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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-90-202FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting without modification as a final rule three interim final rules as they applied to minimum grade and size requirements for Florida citrus for portions of the 1990–91 season. Those rules temporarily relaxed minimum grade and size requirements for fresh shipments of Dancy tangerines, red and white seedless grapefruit, and Valencia and other late type oranges. Those relaxations were designed to enable handlers to maximize shipments to fresh market channels consistent with the overall size and quality of the remaining crops and anticipated market demand.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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.

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 action 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 about 90 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) 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. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (CAC), which administers the order locally, met on September 11, 1990, January 29, 1991, and April 2, 1991, and unanimously recommended several grade and size relaxations for Dancy tangerines, red and white seedless grapefruit, and Valencia and other late type oranges. These relaxations were based on the CAC's assessment of crop and market conditions and the remaining available supply of these citrus fruits. The CAC meets prior to and during each season to review the handling requirements, effective on a continuous basis, for each regulated citrus fruit. CAC meetings are open to the public and interested persons may express their views at these meetings. The Department reviews CAC recommendations and information submitted by the CAC and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

The first interim final rule issued October 19, 1990 and published in the **Federal Register** (55 FR 42843, October 24, 1990), provided for the filing of comments through November 23, 1990. No comments were received. That rule amended § 905.306 (7 CFR 905.306) which specifies minimum grade and size requirements for Florida citrus in Table I of paragraph (a) for domestic shipments, and in Table II of paragraph (b) for export shipments. The minimum size requirement for domestic shipments of Dancy tangerines were relaxed to size 210 (2^{1}⁄$_{16}$ inches in diameter) from size 176 (2^{5}⁄$_{16}$ inches) for the period November 5, 1990 through August 18, 1991. In addition, that interim final rule relaxed the minimum size requirement for domestic shipments of red seedless grapefruit to size 56 (3^{5}⁄$_{16}$ inches in diameter) for the period October 22, 1990 through October 20, 1991. In the absence of that action, the minimum size requirement for red grapefruit would have increased to size 48 (3^{9}⁄$_{16}$ inches in diameter).

The first interim final rule also similarly relaxed the size requirements for grapefruit imported into the United States specified in § 944.106 (7 CFR 944.106), pursuant to section 8e of the Act (7 U.S.C. 608e–1). Subsequently, the grapefruit import requirements were temporarily suspended beginning March 11, 1991 (56 FR 10792, March 14, 1991), to provide the U.S. Trade Representative (USTR) an opportunity to review contemplated changes in the grapefruit import requirements. Therefore, this final rule does not apply to imported grapefruit. Any grapefruit import requirements issued by the Department will be included in a separate action.

The second interim final rule issued March 8, 1991 and published in the **Federal Register** (56 FR 10790, March 14, 1991), provided for the filing of comments through April 15, 1991. No comments were received. That rule further amended § 905.306, relaxing the minimum external quality requirement for domestic and export shipments of red seedless grapefruit to U.S. No. 2 grade from Improved No. 2 grade for the

period March 11, 1991, through August 18, 1991. In addition, that rule relaxes the minimum size requirement for domestic shipments of white seedless grapefruit to size 56 (3 5/16 inches in diameter) from size 48 (3 9/16 inches in diameter) for the period April 15, 1991, through August 18, 1991.

The third interim final rule issued May 8, 1991 and published in the **Federal Register** (56 FR 21915, May 13, 1991), provided for the filing of comments through June 12, 1991. No comments were received. That rule further amended § 905.306 temporarily relaxing the minimum grade requirement for domestic and export shipments of Valencia and other late type oranges to U.S. No. 1 Golden from U.S. No. 1 for the period May 6, 1991, through September 22, 1991. That rule also relaxed the minimum size requirement for domestic and export shipments of Valencia and other late type oranges to 2–4/16 inches in diameter (size 163) from 2–8/16 inches in diameter (size 125) for the period May 6, 1991, through September 22, 1991. In addition, that rule relaxed the minimum grade requirement for domestic shipments of white seedless grapefruit to U.S. No. 2 from Improved No. 2 for the period May 6, 1991, through May 19, 1991, and further relaxed such requirement to U.S. No. 2 Russet for the period May 20, 1991, through August 18, 1991. Further, that rule relaxed the minimum grade requirement for domestic shipments of red seedless grapefruit to U.S. No. 2 Russet from U.S. No. 2 for the period May 6, 1991, through August 18, 1991.

The CAC recommended these relaxations based on analysis of this season's remaining Florida Dancy tangerine, grapefruit, and Valencia and other late type orange crops. Relaxing the minimum grade requirements for these fruits was designed to assure that fresh markets were supplied with the best quality fruit available from this season's remaining crops. The grade relaxations pertained only to the external characteristics of the fruit, not the internal quality, and recognized the fact that the external appearance of these fruits tends to decline later in the season. Relaxing the minimum size requirements for these fruits was designed to make smaller fruit available of acceptable maturity and flavor to meet consumer needs. The relaxations were designed to enable handlers to maximize shipments to fresh market channels consistent with the overall size and quality of the remaining crops and anticipated market demand.

Under this marketing order, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

The Department's view if that these relaxations have had a beneficial impact on producers and handlers since they allow Florida citrus handlers to continue to ship those grades and sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the CAC, and other information, it is found that this final rule finalizing three interim final rules, each of which amended the provisions of § 905.306, as published in the **Federal Register** (55 FR 42844, October 24, 1990; 56 FR 10791, March 14, 1991; and 56 FR 21917, May 13, 1991), will tent to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains relaxed grade and size requirements currently in effect for Dancy tangerines, red and white seedless grapefruit, and Valencia and other late type oranges grown in Florida; (2) the Florida citrus shipping season for these citrus fruit is nearly finished; (3) Florida citrus handlers will need no additional time to continue complying with the relaxed requirements; (4) each interim final rule provided a 30-day comment period, and no comments were received; and (5) no useful purpose will be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

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

2. Accordingly, the interim final rules amending the provisions of § 905.306, published in the **Federal Register** (55 FR 42844, October 24, 1990; 56 FR 10791, March 14, 1991; and 56 FR 21917, May 13, 1991), are adopted as final rules without change.

Note: These sections will appear in the annual Code of Federal Regulations.

Dated: August 2, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18866 Filed 8–7–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 989

[FV–91–267FR]

Raisins Produced From Grapes Grown in California; Revising the Desirable Carryout Formula

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the administrative rules and regulations of the California raisin marketing order. This action changes the desirable carryout level from three months of shipments to two and one-half months of shipments. The Raisin Administrative Committee (Committee) has determined that the use of the current desirable carryout level results in excessive supplies of marketable tonnage early in the crop year. This action is intended to stabilize marketing conditions for California raisins. This change was recommended by the Committee, which is responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3923.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating

the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (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 action 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 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) 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. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This final rule changes the administrative rules and regulations of the raisin marketing order. The Committee recommended this action by a 32 to 11 vote at its March 5, 1991, meeting.

The change revises the desirable carryout level which appears in § 989.154. The desirable carryout level is the amount of tonnage from the prior crop year that is considered necessary for the industry to have available during the first part of the succeeding crop year to meet market needs, before the crop is harvested. Currently, § 989.154 provides that the desirable carryout level shall be equal to the shipments of free tonnage to all outlets for each varietal type during the period from August through October of the prior crop year. The desirable carryout figure is used in marketing policy calculations to determine trade demand. The trade demand is 90 percent of prior year's shipments, adjusted by the carryin and desirable carryout. The trade demand is then used to help determine the volume regulation percentages for each crop year, if necessary.

The current desirable carryout figure was established on June 9, 1989 (54 FR 25669). At that time, the Committee determined that the desirable carryout levels for certain varietal types of raisins specified in the order were too low and that higher levels were more appropriate because they would allow handlers to have adequate inventory to meet shipment needs during the early months of the crop year. The desirable carryout level of three months' shipments was used for the first time in marketing policy calculations for the 1989–90 crop year. The change in the desirable carryout level increased the desirable carryout from 60,000 tons to 103,090 tons for Natural (sun-dried) Seedless raisins (the major varietal type of raisin).

After two crop years' experience, the Committee has determined that the use of the three month desirable carryout level has resulted in excessive supplies of marketable tonnage early in the season. The majority of the Committee members believe that this causes unstable market conditions during the early part of the crop year, resulting in a reduction of trade prices.

In order to correct the oversupply of marketable raisin tonnage early in the season, the Committee has recommended that the desirable carryout level be revised from three months of shipments to two and one-half months of shipments from the prior crop year. For example, the Committee would use the total shipments for each varietal type from the prior year for the months of August and September, and one-half of the total shipments in October, for computing free and reserve percentages for the applicable crop year. The change in the desirable carryout level will reduce the trade demand and the free tonnage percentage, thus making less free tonnage available to handlers for immediate use. However, handlers will still be provided an opportunity to increase their inventory, if necessary, by purchasing raisins from the reserve pool under the 10 plus 10 offers during November and other releases of reserve pool raisins available under the marketing order. The 10 plus 10 offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

A proposed rule on this action was published in the Federal Register on May 20, 1991 (56 FR 23033). The proposed provided interested persons the opportunity to file written comments through June 19, 1991. A total of 117 comments were submitted prior to the close of the comment period. One hundred and three comments were opposed to the proposal. The remaining 14 of the 117 comments supported the proposal.

Prior to the May 20, 1991, publication of the proposed rule to revise the desirable carryout formula in the Federal Register (56 FR 23033), the Department received approximately 67 letters from interested persons opposing the Committee's recommendation. These individuals opposed the recommendation because they believed that: (1) Demand for California raisins will not be increased by a reduction to the industry's free tonnage; (2) a tightening of supply and increased prices will reduce the supply of California raisins at a time when the industry is investing funds in export promotion programs to increase shipments; (3) purchases of over 20,000 tons from this year's 10 plus 10 offers indicate that handlers were not overburdened with free tonnage; and (4) producers may be economically impacted by the decrease in free tonnage due to the reduction in the desirable carryout level. In view of these concerns, the Department requested comments specifically addressing these issues.

