital requirements was the essential first step for reforming coinsurance. During the latter part of 1989 and into January of this year, the Department reviewed the Price Waterhouse recommendations, devised options for increasing capital and liquidity requirements, and discussed these options with representatives of coinsuring lenders. The Department, however, met with strong industry objections to its proposals. In fact, despite repeated efforts by HUD to reach a consensus on this issue, representatives of the industry serving as members of a HUD task force whose mission was to establish adequate capital requirements, announced at a meeting of that task force on December 13, 1989 that the Department's plan to implement enhanced capital and liquidity requirements was totally unacceptable. Should such requirements be imposed on the coinsurance program, these representatives stated, they would not participate. Thus, the essential first step toward reform was rendered impracticable.

The rejection, by a substantial portion of the coinsuring lender community, of HUD's plan to impose higher capital requirements was a significant factor in the Secretary's January 1990 decision to propose termination of coinsurance. But there were other significant factors as well. Between May 1989, when the program evaluation began, and January 1990, the amount of coinsured loans in default had risen from $914,068,800 to $1,386,707,800—an increase of 51 percent. It had become clear that the program was structurally flawed, and that no increase in capital requirements would be adequate to protect the Department, or lenders themselves, from the damage caused by years of aggressive underwriting and lax enforcement. It was also clear that the imprudent underwriting that led to these defaults and losses was not confined to a few "bad apples" but was spread throughout the program.

8. *Coinsurance Should Not be Terminated Until a Viable Alternative is in Place and Fully Operational.*

Four commenters addressed the issue of the transition from coinsurance to an alternative program. The following comment was typical.

> HUD should not terminate this program without a viable alternative in place and fully operational. The full insurance programs should be adequately staffed by trained employees. After the staffing of the HUD field offices and the development and implementation of a viable alternative to coinsurance, we would not object to terminating coinsurance. We believe it would take at least 18 months to bring the field offices up to full operation effectiveness, and during this period, coinsurance should remain in effect, with appropriate staff levels and monitoring.
>
> HUD has a fiduciary responsibility to assure the availability of multifamily mortgage credit for affordable housing on a continuous basis. Without coinsurance, and without restaffing of HUD field offices in the technical multifamily disciplines, the country will be without any national program for financing new construction and substantial rehabilitation for affordable housing or for refinancing and preserving the existing affordable housing stock.

HUD Response: The termination of coinsurance will not adversely affect the availability of full insurance for multifamily projects. In fact, as indicated in the Department's response to numbered comment 3, above, HUD's full insurance program has already begun to respond to a shift in demand resulting from the reduced availability of coinsurance during the first six months of 1990. This fact is reflected by a 48 percent increase in the dollar volume of multifamily full insurance commitments issued, as compared to the corresponding period in 1989.

HUD will enhance its ability to deliver full insurance commitments through a new delegated processing system. HUD will use delegated processing to supplement its Field Office staff capacity by contracting with companies that will provide technical services in the areas of valuation, architecture/engineering, cost, mortgage credit and management analysis. As delegated processing becomes established, the role of HUD Field Office staff will shift from the processing of applications for mortgage insurance to virtual full-time review of the work of contractors (the delegated processors), and to performance of the final underwriting analysis. It is anticipated that delegated processing will become operational in the spring of 1991.

HUD is also carefully assessing its regional and field office technical staff levels and capabilities, as well as the relationship between staff allocation and distribution of current and potential loan activity. This assessment will enable HUD to determine what actions are needed to ensure that the new program will be staffed adequately in all areas.

Applications in Process

The March 27, 1990 proposed rule provided that HUD's authority to coinsure would be terminated as of the effective date of the rule "except that the Department will honor legally binding and validly issued commitments issued before November 12, 1990."

It is the Department's position that HUD's only *legal* obligation is to honor legally binding firm or conditional commitments issued by lenders before the effective date of this final rule. However, the Department recognizes that lenders have continued to accept applications and to process loans, and, in some cases, may not be able to issue commitments before the effective date. The Department is also concerned about mitigating hardships that may result from the reduced availability of mortgage credit during the period between the termination of coinsurance and the implementation of delegated processing. The final rule therefore revises the proposed rule to provide an exception to HUD's basic position in cases where the lender (1) has accepted an application and a non-refundable application fee before November 12, 1990; and (2) submits the application to HUD for precommitment review. In such excepted cases lenders may issue commitments after the termination of the program by this rule, following receipt of HUD's precommitment review and approval, and after making any adjustments required by HUD as a condition of approval.

The condition that commitments issued after program close down must

have been subject to precommitment review is consistent with HUD's strongly held position that such a review is the only truly effective means HUD has for protecting the FHA General Insurance Fund against excessive defaults or losses in the coinsurance programs.

In January of this year the Department issued Coinsuring Lender Letters 90–1 and 90–2, which would have imposed a general precommitment review requirement on future coinsurance applications. These letters were followed by further statements of the same HUD policy in the form of interim and proposed rules published in the **Federal Register** on March 27 and May 25, 1990 (55 FR 11342 and 55 FR 21621). The public comments received in response to these two publications raised issues which largely overlap the issues already described and responded to earlier in this Preamble. The precommitment issues raised in the context of the earlier publications have either already been covered earlier in this Preamble or are now moot in light of this rule terminating the entire coinsurance program.

It should be noted that the additional precommitment review required by this rule has a very limited application. Precommitment review requirements adopted here will only affect those coinsuring lenders that, on the effective date of the rule, are not already under a precommitment review status, whether because of probation or for other reasons. In addition, the review will apply only to coinsurance applications for which lenders have received an application fee, but on which a legally binding commitment has not been issued by the effective date of this rule. Unlike the precommitment review procedures proposed in the March 27, 1990 and May 25, 1990 publications (which would have applied to all lenders for an indefinite period), the procedure in this rule applies only after termination, and is intended to permit the continued processing of a limited category of applications.

This final rule also carries over from the earlier May 25, 1990 proposed rule on precommitment review (55 FR 21621) certain technical provisions relating to extension of commitments and the definition of a legally binding commitment concerning which no public comments were received by the Department.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. While the coinsurance program involves insured loan transactions involving mortgages with very large dollar amounts, the program has never been the exclusive source of FHA multifamily mortgage insurance. HUD's full insurance program has been, and will remain, available as a means of securing the benefits of FHA mortgage insurance on eligible projects.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Experience under the coinsurance programs affected by this rule has not demonstrated any substantial impact on small entities.