Commenters who favored the proposed desirable carryout level change addressed these issues. In reply to the first issue, one commenter stated that the demand for California raisins will neither increase nor decrease as a result of the change. Demand for California raisins is determined by consumer and customer preferences and the available supply from competing countries. It is expected that the change in the desirable carryout level will not affect demand for California raisins.

In response to the second issue, one commenter stated that the industry would make available adequate supplies to cover all projected demand even with the proposed change. Further, the change in the desirable carryout level is consistent with the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" which specifies that reserve pool programs make available a quantity equal to 110 percent of recent years' sales. In fact, since the advent of the

Export Incentive Program in 1983, the 110 percent guideline has been exceeded and the recommended change to the carryout level will not result in a reduction of this figure.

In response to the third issue, one commenter stated that the demand for the 10 plus 10 purchases was quite high for the three years prior to the 1989 change in the desirable carryout level. Since the 1989 desirable carryout level change, the 10 plus 10 purchases have decreased dramatically. For 1986, 1987 and 1988, the 10 plus 10 purchases were:

1986.....44,207 (tons)
1987.....49,715 (tons)
1988.....64,546 (tons)

However, the 10 plus 10 purchases since 1989 were:

1989.....30,345 (tons)
1990.....20,296 (tons)

The reduction from 64,546 tons in 1988 before the change in the desirable carryout level to 20,926 tons in 1990 demonstrates that there has been a substantial change in market conditions. In fact, the low level of 10 plus 10 purchases in 1990 indicates that some handlers are overburdened with raisins and are cutting back their purchases out of the 10 plus 10 offers, thus, adjusting their inventory positions down.

Another commenter stated that the opposition's third issue supports this rule change because only 20,000 tons of raisins were purchased out of the first 10 percent offer. The commenter also stated that this purchase (20,000 tons) did not take into consideration the second 10 percent offer, in which packers would purchase raisins in anticipation of a sales increase. In 1990, approximately 30,000 tons of raisins were available for the first 10 percent offer and an additional 30,000 tons of raisins were available for the second 10 percent offer. However, only 20,000 tons of raisins were purchased. Thus, the fact that approximately 40,000 tons (10,000 tons from the first 10 percent offer and 30,000 tons from the second 10 percent offer) were not purchased by the packers shows that there is excess free tonnage inventory in the industry.

In reply to the fourth issue, several commenters acknowledged that it is possible that, in enacting this change, raisin growers' initial free tonnage could be reduced by approximately 5 percent. However, in subsequent years, the negative impact on their free tonnage may be offset by smaller carryins. The commenters also stated that the Committee's recommendation aims to more accurately reflect the annual desirable free tonnage carryout to bring supply more closely in line with demand. Furthermore, the 10 plus 10 offer is always available to raisin handlers and, if there is strong demand, purchases may be made due to the confidence in market stability.

Several of the comments received in opposition to the recommendation were from raisin producers. Some commenters opposed any change that would reduce the free tonnage of raisins. However, they provided the Department with no additional information to support their opposition.

Other raisin producers commented that they would be affected by the change since it would decrease the free tonnage percentage for the 1991–92 crop by approximately 5 percent. They supported keeping the current desirable carryout level in order to maintain aggressive sales; to avoid increasing the amount of tonnage in the reserve pool; and to prevent further reduction of their income which is used to meet the continuous rise in operational costs.

Comments submitted by interested persons in opposition to the proposal also asserted that the decrease in the free tonnage percentage and increase in the reserve pool percentage will reduce immediate income to producers, since producers are usually paid for their free tonnage portion of the raisin crop at the time of delivery to handlers. Another commenter stated that a large handler has been successful in increasing its market share and stimulating sales under the current desirable carryout level. The commenter requested that the Department allow more time prior to issuing this proposal in order to determine if there are any positive benefits in revising the desirable carryout level.

As previously mentioned, the initial free tonnage could possibly be reduced by approximately 5 percent. However, as one raisin producer who supported the rule stated, "We must look not only at the short-term consequences of an action, but the long-term dividends that can be obtained. The raisin producer can reasonably expect an increase in the 10 plus 10 purchases which have dwindled each season since the three-month shipment formula was initiated."

Another commenter stated that the approximate 5 percent decrease may be more than offset by an increase in 10 plus 10 purchases and an increase in field prices. If such a change is not implemented soon, the proponents of the revision in the desirable carryout level feel that market instability and lower prices will continue.

With regard to several commenters' opposition to the proposal, one supporter of the change to the desirable carryout figure from three months of shipments to two and one-half months of shipments believes that the change is reasonable and is supported by both producers and handlers. The supporter commented that since the inception of the raisin marketing order in 1949 until 1976, there was no specific mathematical formula for determining the volume of free tonnage raisins to be released to the handlers without restrictions. Instead, for 27 years, the industry would debate each year the proper amount of raisins to be released. Due to differences of opinion, the eventual decisions by the industry were unpredictable. In 1976, the raisin industry strongly supported the creation of a mathematical formula to further orderly marketing. In order to provide orderly marketing while permitting for growth in sales, the industry recommended to the Department a policy of raisins equal to 110 percent of the previous years shipments be made available to handlers. This was accomplished by setting the free tonnage volume at 90 percent of previous year's shipments, and allowing two offers of 10 percent to bring the total tonnage available to 110 percent (90 percent plus 10 percent plus 10 percent).

The commenter further stated that the Committee's proposal is necessary to correct a mistake in the formula when it was last amended in 1989. The commenter pointed out that the 1989 change has over the last two marketing seasons created an industry oversupply early in the season; hindered handlers with excess inventory from adjusting their positions; and created a sudden change which has resulted in market instability and lower prices.

In conclusion, it is the Agency's view that the increase to a three-month desirable carryout level contributed to instability in the market, i.e., oversupply early in the season and reduced 10 plus 10 purchases. In addition, the desirable carryout was set at a level which created an industry oversupply early in the season which may have resulted in lower grower returns.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the Committee's recommendation, the comments received, and other available information, it is found that the revision

of the desirable carryout level from three months to two and one-half months of shipments which appears in section 989.154 relating to the desirable carryout level will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the Committee is required to meet on or before August 15 to compute the trade demand for the new crop year, and this rule affects one portion of that computation.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

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

2. Section 989.154 is revised to read as follows:

(Note: This action will appear in the annual Code of Federal Regulations).

§ 989.154 Desirable carryout levels.

The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage of the prior crop year during the months of August and September, and one-half of the total shipments for the month of October, for each varietal type, converted to a natural condition basis: *Provided*, That should the prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August and September, and one-half of the total shipments for the month of October, during one of the three years preceding the prior crop year.

Dated: August 5, 1991.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18928 Filed 8–6–91; 2:48 pm]

BILLING CODE 3410–02–M

7 CFR Part 998

[Docket No. FV–91–262FR]

Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts; Changes in the Outgoing Quality Regulation and Terms and Conditions of Indemnification for 1991 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the outgoing quality regulations and the current terms and conditions of indemnification for 1991 crop peanuts regulated under Marketing Agreement No. 146. The outgoing regulation is changed to allow for more efficient utilization of peanut meal resulting from the crushing of peanuts for peanut oil. The terms and conditions of indemnification are changed to set a $9,000,000 limit on indemnification expenses (including $5,000,000 in insurance coverage) and to establish a payment schedule and criteria which will ensure that all indemnification claims are handled equitably and are paid as soon as it can be ascertained that the $9,000,000 limit will not be exceeded. The limit on indemnification expenditures is intended to ensure that indemnification expenses incurred do not exceed the Peanut Administrative Committee's (Committee) ability to cover such expenses in the event of a crop year with an unusually high incidence of aflatoxin.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 146 (7 CFR part 998), regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act).

This final rule has been reviewed by the U.S. Department of Agriculture (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 final 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.

There are 68 handlers of peanuts subject to regulation under the agreement, and there are about 46,950 peanut growers in the 16 states covered under the program. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) 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. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States covered under the agreement: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1990 totalled 3.60 billion pounds, a 10 percent decrease from 1989 and 1988. The 1990 crop value is $1.26 billion, up 13 percent from 1989.

The objective of the agreement is to ensure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965 with over 90 percent of U.S. shellers (handlers) participating. The participating shellers handle about 95 percent of the crop. Under the agreement, farmer's stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Committee. The Committee works with the Department in administering the marketing

agreement program. The inspection and chemical analysis programs are administered by the Department. A sheller who has complied with these requirements, is eligible for indemnification of losses incurred if the sheller's peanuts are deemed unsuitable for human consumption because of aflatoxin. All indemnification and administration costs are paid by assessments levied on handlers signatory to the agreement.

The incoming quality regulation specifies the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulation requires shellers to mill peanuts to meet certain quality specifications and to have them inspected before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in the milling operation. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows that the lot is positive as to aflatoxin, the lot is not allowed to go to edible channels. Lower quality peanuts are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

On January 23-24, 1991, the Committee unanimously recommended changes in paragraphs (g)(3)(ii) and (l)(2) of § 998.200 *Outgoing Regulation* to require that meal produced from the crushing of all "restricted" categories of peanuts be sampled as prescribed by the Committee and tested for aflatoxin, and that the numeric test results be shown on the certificate accompanying each shipment of meal produced from the crushing of "restricted" categories of peanuts. The Committee also recommended that the current restrictions regarding the use and disposition of meal produced from the crushing of "restricted" peanuts be removed from the regulations. Meal produced from the crushing of "unrestricted" categories of peanuts will continue to be exempt from aflatoxin testing requirements and will be eligible for feed use without testing.

Generally, restricted categories of peanuts are peanuts which were determined to be Segregation III or peanuts which contain or are likely to contain significant levels of aflatoxin. Unrestricted categories of peanuts are peanuts which have been determined to be Segregation I or II pursuant to § 998.100 or have been determined to be negative (based on the criteria applicable to non-edible quality categories) as to aflatoxin content.