This rule was listed as item H12–90 (Sequence No. 1154) in the Department's Semiannual Agenda of rules, published on April 23, 1990 (55 FR 16226, 16242) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with a respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket clerk at the above address.

The information collection requirements contained in §§ 251.1, 252.1 and 255.1 of this rule have been approved by the OMB under the Paperwork Reduction Act of 1980 and assigned OMB approval number 2502–0437.

Executive Order 12612, Federalism. The General Counsel, as the Designed Official under section 67(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule will not affect the basic availability of FHA insured multifamily mortgage financing assistance—merely the methods under which such financing can be secured. No programmatic or policy changes would result from this rule's promulgation which affect existing relationships between the federal government and state and local governments.

Executive Order 12606, The Family. The General Counsel, as Designated Official under Executive Order 12606, *The Family*, has determined that this Rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule is limited to terminating a specific means for delivery of FHA insurance which has proved to be unworkable and a drain on the FHA insurance fund. Other multifamily programs of HUD, specifically full insurance, will be improved upon and reemphasized in conjunction with this rule.

(The Catalog of Federal Domestic Assistance program numbers are 14.129, 14.155, 14.173 and 14.176.)

List of Subjects

24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

24 CFR Part 252

Mortgage insurance, Coinsurance of nursing homes, intermediate care facilities, and board and care homes.

24 CFR Part 255

Mortgage insurance.

Accordingly, 24 CFR parts 251, 252, and 255 are revised as follows:

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

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

Authority: Sections 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. 24 CFR part 251 is revised to read, in its entirety, as follows:

§ 251.1 Termination of program.

(a) Effective on November 12, 1990, the authority to coinsure mortgages under this part is terminated, except that the Department

(1) Will honor legally binding and validly issued commitments issued before November 12, 1990 and

(2) Will accept for review the coinsurance applications described in paragraph (b) of this section.

Part 251, as it existed immediately before November 12, 1990, will continue to govern the rights and obligations of coinsured lenders, mortgagors, and the Department of Housing and Urban Development with respect to loans coinsured under this part.

(b) A precommitment review procedure applies to any application for mortgage coinsurance for which a lender has accepted a non-refundable application fee before November 12, 1990 under this part and for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation. For any coinsurance application for which the lender has accepted an application and a non-refundable application fee before November 12, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(c) Extensions of commitments for projects which had outstanding legally binding commitments as of November 12, 1990 are limited as follows:

(1) Firm commitments for insurance of advances may be granted two 60-day extensions;

(2) Conditional commitments may be granted one 60-day extension;

(3) Firm commitments for insurance upon completion may not be extended. However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with paragraph (b) of this section. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in paragraph (b) of this section.

(d) Reopened expired commitments are subject to precommitment review under paragraph (b) of this section.

(e) HUD considers a commitment to be "legally binding" if:

(1) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(2) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(3) It conforms to HUD requirements pertaining to initial term and extension;

(4) It obligates the lender and HUD to proceed to the next stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(5) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(6) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2502-0437.)

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

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

Authority: Sections 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. 24 CFR part 252 is revised to read, in its entirety, as follows:

§ 252.1 Termination of program.

Effective on November 12, 1990, the authority to coinsure mortgages under this part is terminated, except that the Department

(1) Will honor legally binding and validly issued commitments issued before November 12, 1990, and

(2) Will accept for review the coinsurance applications described in paragraph (b) of this section.

Part 252, as it existed immediately before November 12, 1990, will continue to govern the rights and obligations of coinsured lenders, mortgagors, and the Department of Housing and Urban Development with respect to loans coinsured under this part.

(b) A precommitment review procedure applies to any application for mortgage coinsurance for which a lender has accepted a non-refundable application fee before November 12, 1990 under this part and for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation. For any coinsurance application for which the lender has accepted an application and a non-refundable application fee before November 12, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(c) Extensions of commitments for projects which had outstanding legally binding commitments as of November 12, 1990 are limited as follows:

(1) Firm commitments for insurance of advances may be granted two 60-day extensions;

(2) Conditional commitments may be granted one 60-day extension;

(3) Firm commitments for insurance upon completion may not be extended. However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with paragraph (b) of this section. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in paragraph (b) of this section.

(d) Reopened expired commitments are subject to precommitment review under paragraph (b) of this section.

(e) HUD considers a commitment to be "legally binding" if:

(1) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(2) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(3) It conforms to HUD requirements pertaining to initial term and extensions;

(4) It obligates the lender and HUD to proceed to the next stage (*i.e.*, firm

commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(5) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(6) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2502-0437.)

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

5. The authority citation for part 255 continues to read as follows:

Authority: Sections 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. 24 CFR part 255 is revised to read, in its entirety, as follows:

§ 255.1 Termination of program.

Effective on November 12, 1990, the authority to coinsure mortgages under this part is terminated, except that the Department:

(1) Will honor legally binding and validly issued commitments issued before November 12, 1990 and

(2) Will accept for review the coinsurance applications described in paragraph (b) of this section.

Part 255, as it existed immediately before November 12, 1990, will continue to govern the rights and obligations of coinsured lenders, mortgagors, and the Department of Housing and Urban Development with respect to loans coinsured under this part.

(b) A precommitment review procedure applies to any application for mortgage coinsurance for which a lender has accepted a non-refundable application fee before November 12, 1990 under this part and for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation. For any coinsurance application for which the lender has accepted an application and a non-refundable application fee before November 12, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(c) Extensions of commitments for projects which had outstanding legally binding commitments as of November 12, 1990 are limited as follows:

(1) Firm commitments for insurance of advances may be granted two 60-day extensions;

(2) Conditional commitments may be granted one 60-day extension;

(3) Firm commitments for insurance upon completion may not be extended.

However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with this paragraph. In the event an extension is required beyond those provided for in paragraph (b) of this section, the case will be subject to the precommitment review process described in paragraph (b) of this section.

(d) Reopened expired commitments are subject to precommitment review under paragraph (b) of this section.

(e) HUD considers a commitment to be "legally binding" if:

(1) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(2) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(3) It conforms to HUD requirements pertaining to initial term and extension;

(4) It obligates the lender and HUD to proceed to the next stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(5) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(6) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2502-0437.)

Dated: October 1, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 90-23701 Filed 10-9-90; 8:45 am]

BILLING CODE 4210-27-M

federal register

Wednesday
October 10, 1990

Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Parts 420, 440, 455, 465

Grant Appeals Procedures for State Energy Conservation Program; Weatherization Assistance Program for Low-Income Persons; Grant Programs fo. Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions; and Energy Extension Service Program; Final Rule

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Parts 420, 440, 455, 465

[Docket No. CE-RM-90-101]

Grant Appeals Procedures for State Energy Conservation Program; Weatherization Assistance Program for Low-Income Persons; Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions; and Energy Extension Service Program

AGENCY: Department of Energy.

ACTION: Notice of final rulemaking.

SUMMARY: The Department of Energy gives notice of final amendments to establish clear, and to the extent practicable, uniform administrative review procedures, focusing principally on appeals of preaward denials of financial assistance to the State Energy Conservation Program (10 CFR part 420), the Weatherization Assistance Program for Low-Income Persons (10 CFR part 440), the Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions (10 CFR part 455), and the Energy Extension Service Program (10 CFR part 465). The amendments also conform existing postaward administrative review procedures to generally applicable administrative review procedures for the Department of Energy's financial assistance programs in 10 CFR part 600, which provide for review by the Department's Financial Assistance Appeals Board.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra Monje, State Energy Programs Division, Department of Energy, Mail Stop CE-522, 6A-081, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8295.

Neal J. Strauss, Office of General Counsel, Conservation and Regulations, Mail Stop GC-12, 6A-141, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE or Department) today gives notice of final amendments to the regulations for four State and local assistance programs to promote energy conservation which provide, pursuant to 42 U.S.C. 7254, clear and, to the extent practicable, uniform administrative review procedures for resolution of preaward disputes over initial DOE field office decisions to deny financial assistance. The notice also revises existing procedures for resolving certain postaward disputes arising out of field office notices of enforcement actions, such as termination for cause, in light of dispute resolution procedures in DOE's general financial assistance regulations which provide for administrative review by the DOE Financial Assistance Appeals Board. See 10 CFR 600.26.

The administrative review procedures have been revised principally to resolve inconsistencies between DOE Support Office decisions and to provide more effective remedies for the few cases where an applicant for financial assistance is unable to work out differences informally with DOE officials in field offices. DOE expects that informal settlement of issues in the field will continue to be the norm, with resort to administrative review procedures a rarity.

The four programs and their regulations are: (1) The State Energy Conservation Program (SECP), 10 CFR part 420; (2) the Weatherization Assistance Program for Low-Income Persons (WAP), 10 CFR part 440; (3) the Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions (Schools and Hospitals Program), 10 CFR part 455; and (4) the Energy Extension Service (EES), 10 CFR part 465. Today's amendments replace existing preaward administrative review procedures for SECP (10 CFR 420.9), WAP (10 CFR 440.30), and EES (10 CFR 465.10) which have proved confusing to the States and are unnecessarily inconsistent with each other. Today's amendments also revise SECP, WAP, and EES postaward administrative review procedures by reallocating the responsibility for conducting a public hearing required by program rule to the DOE Financial Assistance Appeals Board. Finally, today's amendments provide administrative review procedures in the Schools and Hospitals Program for preaward disputes where no administrative review procedures had previously existed.

Administration of these programs, operational for more than ten years, is largely decentralized. Applications for financial assistance, approvals of State plans and plan amendments, and other routine administrative functions are handled by a DOE Operations Office or, more often, a DOE Support Office (located in the field) which reports to an Operations Office Manager. National policy on programmatic matters, such as amendments to program regulations, is issued by the Assistant Secretary for Conservation and Renewable Energy or his or her designee. There are Headquarters program staff for the four programs who report to the Assistant Secretary through the Deputy Assistant Secretary for Technical and Financial Assistance (formerly the Director of the Office of State and Local Assistance Programs, or OSLAP).

All four programs are subject to DOE's general financial assistance regulations (10 CFR part 600). The general regulations provide that preaward appeals of denials of new applications for financial assistance are barred; that postaward appeals of suspensions (90 days or less) are barred; and that postaward appeals of enforcement actions, such as terminations for cause, go to the DOE Financial Assistance Appeals Board. See 10 CFR 600.26. The procedural rules of the Financial Assistance Appeals Board are set forth at 10 CFR part 1024. The general financial assistance regulations apply to all four programs except as otherwise provided in statute or program regulations.

On January 29, 1990, the Department issued a Notice of Interim Final Rulemaking, Public Hearings and Request for Public Comment on grant appeals procedures for SECP, WAP, Schools and Hospitals, and EES, 55 FR 3000-3007. In response to this notice, the Department received 3 letters of comment and heard testimony from four organizations at public hearing held: February 26, 1990, in Kansas City, MO; February 27, 1990, in Washington, DC; and March 1, 1990, in San Francisco, CA. As a result of the comments received, a number of changes have been made to the interim final amendments and those changes are reflected herein.

II. Amendments to the Interim Final Rule

The procedure both for filing a notice requesting administrative review and for processing such a notice, contained in today's final amendments, remains the same as described in the Interim Final Rule, 55 FR 3000, 3007, January 29, 1990, with minor modifications which are discussed below.

A significant number of comments received addressed the issue of time limits for States to submit appeal requests at the various levels of the administrative review process. The Interim Final Rule (IFR) provides that the time States have to request an appeal begins with the date of issuance of the Department's adverse decision. Six comments recommended that time

limits begin not with the date of issuance of the Departmental determination but rather with the date of its receipt by the State. A number of States have experienced undue delays with mail delivery of time-sensitive documents, and the problem is even more acute with respect to participating U.S. Territories and possessions. Therefore, the language of the Final Rule specifies that the time States have to request an appeal begins with the receipt of the Departmental determination. The date of receipt may be established by the use of Certified Mail (Return-Receipt Requested) or Telefax (Confirmation Requested).

Eight comments were devoted to requests for additional time for States to ask for appeals. Four comments asked for 30 days (from 20) to request administrative review; three comments requested 20 days (from 15) to request discretionary review; and one comment requested 30 days (from 15) for discretionary review. The Department declines to alter the limits set in the IFR because in substituting "date of receipt" for "date of issuance," DOE is providing sufficient additional time for State authorities consistent with the need to resolve appeals quickly.

For comments requested clarification of the terms "administrative review" and "public hearing" and the difference between them. Administrative review refers to the generic appeals process described in today's final rule. A public hearing may constitute part of the administrative review. The public hearing always involves the opportunity for making oral statements in an open, public environment.

In addition, one comment sought clarification of the term "days." In all instances, the term refers to calendar days.