Currently, meal produced from restricted categories of peanuts, unless detoxified, must be disposed of for fertilizer or other non-feed uses. The Committee reported that other Federal and State requirements or criteria for the disposition of peanut meal in certain food outlets are less restrictive than those currently in effect under the agreement. Therefore, the regulations under the agreement restrict dispositions of peanut meal for feed use that would be authorized under other State and Federal requirements or criteria. The changes will provide crushers and meal receivers with certified information as to the aflatoxin content of meal produced from restricted categories of peanuts. Receivers will then make usage determinations based upon Federal or State requirements or criteria in effect for the desired outlet. This will allow for more efficient utilization of peanut meal, eliminate differences between the agreement regulations and other State or Federal requirements or criteria, and simplify the requirements in effect for the disposition of peanut meal under the agreement.

At its February 27 meeting, the Committee recommended changes in § 998.300 *Terms and conditions of indemnification* to limit indemnification expenses on 1991 crop peanuts to $9,000,000, including $5,000,000 of insurance coverage. The Committee's recommendation would cause payment of the applicable indemnification payment on indemnified 1991 crop peanuts to be withheld until the loan acquired for the purposes of paying indemnities on 1990 crop peanuts is repaid (by December 31, 1991). The Committee also recommended the establishment of a payment schedule, to be utilized after the loan is repaid, to allow 1991 crop indemnification payments to be made as soon as possible while ensuring that all indemnification claims are handled equitably and that the $9,000,000 limit is not exceeded. The payment schedule provides that:

—The cost of preparation, delivery and assays on Samples 2–AB and 3–AB, crushing supervision, and other indemnification costs not allocated to claims, shall be paid, without delay, in accordance with established

—Authorized costs for blanching and remilling fees, freight, and assay costs allocated to claims shall be paid pursuant to the Terms and Conditions of Indemnification, unless the Committee projects that these costs, plus the costs listed above, are likely to exceed the $9,000,000 limitation, in which case alternative rates of payment would be recommended to the Secretary;

—If not more than 800 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee will pay claimants for the applicable indemnification payment on indemnified peanuts covered by claims which are determined to be valid pursuant to the Terms and Conditions of Indemnification;

—If more than 800 but not more than 1300 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee will pay claimants at the rate prescribed in paragraph (x) of the Terms and Conditions, for "additional peanuts", on indemnified peanuts covered by claims determined to be valid pursuant to the Terms and Conditions of Indemnification;

—If more than 1300 but not more than 2500 claims for indemnification have been filed with the Committee by December 31 of the current crop year, indemnification payments for the peanuts removed in the remilling and/or blanching process will continue to be withheld until December 31 of the calendar year following the crop year (December 31, 1992), or until other action is prescribed by the Committee, with the approval of the Secretary; and

—If more than 2500 claims have been filed with the Committee on or before December 31 of the current crop year, or if projections indicate that the total claims during the crop year may be approximately 6,000 or more, or if projections indicate that the aggregate costs of the expense items referred to in paragraphs (z)(1) and (z)(2) herein, less receipts for salvage, might exceed the $9,000,000 limit, alternative methods or rates of payment shall be prescribed by the Committee, with the approval of the Secretary.

The payment schedule is based on historical data on the receipt of indemnification claims by the Committee. Using the number of claims received by December 31 and other information, the Committee can project the number of claims likely to be received for the remainder of the current crop year and the payment levels at which all claims may be processed while remaining within the $9,000,000 limit on total indemnification expenses for the 1991 crop.

The changes in the Terms and Conditions of Indemnification for 1991 crop peanuts are intended to ensure that

indemnification expenses incurred do not exceed the Committee's ability to cover such expenses in the event of a crop year with an unusually high incidence of aflatoxin. Heretofore, no upper limits have been fixed on total committee indemnification expenditures for handler indemnification claims. The limit on indemnification expenditures is in response to the large number of indemnification claims on 1990 crop peanuts. Expenditures from these claims exceeded the $7.8 million which was available to cover 1990 crop indemnification expenses. This resulted in a $14 million dollar deficit in the indemnification reserve. The Committee has negotiated a line of credit to pay 1990 crop indemnification expenses until sufficient income is received from 1991 crop assessments. An indemnification assessment of $15.00 per ton of 1991 crop peanuts has been established to cover expenses from the 1990 crop and to continue the indemnification program. The changes in the terms and conditions will protect the Committee from such unlimited liabilities in the future. This will protect handlers from unreasonably high assessment rates and help ensure the integrity of the indemnification program.

Notice of this action was published in the **Federal Register** on May 31, 1991 (55 FR 24743). The comment period ended June 17, 1991. No comments were received.

One non-substantive clarifying change is being made in the terms and conditions of indemnification (§ 998.300). Paragraph (i) of that section will be changed to specify that indemnification claims on peanut products manufactured from all edible quality grades of 1990 and subsequent crop peanuts may be filed with the Committee no later than November 1 of the second year following the year that the peanuts were produced. Prior to issuance of the 1990 crop terms and conditions of indemnification, indemnification claims on products could only be filed on those products manufactured from indemnifiable grades of peanuts. Also, these claims had to be filed with the Committee by November 1, following the end of the current crop year. The 1990 crop terms and conditions extended indemnification protection to products manufactured from all edible grades of peanuts and extended the deadline for filing claims on such products an additional year. In order to effectuate the change for 1990 crop peanuts it was necessary to include the specific crop year and corresponding deadline in the terms and conditions. This language is now being removed since it is no longer needed. It will be replaced by generic language to alleviate the need of updating paragraph (i) each crop year to insert the new deadlines.

No changes were recommended in § 998.100 *Incoming quality regulation* for the 1991 crop. Therefore, the incoming regulation applicable to 1990 crop peanuts will be effective for 1991 crop peanuts. The section heading of that section is changed accordingly.

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

The information collection requirements contained in the sections of these regulations which are being amended have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0067.

After consideration of all relevant matter presented, including the information and unanimous recommendation submitted by the committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the 1991 crop year began July 1 and therefore this action should be implemented as soon as possible.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows: (These sections will appear in the annual Code of Federal Regulations.)

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

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

2. Section 998.100 is amended by revising the section heading to read as follows:

§ 998.100 Incoming quality regulation—1991 crop peanuts.

* * * * *

3. Section 998.200 is amended by revising the section heading, revising paragraph (g)(3)(ii), adding a new paragraph (l)(2)(viii) and revising the sixth sentence of the concluding text of paragraph (l)(2) to read as follows:

§ 998.200 Outgoing quality regulation—1991 crop peanuts.

* * * * *

(g) * * *

(3) * * *

(ii) Meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have not been certified negative as to aflatoxin content, and meal produced from the crushing of other "restricted" categories of peanuts listed in paragraph (l)(2) of this section, shall be prepared for disposition in specifically identified lots not exceeding 200,000 pounds. Handlers or crushers, at their own expense, shall cause each such lot of meal to be sampled, as prescribed by the Committee, by an inspector of the Federal or Federal-State Inspection Service and tested for aflatoxin in a laboratory approved by the Committee or by a USDA laboratory. The numerical test result of the chemical assay shall be shown on a certificate covering each lot of meal produced from "restricted" peanuts, and a copy of the certificate shall accompany each shipment or disposition. However, meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have been certified negative as to aflatoxin content, and meal produced from the crushing of other categories of peanuts determined by paragraph (l)(1) of this regulation to be eligible for "unrestricted" crushing, shall be exempt from the aflatoxin testing requirements.

* * * * *

(l) * * *

(2) * * *

(viii) PAC indemnified peanuts.

* * * * *

* * * Meal produced from the crushing of "restricted" categories of peanuts described in this paragraph (l)(2) shall be tested and certified as to aflatoxin content pursuant to the requirements of paragraph (g)(3)(ii) of this section, applicable to such "restricted" categories of peanuts. * * *

* * * * *

4. Section 998.300 is amended by revising the section heading, revising the third sentence of paragraph (i), removing the fourth sentence of paragraph (i), and by adding a new paragraph (z) to read as follows:

§ 998.300 Terms and conditions of indemnification—1991 crop peanuts.

* * * * *

(i) * * * On products manufactured from edible quality grades of peanuts,

such claims may be filed with the committee no later than November 1 of the second year following the year in which the peanuts were produced.

* * * * *

(z) Notwithstanding the provisions of any other paragraph of these Terms and Conditions, the total payments for indemnification plus expenses, minus salvage received by the Committee on indemnified peanuts delivered for crushing, shall not exceed $9,000,000 in the aggregate, for the crop year. To assure that the $9,000,000 limit is not exceeded while dealing with all expenses and claims on an equitable basis, the following payment schedule shall be followed:

(1) Cost of preparation, delivery and assays on Samples 2–AB and 3–AB, as prescribed in section 998.200(c)(2), crushing supervision, and other indemnification costs not allocated to claims, shall be paid, without delay, in accordance with the procedures in this part.

(2) Authorized costs for blanching and remilling fees, freight, and assay costs allocated to claims shall be paid pursuant to these Terms and Conditions, unless the Committee projects that these costs, plus the costs listed in paragraph (z)(1), are likely to exceed the $9,000,000 limitation.

(3) If not more than 800 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee shall pay claimants for the applicable indemnification payment on indemnified peanuts covered by claims, which are determined to be valid, pursuant to these Terms and Conditions.

(4) If more than 800 but not more than 1300 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee shall pay claimants at the rate prescribed in paragraph (x) of these Terms and Conditions, for "additional peanuts", on indemnified peanuts covered by claims, as determined to be valid pursuant to these Terms and Conditions.

(5) However, with respect to paragraphs (z)(3) and (z)(4) above, indemnification payments for the peanuts removed in the remilling and/or blanching process shall be delayed until such time as the loan acquired for the purposes of paying indemnities on 1990 crop peanuts is repaid.