Three comments recommended modification of the definition for the term "Director" to ensure that if his or her responsibilities are delegated, then the recipient has the same level of expertise as the Director. The comments misapprehended the meaning and purpose of the redelegation language in the definition of the term "Director." That language was intended to avoid the need to amend the rule if the position of the Director were subject to a DOE reorganization. It does not authorize the Director to subdelegate his or her responsibilities. Accordingly, DOE is not modifying the IFR as the comments suggest.

However, since the issuance of the IFR, the Office of Conservation and Renewable Energy has undergone a reorganization and the functions of the Director of the Office of State and Local Assistance Programs have been allocated to a new Deputy Assistant Secretary for Technical and Financial Assistance. The definition of Director has been revised to be consistent with the new organization. Further, all decisions called for by the Deputy Assistant Secretary for Technical and Financial Assistance will be made by the incumbent of that position.

Three comments requested consistency with the treatment of funding decisions under the Stripper Well Settlement Agreement, i.e., that the appellate review be conducted by DOE's Office of Hearings and Appeals. An alternative recommendation was the establishment of an inter-divisional panel, including representation by DOE's Office of General Counsel, to review appeals of adverse decisions involving oil overcharge funds. Raising an issue of perceived unfairness, these recommendations noted that the Deputy Assistant Secretary, who is responsible for the first appellate review, reports directly to the final decisionmaker, the Assistant Secretary for Conservation and Renewable Energy, who acts unilaterally under the IFR; and they further suggested that the Assistant Secretary might deny review or affirm the initial appellate decision simply because it was made by a close subordinate.

These comments, in effect asking for separation of functions, add a new dimension to the issue in this rulemaking of fairness in the processing of appeals from Support Office decisions. A primary purpose of this rulemaking has been to provide a management mechanism for dealing with the unfairness which results from inconsistency among Support Offices in rare preaward decisions based on applications which cannot be significantly distinguished on the facts. In no DOE financial assistance program does a disappointed applicant for a grant have the right under a statute or regulation to more formal appellate review with separation of functions. As a matter of policy, DOE has decided, consistent with the need for expedited final decisions, that provision of a right of informal appeal to the headquarters officials principally responsible for the management of the state and local assistance programs is the appropriate method for dealing with this problem, which results from DOE's decentralized administrative organization.

The provision for final appeal to the Assistant Secretary was designed to ensure that the appellants who may be Governors have the opportunity to seek review by the DOE official who is primarily responsible for the management of DOE's State and local assistance programs and whose position is subject to Senate confirmation. To allay the commenter's concern that the Assistant Secretary might act merely out of an impulse to support his or her deputy, DOE is modifying the IFR to require occurrence by the Office of General Counsel, which should ensure that the Assistant Secretary acts consistent with applicable statutes and regulations.

Several comments addressed three issues specific to the Schools and Hospitals program related to § 455.110. First, it was recommended that under the Schools and Hospitals Program, appeals be permitted in the case of an adverse decision for either technical assistance grant awards or energy conservation measure grant awards. The Department concurs with this recommendation and has included the appropriate language in § 455.110(b).

Second, several comments suggested that States be permitted to file appeals on behalf of the clients, such as schools and hospitals. DOE agrees that State expertise and familiarity with the mechanics of the appeals process would be extremely useful to those schools and hospitals lacking the requisite experience and resources themselves to file an appeal. The Department has therefore amended § 455.110(b) to provide for State representation of such an institution.

Third, it was suggested that DOE amend the IFR to state categorically that it would not "recapture" the funding for an application which was denied while an appeal is in process. In responding to this comment, it is necessary to distinguish between appropriated funds and petroleum violation escrow funds, but the conclusion is the same. DOE is legally constrained not to accept this suggestion.

With regard to appropriated funds, the Schools and Hospitals program is required by its authorizing legislation to reallocate funs not obligated at the end of a grant cycle in the subsequent grant cycle, 42 U.S.C. 6371i(e). However, DOE believes it has structured the appeals process to provide for timely review and decisionmaking regarding disputed items. Every effort will be made to resolve such items before the end of a grant cycle to minimize adverse State impacts. In the unlikely event that an appeal should exceed this time frame, and is successful, the applicant in question could resubmit its application for approval and funding in the subsequent grant cycle.

With regard to petroleum violation escrow funds, the law is different. Those

funds are not subject to reallocation or "recapture" *by DOE* because they were transferred in lump sums to the States by court order or settlement agreement. Time limitations on the availability of such funds while an appeal is pending is a matter of State law and is not subject to DOE regulation.

One general comment recommended that States be given the right to make oral presentations at all levels on the "administrative review." While the right of oral presentation is preserved in the case of a "public hearing," given the unknown volume of appeal requests and the necessity for conserving the time of the Assistant Secretary, it was determined not to extend the right of oral presentations by the State beyond the public hearing portion of the administrative review process.

Finally, one comment requested that program "projects," similar to other projects already approved by DOE Support Offices, not be disapproved under the appeals process described here. DOE rejects this comment because the appeals process is supposed to resolve inconsistencies between DOE Support Offices on the basis of a correct interpretation of the governing statute and regulations rather than on the basis of the date of the earlier decision. Further, DOE wishes to preserve its options with respect to individual project approvals or disapprovals, the appropriateness of which might well lie in region- or even State-specific factors.

III. Other Matters

A. Review Under Executive Order 12291

Today's regulatory amendments were reviewed under Executive Order 12291. DOE has concluded that the rule is not a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic export markets. In accordance with the requirements of the Executive Order, this notice has been reviewed by the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

These regulations were reviewed under the Regulatory Flexibility Act, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small government jurisdictions. DOE has concluded that the rule will affect a few small entities (principally in Schools and Hospitals) who appeal denials of financial assistance, but that impact is not appreciably greater than the expense of appeal under existing regulations. DOE therefore certifies that there will not be a significant economic impact on a substantial number of small entities, and that preparation of a regulatory flexibility analysis is not warranted.

C. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by today's rules. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., or implementing regulations at 5 CFR part 1320.

D. Review Under National Environmental Policy Act

DOE has concluded that promulgation of these wholly procedural rules would not represent a major Federal action having a significant impact on the human environment under the National Environmental Policy Act (42 U.S.C. 4321, et seq.), Council of Environmental Quality guidelines (40 CFR parts 1500–1508), and DOE environmental guidelines (10 CFR part 1021). Therefore, no environmental impact statement has been prepared.

E. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation.

Today's regulatory amendments will affect appeal rights of States on denials of financial assistance applications. However, they are purely procedural, and will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government.

List of Subjects in 10 CFR Parts 420, 440, 455, and 465

Appeals, Administrative review.

Issued in Washington, D.C. October 1, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

In 10 CFR, chapter II, parts 420, 440, 455, and 465 are amended as follows:

PART 420—STATE ENERGY CONSERVATION PROGRAM

Part 420 is amended as follows:

1. The authority citation for part 120 continues to read as follows:

Authority: Title III, Part C, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.); Department of Energy Organization Act (42 U.S.C. 7101 et seq.).

1a. Section 420.2 is amended by adding the definitions of "Assistant Secretary" and "Deputy Assistant Secretary" in the appropriate alphabetical order and revising the definition of "Operations Office Manager" as follows:

§ 420.2 Definitions.

* * * * *

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or any official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

* * * * *

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistance or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

* * * * *

Operations Office Manager means the manager of a DOE Operations Office or the manager's designee, or any official to whom the manager's functions may be redelegated by the Secretary.

* * * * *

2. Section 420.5 is revised to read as follows:

§ 420.5 Review and approval of annual State applications and State plans.

(a) After receipt of an application for financial assistance or for approval of an amendment to a State plan, the Operations Office Manager may request the State to submit within a reasonable period of time any revisions necessary to make the application complete to bring the application into compliance with the requirements of this part. The Operations Office Manager shall attempt to resolve any dispute over the application informally and to seek voluntary compliance. If a State fails to submit timely appropriate revisions to complete an application, the Operations Office Manager may reject the

application as incomplete in a written decision, including a statement of reasons, which shall be subject to administrative review under § 420.9 of this part.

(b) On or before 60 days from the date that a timely filed application is complete, the Operations Office Manager shall decide whether DOE shall approve the application. The Operations Office Manager may—

(1) Approve the application in whole or in part to the extent that—

(i) The application conforms to the requirements of this part;

(ii) The proposed program measures are consistent with a State's achievement of its energy conservation goals in accordance with § 420.4; and

(iii) The provisions of the application regarding program measures satisfy the minimum requirements prescribed by § 420.6 and § 420.7 as applicable;

(2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or

(3) Disapprove the application if it does not conform to the requirements of this part.

3. Section 420.9 is revised to read as follows:

§ 420.9 Administrative review.

(a) An applicant shall have 20 days from the date of receipt of a decision under § 420.5 to file a notice requesting administrative review in accordance with paragraph (b) of this section. If an applicant does not timely file such a notice, the decision under § 420.5 shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the Operations Office Manager and shall be accompanied by a written statement containing supporting arguments. If the Operations Office Manager has disapproved an entire application for financial assistance, the State may request a public hearing.

(c) A notice or any other document shall be deemed filed under this section upon receipt.

(d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Operations Office Manager shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision under § 420.5 as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.

(e) If the State requests a public hearing on the disapproval of an entire application for financial assistance, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and **Federal Register** notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(f) On or before 45 days from receipt of documents under paragraph (d) of this section or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Operations Office Manager.

(9) On or before 15 days from the date of receipt of the determination under paragraph (f) of this section, the Governor may file an application for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor stating whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants a review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

(h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE and no appeal shall lie elsewhere in DOE.

(i) Prior to the effective date of the termination or suspension of a grant award for failure to implement an approved State plan in compliance with the requirements of this part, a grantee shall have the right to written notice of the basis for the enforcement action and of the opportrunity for public hearing before the DOE Financial Assistance Appeals Board notwithstanding any provisions to the contrary of 10 CFR 600.26, 600.28(b), 600.29, 600.121(c), and 600.443. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior Federal Register notice, in the election letter submitted under Rule 2 of 10 CFR 1024.4 and the request shall be granted notwithstanding any provisions to the contrary of Rule 2.

PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Title IV, Energy Conservation and Production Act, Pub. L. 94–385, 90 Stat. 1150 (42 U.S.C. 6851 et seq.), as amended; Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 et seq.).

1a. Section 440.3 is amended by adding the definitions of "Assistant Secretary" and "Deputy Assistant Secretary" in the appropriate alphabetical order and by revising the definition of "Operations Office Manager" as follows:

§ 440.3 Definitions.

* * * * *

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

* * * * *

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistance or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

* * * * *

Operations Office Manager means the manager of a DOE Operations Office or the manager's designee, or any official to whom the manager's functions may be redelegated by the Secretary.

* * * * *

2. Section 440.12 is amended by removing the last sentence of paragraph (a) and adding in lieu thereof the following: "After receipt of an application for financial assistance or for approval of an amendment to a State plan, the Operations Office Manager may request the State to submit within a reasonable period of time any revisions necessary to make the application complete or to bring the application into compliance with the requirements of this part. The Operations Office Manager shall attempt to resolve any dispute over the application informally and to seek voluntary compliance. If a State fails to submit timely appropriate revisions to complete the application, the Operations Office Manager may reject the application as incomplete in a written decision, including a statement of reasons, which shall be subject to administrative review under § 440.30 of this part"; and § 440.12 is further amended by adding paragraph (c) to read as follows:

§ 440.12 State application.

* * * * *

(c) On or before 60 days from the date that a timely filed application is complete, the Operations Office Manager shall decide whether DOE

shall approve the application. The Operations Office Manager may—

(1) Approve the application in whole or in part to the extent that the application conforms to the requirements of this part;

(2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or

(3) Disapprove the application if it does not conform to the requirements of this part.

§ 440.15 [Amended]

3. Section 440.15(c) is amended by removing the reference "§ 440.30(d)" and adding the reference "§ 440.30(i)" in lieu thereof.

4. Section 440.30 is revised to read as follows:

§ 440.30 Administrative review.

(a) An applicant shall have 20 days from the date of receipt of a decision under § 440.12 to file a notice requesting administrative review. If an applicant does not timely file such a notice, the decision under § 440.12 shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the Operations Office Manager and shall be accompanied by a written statement containing supporting arguments and requesting, if desired, the opportunity for a public hearing.

(c) A notice or any other document shall be deemed filed under this section upon receipt.

(d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Operations Office Manager shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision under § 440.12 as to which administrative review is sought, a draft recommended final decision for the concurrence of the Deputy Assistant Secretary, and any other relevant material.

(e) If the applicant requests a public hearing, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and Federal Register notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(f) On or before 45 days from receipt of documents under paragraph (d) of this section or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Operations Office Manager.

(g) On or before 15 days from the date of receipt of the determination under paragraph (f) of this section, the Governor may file an application, with a supporting statement of reasons, for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor stating whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

(h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE, and no appeal shall lie elsewhere in DOE.