(6) If more than 1300 but not more than 2500 claims for indemnification have been filed with the Committee by December 31 of the current crop year, indemnification payments for the peanuts removed in the remilling and/or blanching process shall be delayed until December 31 of the calendar year following the current crop year, or until other action is prescribed by the Committee, with the approval of the Secretary.

(7) If more than 2500 claims for indemnification have been filed with the Committee on or before December 31 of the current crop year, or if projections indicate that the total number of claims during the crop year may be approximately 6,000 or more, or if projections indicate that the aggregate costs of the expense items referred to in paragraph (z)(1) and (z)(2), minus salvage, might exceed the $9,000,000 limit, alternative methods or rates of payment shall be prescribed by the Committee, with the approval of the Secretary.

Dated: August 2, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18867 Filed 8–7–91; 8:45 am]

BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice to waive the "Nonmanufacturer Rule" for hack saw blades, computer disk drives, and laser printers.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the "Nonmanufacturer Rule" for the products listed. These products are being granted waivers because no small business manufacturer or processor is supplying them to the Federal Government. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer on a Federal contract set aside for small business or awarded through the SBA 8(a) program.

PSC	Product lines granted waivers
7025	Laser printers.
3405	Hack saw blades.
7025	Disk drives, computer.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: James Fairbairn, Industrial Specialist, phone (202) 205–6465.

SUPPLEMENTARY INFORMATION: After an initial survey of these product lines, SBA notified the public by notice in the Federal Register on May 15, 1991 (Vol. 56, No. 99 p. 23526), of its proposed intention to grant a waiver for the products indicated, plus certain pneumatic tires. After a fifteen day comment period, small business sources were identified for the pneumatic tires. Tires are therefore deleted from this notice of final waiver. The basis for a waiver is that no small business manufacturer or processor is supplying these specific product lines to the Federal Government.

On November 15, 1988, Public Law 100–656 incorporated into the Small Business Act the existing SBA policy that recipients of contracts set aside for small business or the SBA 8(a) Program shall provide the products of small business manufacturers or processors. This requirement is commonly known as the "Nonmanufacturer Rule". The SBA regulations imposing this requirement are found in 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line within a PSC. To be considered in the Federal market, a small business must have been awarded a contract by the Federal Government to supply that particular class of products within the past three years. SBA has been requested to issue a waiver for each of the products listed above because of an apparent lack of any small business manufacturers or processors for them within the Federal market. SBA searched its Procurement Automated Source System (PASS) for small business manufacturers or processors that have sold to the Federal Government. When no small business manufacturers or processors were identified within the Federal market by the PASS search, we published a notice to the public in the Federal Register stating our proposed intention to grant waivers for these products unless new information was found. The notice described the legal provisions for a waiver, how SBA defines the market, and requested information as to whether small businesses manufacturers have sold them to the Federal Government during the past three years.

We received only one comment on the notice of intent to issue waiver. The Army Tank and Automotive Command (TACOM) identified small businesses manufacturers of pneumatic tires. They

have thus been deleted from this final waiver. These waivers are being granted pursuant to statutory authority under section 303(h) of Public Law 100–656. A waiver for the designated products is for an indefinite period, but is subject to an annual review or upon receipt of information indicating that the conditions required for a waiver no longer exist. If SBA determines that the conditions required for a waiver no longer exist, the waiver will be terminated. That termination will be published in the Federal Register.

Dated: July 29, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–18797 Filed 8–7–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–ANE–19; Amendment 39–7068; 91–15–05]

Airworthiness Directives; Rolls-Royce plc (RR) GEM Mk 530 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments and withdrawal of earlier AD.

SUMMARY: This amendment withdraws an earlier version of Amendment 39–7068, Airworthiness Directive (AD) 91–15–05 published at 56 FR 33705 (July 23, 1991) and adopts a new version of that AD, applicable to RR GEM Mk 530 series engines, which requires a repetitive leak check inspection of the hydromechanical fuel control unit (HMU). This AD also requires a one-time x-ray or disassembly inspection to confirm correct assembly of the HMU. This amendment is prompted by two events of significant external fuel leakage from the HMU. This condition, if not corrected, could result in a fire hazard in the engine nacelle.

DATES: The AD at 56 FR 33705 (July 23, 1991) is withdrawn August 8, 1991.

This final rule is effective August 19, 1991.

Incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 19, 1991.

Comments must be received no later than September 9, 1991.

ADDRESSES: Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–19, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from United Technologies Corporation, Hamilton-Standard Division, Technical Publications Department, One Hamilton Road, Windsor Locks, Connecticut 06096–1010, and Rolls-Royce plc, Leavesden, WD27BZ, England. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Engine Certification Office, ANE–142, Engine and Propeller Directorate, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: Due to a clerical error, the incorrect version was published in the Federal Register at 56 FR 33705 (July 23, 1991). Accordingly, that incorrect version is withdrawn and this newer version is published in its place. This newer version has the same compliance requirements, but contains some editorial changes.

Two revenue service events have occurred where significant fuel has leaked from the HMU in the area of the electrical connector. The cause of the leakage has been determined to be incorrect assembly of the torque motor transfer tube preformed packing and backup retaining ring assembly. The FAA has determined that the misassembly can occur at HMU overhaul, or at new HMU manufacture. The population of affected units is unknown, and timely execution and completion of the requirements in this AD requires initiations of the x-ray or disassembly one-time inspection. Further, any delay in incorporation of the one-time inspection requirement may result in a very short compliance interval. This condition, if not corrected, could result in external fuel leakage from the HMU, and a fire hazard in the engine nacelle.

Since this situation is likely to exist or develop on other engines of the same type design, this AD requires repetitive visual inspection of the HMU for external fuel leakage. This AD also requires a one-time x-ray or disassembly inspection of the HMU preformed packing and backup retaining ring assembly to determined correct assembly. The repetitive inspection program is not required for HMU's determined to be assembled correctly.

Since this condition could result in a fire hazard to the engine nacelle, there is a need to minimize the exposure of revenue service aircraft to this unsafe condition. Therefore, safety in air transportation requires adoption of this regulation prior to notice and public comment. Based on the above and the need to inspect the HMU to identify external fuel leakage and incorrect assembly as soon as practicable, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure are impracticable, and good cause exists for the adoption of the amendment prior to public comment, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–19, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

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.

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 Executive 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 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91–15–05 **Rolls-Royce plc:** Amendment 39–7068. Docket No. 91–ANE–19.

Applicability: Rolls-Royce plc (RR) GEM Mk 530 series engines, installed on, but not limited to, Westland 30 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent external fuel leakage from the hydromechanical fuel control unit (HMU) which could result in a fire hazard in the engine nacelle, accomplish the following:

(a) For engines equipped with Hamilton-Standard Model JFC118–22 HMU, part numbers 779218–3, 779218–6, 779218–9, 779218–12, excluding HMU's marked "MS090–001" adjacent to the identification plate, perform the following:

(1) Perform an HMU leak check inspection in accordance with RR Service Bulletin (SB) GEM–73–24, dated October 29, 1990, within the next 15 hours time in service after the effective date of this AD.

(2) Thereafter, reinspect the HMU daily for fuel leakage within 30 minutes of the last shut-down of the day, in accordance with RR SB GEM–73–24.

(3) Remove from service, prior to further flight, HMU's exhibiting any fuel leakage when inspected in accordance with paragraphs (a)(1) or (a)(2) of this AD.

(4) X-ray or disassemble inspect the HMU for correct assembly in accordance with the Accomplishment Instructions of Hamilton-Standard (HS) SB JFC118–22–73–10, dated November 21, 1990, at the next engine shop visit or HMU removal, or by December 31, 1991, whichever occurs first.

(5) Remove from service, prior to further flight, HMU's confirmed incorrectly assembled when inspected in accordance with paragraph (a)(4) of this AD.

(6) For HMU's determined to be correctly assembled when inspected in accordance with paragraph (a)(4) of this AD, the repetitive inspections of paragraphs (a)(1) or (a)(2) of this AD are no longer required.

(b) For the purpose of this AD, shop visit is defined as the induction of an engine into a shop for the conduct of maintenance.

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

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

(e) The leak check inspection and the x-ray and disassembly inspection shall be done in accordance with the following documents:

Document	Page	Revision	Date
RR SB GEM–73–24 Total Pages: 4.	1–4	Original	Oct. 29, 1990.
HS SB JFC118–22–73–10 Total Pages: 12.	1–12	Original	Nov. 21, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the United Technologies Corporation, Hamilton-Standard Division, Technical Publications Department, One Hamilton Road, Windsor Locks, Connecticut 06096–1010, and Rolls-Royce plc, Leavesden, WD27BZ, England. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment (39–7068, AD 91–15–05) becomes effective August 19, 1991.

Issued in Burlington, Massachusetts, on August 2, 1991.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91–18898 Filed 8–7–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AA 82

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of administrative stay.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** on occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). In response to numerous public comments which indicated confusion about the hazard warning provisions of the newly revised Formaldehyde Standard, on December 13, 1988, OSHA announced an administrative stay of paragraphs (m)(1)(i) through (m)(4)(ii) for a period of nine months. OSHA also announced its intention to revoke paragraphs (m)(1)(i) through (m)(4)(ii) and invite comments on replacing them with the Hazard Communication Standard (29 CFR 1910.1200) or another equally protective alternative which would be less confusing to the public (53 FR 50198). The stay was subsequently extended (54 FR 35639, August 29, 1989; 55 FR 24070, June 13, 1990; 55 FR 32616, August 10, 1990; 55 FR 51698, December 17, 1990; 56 FR 10377, March 12, 1991; 56 FR 26909, June 12, 1991).