(i) Prior to the effective date of the termination of eligibility for further participation in the program because of failure to comply substantially with the requirements of the Act or of this part, a grantee shall have the right to written notice of the basis for the enforcement action and the opportunity for a public hearing notwithstanding any provisions to contrary of 10 CFR 600.26, 600.28(b), 600.29, 600.121(c), and 600.443. A notice under this paragraph shall be mailed by the Operations Office Manager by registered mail, return-receipt requested, to the State, local grantee, and other interested parties. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior Federal Register notice, in the election letter submitted under Rule 2 of 10 CFR 1024.4 and the request shall be granted notwithstanding any provisions of Rule 2 to the contrary.

PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

Part 455 is amended as follows:

1. The authority citation for part 455 continues to read as follows:

Authority: Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3238 (42 U.S.C. 6371 et seq.); and Department of Energy Organization Act, Pub. L. 95-91 Stat. 565 (42 U.S.C. 7101 et seq.).

2. Section 455.2 is amended by adding the definitions of "Assistant Secretary", "Deputy Assistant Secretary" and "Operations Office Manager" in the appropriate alphabetical order as follows:

§ 455.2 Definitions.

* * * * *

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

* * * * *

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistant or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

* * * * *

Operations Office Manager means the manager of a DOE Operations Office or the manager's designee, or any official to whom the manager's functions may be redelegated by the Secretary.

* * * * *

3. Subpart J of 10 CFR Part 455 is added to read as follows:

Subpart J—Administrative Review

Sec.

Subpart J—Administrative Review

§ 455.110 Right to administrative review.

(a) A State shall have a right to file a notice requesting administrative review of a decision under § 455.83 by an Operations Office Manager to disapprove an application for a grant award for State administrative expenses subject to special conditions or a decision under § 455.91 of this part by an Operations Office Manager to disapprove a State plan or an amendment to a State plan.

(b) A school, hospital, coordinating agency or State acting as an institution's duly authorized agent shall have a right to file a notice requesting administrative review of a decision under § 455.82 by an Operations Office Manager to disapprove an application for a grant award to perform technical assistance programs or to acquire and install an energy conservation measure if the disapproval is based on a determination that—

(1) The applicant is ineligible, under § 455.41 or § 455.51 or for any other reason;

(2) An energy use evaluation submitted in lieu of an energy audit, pursuant to § 455.20, is unacceptable under the State plan; or

(3) A technical assistance program equivalent performed without the use of Federal funds does not comply with the requirements of § 455.42 for purposes of satisfying the eligibility requirements of § 455.51(a)(3).

§ 455.111 Notice requesting administrative review.

(a) Any applicant shall have 20 days from the date of receipt of a decision under § 455.110 to disapprove its application for a grant award to file a notice requesting administrative review. If an applicant does not timely file such a notice, the decision to disapprove shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the Operations Office Manager and shall be accompanied by a written statement containing supporting arguments.

(c) If the applicant is a State appealing pursuant to paragraph (a) of § 455.110, the State shall have the right to a public hearing. To exercise that right, the State must request such a hearing in the notice filed under paragraph (b) of this section. A public hearing under this section shall be informal and legislative in nature.

(d) A notice or any other document shall be deemed filed under this subpart upon receipt.

§ 455.112 Transmittal of record on review.

On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Operations Office Manager shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision to disapprove as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.

§ 455.113 Review by the Deputy Assistant Secretary.

(a) If a State requests a public hearing pursuant to paragraph (a) of § 455.110, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and **Federal Register** notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(b) The Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Operations Office Manager—

(1) With respect to a notice filed pursuant to paragraph (a) of § 455.110, on or before 60 days from receipt of documents under § 455.112 or the conclusion of a public hearing, whichever is later; or

(2) With respect to a notice filed pursuant to paragraph (b) of § 455.110, on or before 30 days from receipt of documents under § 455.112.

§ 455.114 Discretionary review by the Assistant Secretary.

On or before 15 days from the date of receipt of the determination under § 455.113(b), the applicant for a grant award may file an application, with a supporting statement of reasons, for discretionary review by the Assistant Secretary. If administrative review is sought pursuant to paragraph (a) of § 455.110, the Assistant Secretary shall send a notice granting or denying discretionary review within 15 days and upon granting such review, shall issue a decision no later than 60 days from the date discretionary review is granted. If administrative review is sought pursuant to paragraph (b) of § 455.110, the Assistant Secretary shall send a notice granting or denying discretionary review within 10 days, and upon granting such review shall issue a decision no later than 30 days from the date discretionary review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

§ 455.115 Finality of decision.

A decision under § 455.113 shall be final for DOE if there is no review sought under § 455.114. If there is review under § 455.114, the decision thereunder shall be final for DOE, and no appeal shall lie elsewhere in DOE.

PART 465—ENERGY EXTENSION SERVICE

Part 465 is amended as follows:

1. The authority citation for part 465 continues to read as follows:

Authority: National Energy Extension Service Act, enacted as title V of the Energy Research and Development Administration Authorization Act of 1977, title V of Pub. L. 95–39, 91 Stat. 191 et seq. (42 U.S.C. 7001 et seq.); Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 956 et seq. (42 U.S.C. 7101 et seq.); Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, 92 Stat. 3 *et seq.* (41 U.S.C. 501 et seq.); section 1007(b) of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, 95 Stat. 611 (42 U.S.C. 7270 Note); E.O. 12009 (42 FR 46267); E.O. 12291 (46 FR 13193).

1a. Section 465.2 is amended by adding the definitions of "Assistant Secretary" and "Deputy Assistant Secretary" in the appropriate alphabetical order and revising the definition of "Operations Office Manager" as follows:

§ 465.2 Definitions.

* * * * *

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

* * * * *

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistance or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

* * * * *

Operations Office Manager means the manager of a DOE Operations Office or the manager's designee, or any official to whom the manager's functions may be redelegated by the Secretary.

* * * * *

2. Section 465.8 is revised to read as follows:

§ 465.8 Approval of annual State applications and State plans.

(a) After receipt of an application, the Operations Office Manager may request the State to submit within a reasonable period of time any amendments necessary to make the application complete or amendments to bring the application into compliance with the requirements of this part. The Operations Office Manager shall attempt to resolve any dispute over an application informally and to seek voluntary compliance. If a State fails to submit timely appropriate amendments to complete the application, the Operations Office Manager may reject the application as incomplete in a written decision, including a statement of reasons, which shall be subject to administrative review under § 465.10 of this part.

(b) On or before 60 days from the date that a timely filed application is complete, the Operations Office Manager shall decide whether DOE shall make a financial assistance award. The Operations Office Manager may—

(1) Approve the application in whole or in part to the extend that—

(i) The State plan meets the objectives of the Act;

(ii) The annual State application and the State plan meet the requirements of §§ 465.6 and 465.7, respectively; and

(iii) Implementation of the State plan by the State conforms to the requirements of this part;

(2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or

(3) Disapprove the application if it does not conform to the requirements of this part.

3. Section 465.10 is revised to read as follows:

§ 465.10 Administrative review.

(a) A State shall have 20 days from the date of receipt of a decision under § 465.8 to file a notice requesting administrative review. If the State does not timely file such a notice, the decision under § 465.8 shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the Operations Office Manager and shall be accompanied by a written statement containing supporting arguments. If the Operations Office Manager has disapproved the entire application, the State may request a public hearing.

(c) A notice of any other document shall be deemed filed under this section upon receipt.

(d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Operations Office Manager shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision under § 465.8 as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.

(e) If the State requests a public hearing on the disapproval of an entire application, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and **Federal Register** notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(f) On or before 45 days from receipt of documents under paragraph (d) or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary, shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Operations Office Manager.

(g) On or before 15 days from the date of receipt of the determination under paragraph (f) to the section, the Governor may file an application for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

(h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE and no appeal shall lie elsewhere in DOE.

(i) Prior to the effective date of the termination or suspension of a grant award for failure to implement an approved State plan in compliance with the requirements of this part, a grantee shall have the right to written notice of the basis for the enforcement action and of the opportunity for public hearing before the DOE Financial Assistance Appeals Board notwithstanding any provisions to contrary of 10 CFR 600.26, 600.28(b), 600.29, 600.121(c), and 600.443. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior **Federal Register** notice, in the election letter submitted under rule 2 of 10 CFR 1024.4 and the request shall be granted notwithstanding any provisions to the contrary of rule 2.

[FR Doc. 90-23866 Filed 10-9-90; 8:45 am]
BILLING CODE 6450-01-M

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H.R. 5725/Pub. L. 101-407

To extend the expiration date of the Defense Production Act of 1950. (Oct. 4, 1990; 104 Stat. 882; 1 page) Price: $1.00

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Indian Environmental Regulatory Enhancement Act of 1990. (Oct. 4, 1990; 104 Stat. 883; 2 pages) Price: $1.00

The Federal Register

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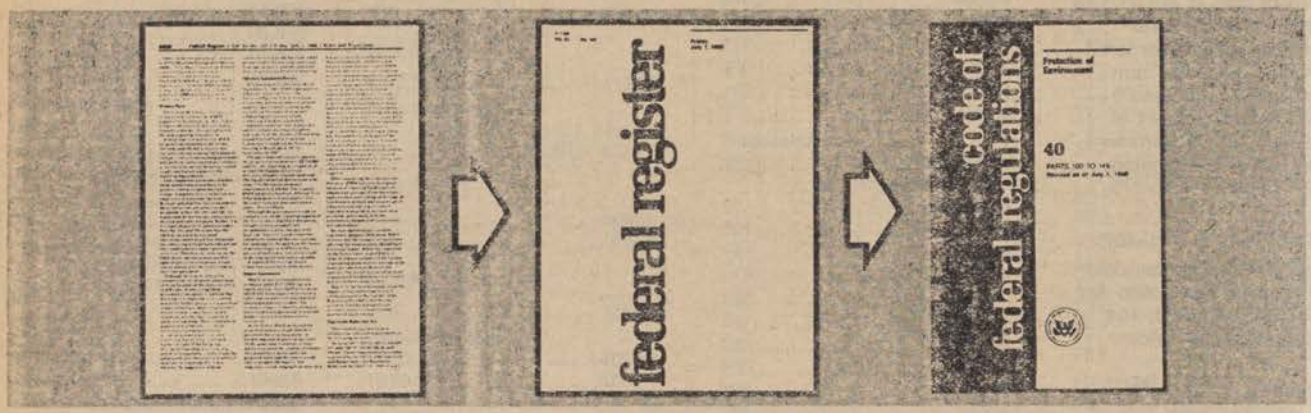

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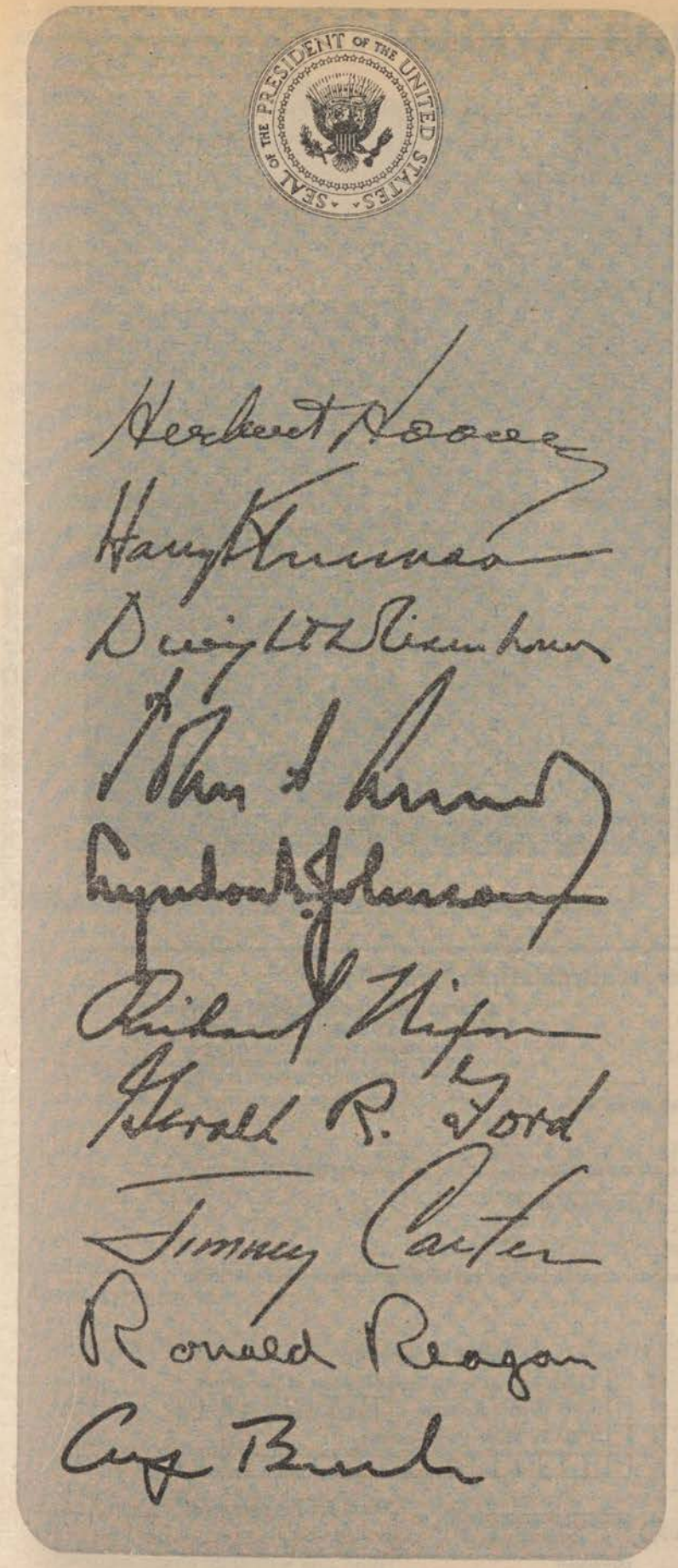