On July 15, 1991 OSHA published a proposal to resolve several remaining issues on formaldehyde, including those raised by the stayed paragraphs (56 FR 32302). The public was given until August 14, 1991 to comment on the proposal. Consequently the stay is being extended for an additional 90 days. While this stay is in effect, affected

employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

EFFECTIVE DATE: The administrative stay of 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) will be effective until November 6, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

This action is taken pursuant to section 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1-90 (55 FR 9033) and 29 CFR part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

§ 1910.1048 [Stayed in part]

Therefore, 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) is stayed until November 6, 1991.

Signed at Washington, DC this 2nd day of August, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 91-18851 Filed 8-7-91; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3972-6]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Oklahoma County Carbon Monoxide Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves Oklahoma's State Implementation Plan (SIP) revision for attainment of the carbon monoxide National Ambient Air Quality Standard (NAAQS) in Oklahoma County. EPA proposed approval of the Oklahoma County carbon monoxide SIP on September 30, 1986, at 51 FR 34669. No comments were received on the proposal. This notice discusses EPA's final action.

The revision was originally submitted by the Governor on October 17, 1985, with supporting submittals of January 29, 1986, November 7, 1988, October 12, 1990, and October 15, 1990. These submittals were in response to the October 5, 1984, and May 26, 1988, letters from EPA requesting a SIP revision because Oklahoma County was not attaining the carbon monoxide standard.

EFFECTIVE DATE: This rule will become effective on September 9, 1991.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Dallas, Texas 75202.

Oklahoma State Department of Health, Air Quality Service, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73117.

Public Information Reference Unit (PIRU), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gregg Guthrie or Robin Sullivan, telephone (214) 655-7214 or (FTS) 255-7214.

SUPPLEMENTARY INFORMATION:

A. Background

EPA described the facts and regulatory history from which this SIP revision arose in its proposed approval on September 30, 1986, at 51 FR 34669. The Agency will not repeat that description here, but will briefly summarize the major issues and respond to comments it received on the notice of proposed rulemaking. EPA recommends that interested readers examine that notice for a complete understanding of today's action.

Ten violations of the carbon monoxide NAAQS occurred during 1984. Consequently, on October 5, 1984, EPA issued a letter to the Governor of Oklahoma calling for a revision to correct the inadequacy of the existing SIP. As a newly discovered CO nonattainment area, EPA required the implementation of a vehicle Inspection/Maintenance program and CO attainment demonstration, although the area was never formally redesignated as a nonattainment area under section 107(d) of the Clean Air Act.

On October 17, 1985, the Governor of Oklahoma submitted a SIP revision designed to achieve the carbon monoxide standard in Oklahoma County. Supplemental information was submitted on January 29, 1986, November 7, 1988, October 12, 1990, and October 15, 1990. On July 20, 1985, the Oklahoma Department of Public Safety (DPS) submitted the proposed anti-tampering regulation for Oklahoma County to EPA. The DPS conducted a public hearing on the proposed anti-tampering program on May 7, 1985. The final anti-tampering regulation was submitted to EPA by the Governor on October 8, 1985.

Because 1985 and 1986 monitoring data did not demonstrate attainment of the carbon monoxide NAAQS, the Oklahoma City metropolitan statistical area (MSA) was identified as a potential 1988 SIP Call area in appendix A of the proposed Post-1987 Ozone/Carbon Monoxide strategy that was published in the Federal Register on November 24, 1987. EPA issued a Phase I SIP Call for the Oklahoma City MSA on May 26, 1988, since the 1986 and 1987 ambient monitoring data continued to reveal the area as nonattainment. As a Phase I SIP Call area, the State was required to correct deficiencies and inconsistencies in their existing SIP, and begin updating their emission inventory to reflect current emission levels in the Oklahoma City MSA.

B. Plan Review

The control strategy for attainment of the carbon monoxide NAAQS in Oklahoma County was prepared by the Oklahoma State Department of Health (OSDH). The OSDH's Air Quality Service (AQS) is the agency designated by the State as the principal authority for air pollution control matters in Oklahoma. The Association of Central Oklahoma Governments (ACOG) is the planning agency for development of the transportation portion of the SIP in Oklahoma County.

EPA reviewed the submittals and developed a Technical Support Document (TSD).[1] This document is

[1] Evaluation Report for the Oklahoma County Carbon Monoxide State Implementation Plan submitted by the Governor of Oklahoma on October 17, 1985. January 1986; amended by Technical Support Document for EPA's Review of the Oklahoma County, Oklahoma, State Implementation Plan Revision for Carbon Monoxide Attainment, November 1990.

available for inspection by interested parties during normal business hours at the locations listed in the **ADDRESSES** section of this notice.

The carbon monoxide SIP submittals for Oklahoma County were reviewed by EPA in accordance with the requirements of the CAA and the January 27, 1984, Guidance Document for Correction of Part D SIPs in Nonattainment Areas. The results of that review are contained in this notice and the TSD cited previously in this notice.

C. Air Quality Data

EPA's decision that Oklahoma County would be unable to demonstrate compliance with the carbon monoxide NAAQS was based on review of 1984 ambient carbon monoxide monitoring data in the National Aerometric Data Bank (NADB). Oklahoma County experienced ten exceedances of the carbon monoxide NAAQS in 1984. Only one exceedance of the carbon monoxide NAAQS per monitoring site per year is allowed. Since 1984, two of the three sites have experienced exceedances of the CO NAAQS.

These data were collected at three sites within Oklahoma City; Site 018 located at 2045 NW. 10th Street; Site 047 located at 36th and Classen Blvd; and Site 033 located at the OSDH on NE. 10th and Stonewall. These sites are located in a roughly east to west line across Oklahoma City. Only two sites were experiencing exceedances of the carbon monoxide standard and therefore site 033 was discontinued in 1988. Site 018 is situated at the center of a traffic island surrounded by three heavily traveled streets. The number of carbon monoxide exceedances are summarized below:

TABLE 1.—CARBON MONOXIDE EXCEEDANCES PER YEAR

Site No.	1985	1986	1987	1988	1989
018	3	3	4	none	1
047	1	none	none	none	none
033	none	none	none	n/a	n/a

D. Modified Rollback Analysis and Control Strategy

The modified rollback method used to determine the percent reduction needed was performed by the State and verified by EPA. The calculation showed that the CO reduction needed to bring Oklahoma County into attainment was 32 percent of the 1984 emissions level. The 1984 emissions inventory shows the VOC breakdown as 4 percent from stationary sources and 96 percent from mobile sources. The revision demonstrated that the implementation of the anti-tampering program along with the continuation of the Federal Motor Vehicle Control Program (FMVCP) would reduce the automobile CO emissions by 36.1 percent by April of 1988.

Adequate supporting documentation was provided for all of the modified rollback expression input parameters. The EPA agrees with the State's demonstration of a CO reduction requirement of 32 percent. The 32 percent estimate results from using a design value of 14.8 micrograms per cubic meter (ug/m^3). EPA is approving the control strategy and attainment demonstration.

E. New Source Review

The OSDH has developed a new source permitting program that will ensure new sources of pollution will not contribute to a new violation of the NAAQS. These programs are implemented through OAPCR 1.4 "Permits." Oklahoma's requirements listed in OAPCR 1.4 (Air Resources Management: Permits Required) in general as well as the specific requirements of section 1.4.4 (Major Sources—Prevention of Significant Deterioration (PSD) Attainment Areas), will ensure that the emissions from new sources will not cause deterioration of the present air quality. OAPCR 1.4 will require an air quality analysis to ensure no emission increases before new major sources or modifications could be approved for construction. The new source review program also requires the application of Best Available Control Technology (BACT). EPA approved OAPCR 1.4.4 on August 25, 1983, at 48 FR 38635.

F. Transportation Control Measures

The January 29, 1986, supplemental submittal included a discussion of the transportation control plan (TCP). The TCP was originally approved with 1979 Oklahoma County ozone SIP revision and included a commitment to implement transportation control measures (TCMs) if and when necessary. No reduction credit for TCMs were assumed in the CO SIP revision.

G. Vehicle Inspection and Maintenance (I/M)

The State of Oklahoma has implemented an anti-tampering program [2] in Oklahoma County, Oklahoma. The Oklahoma I/M program places emphasis on the reduction of excess emissions resulting because of tampering or misfueling of vehicles. The program includes an annual vehicle inspection for tampering and misfueling, a mechanic training program, a public awareness program, and enforcement of State regulations against tampering and misfueling. It also includes a visual check of the components of the vehicle emission control systems and a tailpipe test to detect lead in vehicles requiring unleaded gasoline.

The Oklahoma I/M program consists of the following segments:

1—An annual inspection of vehicles for tampering of the emission control systems or fuel-switching, and a repair requirement to correct any deficiencies before an inspection sticker is issued.
2—A Public Information Program.
3—An Inspector Training Program.
4—Active enforcement of the inspection requirement.
5—Certification of stations and inspectors.
6—An effective quality control program over the inspections and recordkeeping.

The anti-tampering program was implemented on January 1, 1987, and it is conducted in conjunction with the annual vehicle safety inspection program administered by the Department of Public Safety (DPS). The legal authority for the anti-tampering program is contained in section 856 of title 47 of the Oklahoma Statutes. Section 854 authorizes and directs the Commissioner of the DPS to make the necessary rules and regulations for the administration and enforcement of the anti-tampering inspection program.

The vehicle inspection requirements applies to all 1979 and later model year gasoline powered automobiles and trucks up to 8500 pounds gross vehicle weight owned and operated in the program area. The visual inspection is designed to identify any evidence of tampering or obvious need for service. The presence of lead in cars which should be using unleaded fuel will also be checked.

The September 30, 1986, proposed approval notice identified five items that the State was to complete before EPA would publish a final rulemaking action. Those five items were; (1) Submittal of a public information plan; (2) a written interpretation of the term "proper replacement" in section 851(c) of the Oklahoma Statutes; (3) a quality

[2] The Oklahoma State legislature passed House Bill No. 13889 which authorizes an anti-tampering program. On July 20, 1985, the Oklahoma Department of Public Safety submitted their proposed anti-tampering regulation. The DPS conducted a public hearing on the proposed anti-tampering program on May 7, 1985. On October 8, 1985, the Governor submitted the final DPS anti-tampering regulation for the State.

assurance/audit surveillance plan; (4) an enforcement plan discussing legal authority and penalties; and (5) train all inspectors prior to program startup. All five items have been satisfactorily addressed by the State and are discussed in the following paragraphs.