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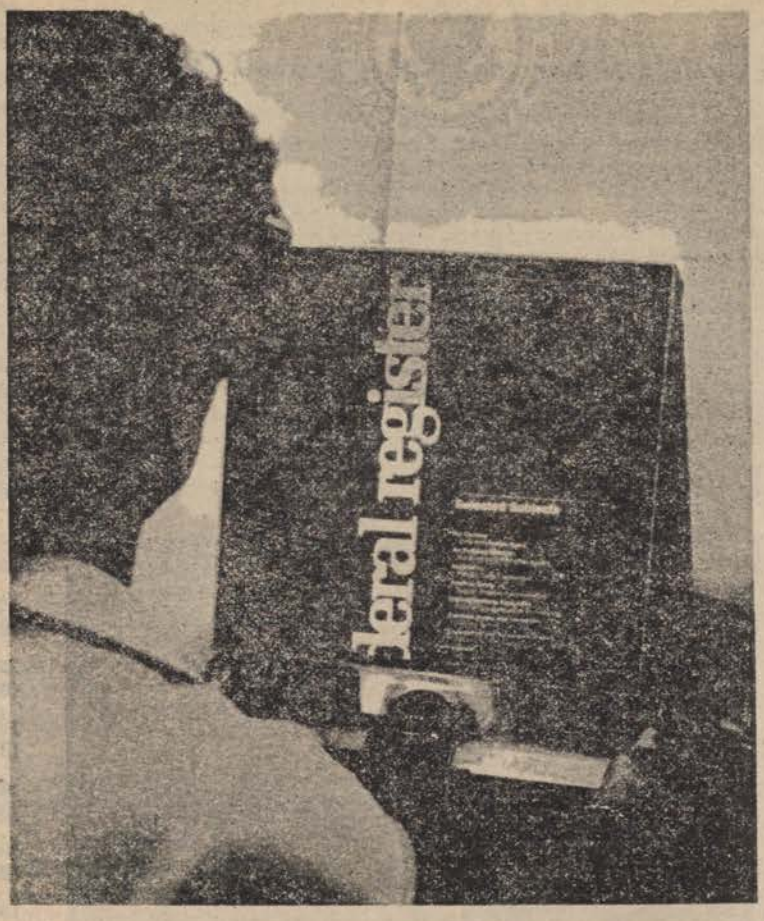

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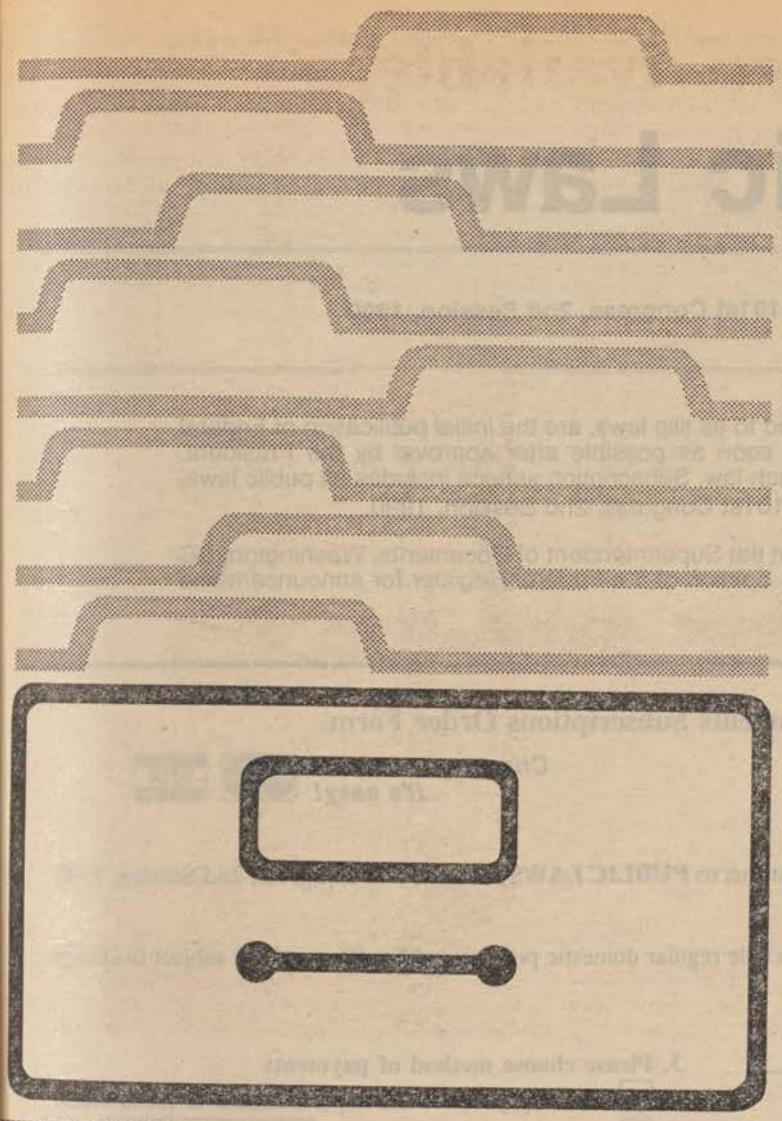

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