The vehicle will fail inspection if any emission control component is missing, disconnected or shows evidence that tampering has occurred or, if the lead detection test reveals lead in the tailpipe of a vehicle requiring unleaded fuel. Vehicles that fail the catalyst, fuel inlet restrictor, or lead detection test must replace the catalyst before being reinspected. Vehicles that fail any item of the inspection will have to be repaired by a mechanic of the owner's choice and returned for reinspection within thirty (30) days. If the vehicle passes reinspection, then a certificate of inspection will be issued.

The DPS rules and regulations require "proper replacement" of tampered or missing items. The State has submitted a written interpretation by the DPS dated July 26, 1987, of the term "proper replacement" in § 856.1(C) of the Oklahoma statutes to mean "original equipment manufacturer (OEM) or equivalent." The catalytic converter may be replaced by an OEM aftermarket catalytic converter, or one that has demonstrated compliance with EPA policy.

The annual anti-tampering inspection requirement will be enforced through a windshield sticker system. Vehicles subject to the anti-tampering inspection will display a larger and different colored windshield sticker than vehicles subject only to the safety inspection. The sticker will also have the word "EMISSION" across the front.

Although the program will be enforced by State, County and City Police Departments, primary enforcement will rest with the Oklahoma City Police Department. Oklahoma City has adopted the State's regulation and citations can be issued with a maximum penalty of $500 to owners operating non-complying vehicles. The Oklahoma City Police Department has committed to aggressively enforce the anti-tampering program. When a citation is issued, the owner has fifteen (15) days to secure a proper inspection.

The rules and regulations manual requires vehicles owned and operated in the program area to be inspected in that area. All inspection stations, statewide, are required to verify the residence of the vehicle owner prior to conducting an inspection. This will be accomplished by checking the owner's driver's license and the certificate of insurance. The insurance certificate was determined to be the best method of verifying residence since State law requires the certificate to be carried at all times and it must be renewed every six months. If a vehicle subject to the program is presented for inspection outside the program area, the inspection station will not inspect the vehicle and will inform the owner that the vehicle must be inspected in the program area.

A vehicle which has failed an inspection will be easily identified by law enforcement officers since the sticker will be marked with a large "X". Inspection stations are required to remove stickers which have expired when the vehicle is presented for inspection. If the sticker has not expired and the vehicle failed the inspections, it will be marked with an "X". All motorists have the right to appeal to the DPS any rejection certificate issued within seven days. When an inspection decision is appealed, the DPS will reinspect the vehicle within 30 days.

The DPS has trained all inspectors in the I/M program area. The training consists of inspecting the emission control systems and detecting tampering and misfueling. To be certified, an inspector must complete the prescribed training and pass a written test. Inspectors may not transfer from one station to another without being recertified and they are subject to reexamination at any time.

Each inspection station will be visited by a DPS trooper at least once every two months. The trooper will audit the records to ensure that the stickers are accountable and he will observe inspections to ensure compliance with the proper procedures. If deviations are noted, the station and/or inspector is subject to suspension or revocation of license or recertification by the DPS. Any station operator or inspector who is convicted of a violation is subject to a fine of up to $500 and/or imprisonment for not more than 30 days. As committed in a February 7, 1991, letter, the DPS will annually conduct unannounced visits to 10 percent of the Oklahoma inspection stations in unmarked cars driven by troopers in civilian clothes to insure that inspections are being properly conducted. The February 7, 1991, letter states that a minimum of six inspections will be accomplished each calendar quarter. The DPS will also investigate all complaints received from the public with regard to inspection stations or inspectors.

The I/M plan contains recordkeeping or record submittal commitments. The State has committed, in an October 12, 1990, letter to report semiannually to EPA, information relating to the effectiveness and enforcement of the I/M program. Items to be reported include: (1) The approximate number of vehicles to be inspected based on vehicle type, age, fuel type, (2) the number of vehicles receiving and passing initial inspections, (3) the number of vehicles failing the initial inspection, (4) the number passing after repair, (5) the number failing for each emission control device, and (6) the number of inspection stickers issued. The state also committed to report data concerning inspection facilities. Data that will be reported include: (1) The number of facilities licensed to perform inspections, and (2) the number of facility licensees and inspector certificates suspended and revoked.

A public information plan was submitted to EPA on November 7, 1986. That plan described the program that was implemented by the OSDH. Periodic news releases began in October 1986 and increased near the program start date of January 1987 and continued into that year. A brochure, which explains the program, was distributed in June 1986 by the DPS and the OSDH. Other activities during the month of October 1986 were free tampering inspections and the distribution of pamphlets which discussed the tampering inspection program and the health effects of automobile emissions.

I. Reasonable Further Progress (RFP)

The Reasonable Further Progress (RFP) curve submitted with the Oklahoma carbon monoxide SIP predicted sufficient reductions would be achieved to attain the carbon monoxide NAAQS. The curve showed that a decrease of 103,535 tons of CO, or 36.1 percent, would occur in Oklahoma County between 1984 and 1988. The OSDH demonstrated that a 32 percent decrease of CO emissions was required to attain the carbon monoxide standard. The RFP report projected an attainment date of April 1988. Since December 31, 1987, no violations of the carbon monoxide NAAQS have occurred in Oklahoma County.

The RFP curve demonstrated that predicted reductions would be achieved with the implementation of the I/M anti-tampering program and the continuation of the Federal Motor Vehicle Control Program.

The State has also committed to report annually on how the I/M program contributes to reasonable further progress. These reports have been submitted by the State for years 1986 through 1988 and indicate that RFP was being met during those years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future

request revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

J. Final Action

Today, EPA is approving the SIP revision submittals of October 17, 1985, January 29, 1986, November 7, 1986, October 12, 1990, and October 15, 1990, which include: (1) The I/M plan with an anti-tampering regulation; and (2) the carbon monoxide plan control strategy and attainment demonstration.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 1991. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the adoption of the revision by the State preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Note: Incorporation by reference of the State Implementation Plan for the State of Oklahoma was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 28, 1991.

William K. Reilly,

Administrator.

40 CFR part 52, Subpart LL, is amended as follows:

Subpart LL—Oklahoma

1. The Authority citation for part 52 continues to read as follows:

Authority: 42 U S C. 7401–7642.

2. Section 52.1920 is amended by adding paragraph (c)(40) to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(40) On October 17, 1985, the Governor of Oklahoma submitted a SIP revision designed to achieve the carbon monoxide standard in Oklahoma County. Supplemental information was submitted on January 29, 1986, November 7, 1986, October 12, 1990, and October 15, 1990. The anti-tampering regulation was submitted to EPA by the Governor on October 8, 1985.

(i) Incorporation by reference.

(A) Oklahoma Official Motor Vehicle Inspection Rules and Regulations Manual adopted December 5, 1985, and effective January 1, 1986.

(B) 47 O.S. SUPP. Section 856.1 et seq. adopted May 24, 1984, and effective May 24, 1984.

(C) OP. Oklahoma Attorney General number 84–174 (December 12, 1984).

(D) October 17, 1985, plan reporting commitments for Oklahoma County Reasonable Further Progress schedule, page 6.

(E) The City of Oklahoma City Ordinance No. 12,575, as passed by the Council of the City of Oklahoma City on March 31, 1970, and approved by the Mayor on March 31, 1970.

(ii) Additional material.

(A) A February 7, 1991, commitment letter stating that the DPS will annually conduct unannounced visits at 10 percent of the Oklahoma County inspection stations.

(B) An October 12, 1990, letter committing to report semiannually to EPA, information relating to the effectiveness and enforcement of the I/M program.

[FR Doc. 91–18828 Filed 8–7–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[AD–FRL–3982–5]

Designations and Classifications for Initial PM–10 Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice correcting EPA's announcement of the designations and classifications for the initial PM–10 (particulate matter nominally 10 microns or smaller in diameter) nonattainment areas.

SUMMARY: On March 15, 1991 (56 FR 11101), EPA announced the designations and classifications of areas with respect to the national ambient air quality standards (NAAQS) for PM–10 occurring by operation of law upon enactment of the 1990 Amendments to the Clean Air Act (Act) (the "initial PM–10 nonattainment areas").

Sections 107(d)(2) (referencing section 107(d)(4) designations) and 188(a) of the Act specify that EPA must make these announcements. In the March 1991 notice, EPA explained the operative legal provisions governing the designation and classification of these initial areas (see e.g., sections 107(d)(4)(B) (i), (ii), (iii), and 188(a) of the Act).

The EPA also provided an opportunity for the public to comment on EPA's announcement. As noted, this did not stem from any legal obligation. Rather, as a matter of policy, EPA requested public comment on the announcement in order to facilitate public participation and avoid committing errors. In today's action, EPA has responded to pertinent comments addressing the March 1991 Federal Register notice. Where EPA believed appropriate and where there was a legal basis to do so, EPA has made adjustments to the initial PM–10 nonattainment areas in light of the comments. Finally, note that for informational purposes, EPA has restated some of the background discussion provided in the March 1991 notice.

EFFECTIVE DATES: For those areas that have remained unchanged, the effective date of the announcement of the designation and classification of the areas is May 14, 1991, as indicated in the March 15, 1991 Federal Register notice (56 FR 11101).

For those areas where EPA has adjusted or corrected the boundaries, the effective date of the announcement of the designation and classification of such areas is August 8, 1991. (see discussion below).

FOR FURTHER INFORMATION CONTACT: Larry D. Wallace, Particulate Matter Programs Section, Air Quality Management Division (MD–15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. Mr. Wallace's phone number is (919) 541–0906 or FTS 629–0906.

SUPPLEMENTARY INFORMATION: The air quality monitoring data supporting the nonattainment designation of the former Group II and III areas monitoring violations of the PM–10 NAAQS prior to January 1, 1989 are available from the respective EPA Regional Office which serves the State where the affected area

is located. The addresses of the Regional Offices are as follows:

- State Air Programs Branch, EPA Region I, J.F.K. Federal Building, Boston, MA 02203–2211.
- Air Programs Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278.
- Air Programs Branch, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107.
- Air Programs Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, GA 30365.
- Air and Radiation Branch, EPA Region V, 230 South Dearborn Street, Chicago, IL 60604.
- Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733.
- Air Branch, EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.
- Air Programs Branch, EPA Region VIII, 999 18th Street, Denver Place—suite 500, Denver, CO 80202–2405.
- Air Programs Branch, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.
- Air Programs Branch, EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101.

I. Background

A. 1987 Revision of the NAAQS for Particulate Matter

On July 1, 1987 EPA revised the NAAQS for particulate matter, replacing total suspended particulates (TSP) as the indicator for particulate matter with a new indicator that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (called "PM–10") (see 52 FR 24634). At the same time EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy elaborating PM–10 control strategies necessary to assure attainment and maintenance of the PM–10 NAAQS (see generally 52 FR 24672). The EPA adopted a PM–10 SIP development policy dividing all areas of the country into three categories based on their probability of violating the new NAAQS:

1. Areas with a strong likelihood of violating the PM–10 NAAQS and requiring substantial SIP adjustment were placed in Group I.

2. Areas where attainment of the PM–10 NAAQS was possible and existing SIP's needed less adjustment were placed in Group II.

3. Areas with a strong likelihood of attaining PM–10 NAAQS and therefore needing adjustment only to their preconstruction review program and monitoring network were placed in Group III (see 52 FR 24672, 24679–24682).

B. Prior Listing of the Modification to PM–10 Group I, II, and III Areas

In accordance with the standards, policies, and regulations published on July 1, 1987 for revising and implementing the new particulate matter standard, EPA identified and listed the Group I and Group II areas in each State in a notice published on August 7, 1987 (see 52 FR 29383). The 1987 notice also indicated that any area of the country not listed as Group I or II was placed in Group III (see 52 FR 29383).

The EPA subsequently modified the identification for three areas and announced these revisions in a notice published on March 28, 1989 (see 54 FR 12620). Specifically, the 1989 notice indicated that Porter County, Indiana, was changed from Group I to Group II; Mono Basin, California, was changed from Group III to Group II; and Sandpoint, Idaho, was changed from Group I to Group II.

On October 31, 1990 EPA published technical corrections modifying the identification of the locations of concern for some of the areas previously identified as Group I and II areas (see 55 FR 45799). When EPA listed the initial groupings for areas in the August 1987 notice, the Group I and II areas of concern were generally described as cities, towns, counties, or planning areas. The EPA indicated at that time that these descriptions were only the initial definitions of the areas to be investigated in the SIP development process and would be better defined later. The modifications to the identification of the Group I and II areas announced in the October 1990 notice specifically defined and delineated the boundaries of the Group I and Group II areas in question based on information obtained in the SIP development process and EPA guidelines and procedures for determining particulate matter boundaries. Generally, prior to modifying the identification of boundaries in the October 1990 notice, EPA consulted with the affected States, reviewed technical information, and was guided by applicable EPA policy. Weighing these various factors, EPA set the boundaries it believed appropriate.

II. Today's Action

On March 15, 1991 (56 FR 11101), EPA announced the designations and classifications occurring for PM–10 by operation of law upon enactment of the Act (the "initial PM–10 nonattainment areas").[1] Sections 107(d)(2)(A) (referencing section 107(d)(4) designations) and 188(a) of the Act specify that EPA must make these announcements. In the March 1991 notice, EPA explained the operative legal provisions governing the designation and classification of these initial areas (see, e.g., sections 107(d)(4)(B)(i), (ii), (iii), and 188(a) of the Act). The EPA also provided an opportunity for the public to comment on EPA's announcement. As noted, this did not stem from any legal obligation.[2] Rather, as a matter of policy, EPA requested public comment on the announcement in order to facilitate public participation and avoid committing errors. In today's action, EPA has responded to pertinent comments addressing the March 15, 1991 notice.[3] The EPA has made adjustments

[1] In that notice EPA deferred codification of the PM–10 designations and classifications until EPA codifies the designations and classifications of areas across the country with respect to the NAAQS for other pollutants. This codification should occur sometime within the next few months. As discussed below, codification of the designation of the initial PM–10 nonattainment areas will represent the Agency's final action on those designations within the meaning of section 307(b) of the Act, 42 U.S.C. 7607(b).

[2] In the March 15, 1991 notice EPA noted (and has reiterated in today's notice) that neither the announcement of the initial designations nor the initial classifications for PM–10 were subject to the requirements for notice-and-comment rulemaking under either the Administrative Procedure Act (APA) (5 U.S.C. 553–557) or section 307(d) of the Act (see generally 56 FR 11103). Regarding designations, section 107(d)(2) of the Act requires the Administrator to publish a notice announcing designations occurring pursuant to section 107(d)(4), but explicitly provides that such announcement is not subject to APA notice-and-comment rulemaking procedures. Thus, Congress has expressly exempted from the notice-and-comment procedural requirements of the APA the announcement of those areas designated nonattainment for PM–10 by operation of law under section 107(d)(4)(B). Regarding classifications, section 188(a) of the Act requires the Administrator to publish a notice announcing the classifications of these areas. Section 188(a) explicitly states that the provisions of section 172(a)(1)(B) pertaining to lack of notice and comment and judicial review shall apply when the Administrator announces these classifications. Section 172(a)(1)(B), in turn, expressly exempts the classification announcement from the notice-and-comment procedures set forth in 5 U.S.C. 553–557.

[3] The EPA received many pertinent comments in direct response to the notice. However, EPA has attempted also to respond to pertinent comments received from affected States submitted in response to another Agency action. In January and February of 1991, EPA Regional Administrators provided letters to the Nation's Governors explaining some of the specific State actions that were to be completed in order to initiate implementation of title I of the Act as recently amended by the 1990 Amendments ("RA Letters"). Regarding PM–10, for example, EPA informed the Governors of those areas designated nonattainment for PM–10 by operation of law upon enactment of the Act and explained some of the SIP requirements applicable to such areas under the

Continued

to the initial PM–10 nonattainment areas in light of the comments, where EPA believed appropriate and where there was a legal basis to do so.

A. Legal Framework

Section 107(d)(4)(B)(i) of the Act clearly specifies those former Group I areas that were designated nonattainment at enactment. That provision states that each former Group I area identified in 52 FR 29383 (August 7, 1987) or modified before enactment of the Act (November 15, 1990) is designated nonattainment for PM–10. As discussed previously, the Federal Register notice published on October 31, 1990 (55 FR 45799) clarified or "modified" EPA's identification of the Group I areas listed in the August 1987 notice.[4] Thus, as explicitly provided by the statute, the Group I areas listed in the October 1990 notice became nonattainment for PM–10 by operation of law upon enactment of the Act on November 15, 1990. The EPA, then, announced that these areas were among the initial PM–10 nonattainment areas in its March 15, 1991 Federal Register notice. Because the Act explicitly provided that the former Group I areas identified in the October 1990 notice became nonattainment for PM–10 by operation of law at enactment, EPA believes the law generally prohibits any modification of these areas at this juncture. The one exception is where, before enactment, EPA committed error in identifying and/or modifying a Group I area as referenced in section 107(d)(4)(B)(i) of the Act.

There are a few circumstances where there is evidence that EPA intended that the boundary for a Group I area identified and/or modified in its October 31, 1990 Federal Register notice (and reiterated in the March 1991 announcement of initial PM–10 nonattainment areas) be different and through administrative oversight or other error failed to so provide.[5] In one instance, for example, EPA mislabeled a highway number. EPA has made adjustments to the boundaries in such circumstances. Faced with the choice of designating erroneous nonattainment areas or interpreting section 107(d)(4)(B)(i) such that it includes the areas identified before enactment in the October 31, 1990 notice but corrected for error, EPA believes the latter approach the most reasonable.[6] Moreover, EPA believes that in providing that the areas identified and/or modified in the October 31, 1990 notice would be nonattainment areas by operation of law upon enactment of the 1990 Amendments, Congress and the President could not have intended to ratify dysfunctional or evidently erroneous boundaries not grounded in fact. Note that these circumstances are in contrast to the situation where commenters requested modification of a former Group I area because they believe, as a technical or policy matter, that all or part of the area should not be designated nonattainment. EPA has not adjusted former Group I areas where there is a judgment dispute about the proper scope of the area or its very designation as nonattainment.[7]

The prior categorization as a Group II or III area bears differently on an area's nonattainment status, in comparison with the Acts' treatment of former Group I areas. Specifically, section 107(d)(4)(B)(ii) of the Act states that "any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standards for PM–10 before January 1, 1989 (as determined under part 50, appendix K, of title 40 of the Code of Federal Regulations) is hereby designated nonattainment for PM–10." [8]

The language of section 107(d)(4)(B)(ii) suggests that EPA has more discretion in determining which of the former Group II and III areas were designated nonattainment by operation of law upon enactment of the Act. For example, EPA must exercise some judgment in construing what is a violation within the meaning of 40 CFR part 50, appendix K, to the extent these regulations leave discretion.

Further, section 107(d)(4)(B)(ii) does not define the boundaries of "any area" measuring a pre-1989 violation. The Act does, however, set forth a revised definition of nonattainment area for purposes of section 107(d) designations generally. Specifically, section 107(d)(1)(A)(i) of the Act defines a nonattainment area as "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant." Thus, coincident with providing that certain former Group II and III areas were designated nonattainment by operation of law at enactment, the Act provided a standard to govern the scope of what that area should be. This definition suggests that EPA must apply its expertise and knowledge to isolate as nonattainment any area it believes violates the standard or any area that significantly contributes to such violation in a nearby area.[9] Further, nonattainment area definition is being applied to these areas for the first time since under EPA's pre-enactment grouping scheme they were not designated nonattainment. The EPA therefore believes that, consistent with this new standard, it has some discretion to apply its technical expertise and appropriately adjust the boundaries of the former Group II or III areas for purposes of determining which

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revised law. By these letters EPA also initiated the process of redesignating additional areas as nonattainment for PM–10, pursuant to section 107(d)(3) of the Act. Section 107(d)(3) expressly provides an opportunity for State participation in redesignating additional PM–10 nonattainment areas. Section 107(d)(4)(B), the provision addressing designation of the initial PM–10 nonattainment areas (i.e., those occurring by operation of law upon enactment), does not contemplate such a process. Nevertheless, some Governors and State agency officials submitted comments on the initial areas in responding to EPA's suggested additional nonattainment areas. The EPA has responded to any such pertinent comments in this notice.

[4] Pre-enactment modifications to the August 1987 notice were also made in the Federal Register notice published on March 28, 1989, discussed previously.

[5] This error was brought to EPA's attention in comments submitted in response to EPA's March 15, 1991 announcement or in EPA's review of its records in preparing responses to comments.

[6] Further, section 110(k)(6) expressly authorizes the Administrator to revise designations, classifications, etc. where the Administrator determines that such designations, classifications, etc. were in error.

[7] In cases where there are disputes regarding the proper scope of the designation, if a State later makes a persuasive demonstration (SIP equivalent) that EPA's factual conclusions in identifying a former Group I area were in error, the Agency will consider whether it would be appropriate to correct the error relying on the authority in section 110(k)(6) of the Act.

[8] Since EPA grouped all areas of the country as I, II, or III when it revised the PM–10 NAAQS (see previous discussion) and because all former Group I areas were designated nonattainment by operation of law under section 107(d)(4)(B)(i), the reference to "any area" in section 107(d)(4)(B)(ii) de facto applies to all areas formerly grouped as II and III.

That all former Group I areas would be designated nonattainment by operation of law upon enactment of the Act, while former Group II/III areas would have to measure a violation prior to January 1, 1989 to be so designated, is grounded in some logic and reason. As noted above, when EPA placed areas of the country into Groups I, II, or III, Group I areas were those with a strong likelihood of violating the PM–10 standard.

[9] In the context where the Agency has adjusted the boundaries of a former Group II or III area because it contributes to a violation in a nearby area, the Agency has construed the definition of nonattainment area to require some material or significant contribution to such a violation. The Agency believes that something greater than a molecular impact is required. Further, EPA has adjusted the boundaries of former Group II and III areas designated nonattainment in reliance on its general technical expertise and has not conducted, for example, rigorous modeling analysis. The timeframes set forth in the statute do not contemplate such detailed analysis. For example, the law mandates that all of the areas designated nonattainment by operation of law upon enactment of the Act must submit SIP revisions by November 15, 1991. Such tight deadlines do not afford time for more sophisticated technical analysis.

areas were actually designated nonattainment by operation of law.[10]

Where appropriate, EPA has exercise both types of discretion in responding to comments addressing former Group II and III areas that were announced as initial PM–10 nonattainment areas in the March 1991 notice. Specifically, EPA has considered whether a violation within the meaning of part 50, appendix K, occurred and EPA has adjusted nonattainment area boundaries for those areas based on the standard set forth in section 107(d)(1)(A)(i).[11]

B. Responses to Comments

1. Former Group I Areas

a. Hayden/Miami Planning Area, Arizona. Comments were submitted on behalf of ASARCO, Incorporated (ASARCO), addressing EPA's designation of the Hayden/Miami Planning Area in Arizona as an initial PM–10 nonattainment area. ASARCO acknowledged that as a former Group I area "the 'Hayden/Miami' Group I area identified in the notice published at 52 FR 29383 on August 7, 1987, must be designated a nonattainment area * * *" However, ASARCO stated that the March 1991 notice "expands the boundaries of the Hayden/Miami nonattainment area far beyond the limits of the planning area used by the state when developing its PM–10 SIP for Hayden." ASARCO commented that these boundaries are unsupported by ambient monitoring data, information the State of Arizona discovered in its SIP development for the Group I area, EPA guidance documents, and the language of the amended law. Consequently, ASARCO requested that the boundaries of the area be substantially revised.

ASARCO has misinterpreted the legal weight of the October 1990 notice. In its August 1987 notice, EPA only generally referenced the "Hayden/Miami area." In the October 1990 notice, EPA modified and clarified this, enumerating in detail, portions of the Hayden/Miami planning area deemed Group I. These modifications, in turn, were adopted by operation of law upon enactment of the Act (see section 107(d)(4)(B)(i)).

ASARCO argues that EPA can disregard the boundaries in the October 1990 notice because it "did not 'modif[y]' the 'identification' of PM–10 nonattainment areas; rather, that notice defined the boundaries of nonattainment areas that had already been identified in previous notices." This extreme reading of section 107(d)(4)(B)(i) has no basis in reason. An area is identified by its boundaries. Thus, when EPA modified the boundary of a Group I area in its October 1990 notice, it was modifying the identification of the area as section 107(d)(4)(B)(i) expressly contemplates.

ASARCO also argues that the October 1990 notice is not within the intended ambit of section 107(d)(4)(B)(i) because the operative language appeared in the legislative history before the publication of the October notice. This argument ignores the express and plain meaning of the text of section 107(d)(4)(B)(i). That provision states that any modification of the August 1987 notice "before the date of enactment of the Act" is effective. It clearly does not state, for example, that only modifications occurring before legislation or legislative history was introduced are effective, as the commenter apparently believes it should be read.

The EPA has no basis to disregard the boundaries for this former Group I area as modified in the October 1990 notice and adopted by operation of law. ASARCO argues, for example, that EPA should adjust the boundaries because they are inconsistent with the Group I SIP develop for that area, monitoring data, and EPA guidance documents. That the State of Arizona was developing a SIP focusing on certain portions of this former Group I area does not compel EPA either to agree with the SIP's scope or to adjust the area boundaries to comport with that scope. In fact, EPA has taken no action on the former Group I SIP for this area. Generally, prior to modifying the boundaries in the October 1990 notice, EPA consulted with the affected States, reviewed technical information, and was guided by applicable EPA policy. Weighing these various factors, EPA set the boundaries it believed appropriate, and on November 15, 1990 these boundaries were adopted as the nonattainment boundaries for the former Group I area in question.

The Governor of Arizona also submitted comments addressing the Hayden/Miami PM–10 nonattainment area. The Governor commented that the State has submitted a SIP demonstrating attainment in the Hayden area. He also commented that since 1988, monitoring in the vicinity of industrial sources at Miami has not revealed any violations of the PM–10 standards. The Governor stated that the State of Arizona "will be submitting a SIP revision to designate only the area within T5S, R15E as nonattainment." However, in an attachment to the Governor's letter, he provided a more detailed and apparently inconsistent description of portions of Hayden that the Governor believed should be designated nonattainment.

As indicated in response to ASARCO's comments, there is no evidence that EPA intended to provide boundaries for the Hayden/Miami area that are different from those identified in the October 1990 notice and announced in EPA's March 1991 notice in reliance on the October notice. Essentially, there is no evidence of EPA error. Moreover, as explained in the response to ASARCO's comments, EPA is in no way obligated to set nonattainment boundaries for former Group I areas according to the scope of the State's implementation plan for the former Group I area. In fact, EPA has taken no action on the former Group I SIP for this area. In sum, the boundaries for this initial PM–10 nonattainment area will remain as set forth in the March 15, 1991 **Federal Register** notice.

b. New Haven, Connecticut. The Governor of Connecticut and the State of Connecticut Department of Environmental Protection (CDEP) submitted comments requesting that the boundaries for the New Haven nonattainment area be modified to include only that portion of the city east of the Quinnipiac River. The CDEP noted that CDEP staff had sought to have the boundary revised in the October 31, 1990 notice but that EPA had informed them that "a municipality was the smallest geographic area that could be designated." The CDEP also commented that CDEP staff were told by EPA that the State would have another opportunity to refine the boundaries.

[10] Former Group II areas, for example, present an extreme case, clearly compelling EPA to exercise discretion in this way. The August 1987 and October 1990 **Federal Register** notices stated that any area of a State not listed as Group I or II is considered to be Group III (see 52 FR 29384 and 55 FR 45799). Where EPA determined that such an area measured a violation of the PM–10 standard prior to January 1, 1989, it would be irrational for the Agency to designate as nonattainment entire portions of States far removed from and not significantly contributing to the area monitoring the violation. Rather, EPA must exercise some judgment.

[11] In contrast, unless EPA has committed an error, the statute's treatment of former Group I areas does not contemplate such adjustment. As mentioned, the provision of the Act addressing the nonattainment designation of former Group I areas is quite specific. Section 107(d)(4)(B)(i) calls for the nonattainment designation of "each area identified in 52 FR 29383" or as subsequently modified before the date of enactment of the Act. Thus, the law specifies "each area" that was designated nonattainment. The EPA cannot rely on the Act's definition of nonattainment to adjust these area. The EPA believes such adjustment would contravene the general canon of statutory construction that when interpreting the Act, specific provisions control those that are more general. In this case, EPA believes that Congress has specified that former Group I areas will be nonattainment and EPA cannot rely on the general definition of nonattainment area to adjust the boundaries of these area.

The EPA regrets any miscommunication between Connecticut and EPA that may have occurred when discussing the modification of Group I areas for the October 1990 notice. However, Connecticut has not submitted any documentation indicating that EPA committed an error in designating the City of New Haven as an initial PM–10 nonattainment area, in reliance on the October 1990 notice. There is no evidence that EPA intended that the boundaries for this area be different from those set forth in the March notice and through administrative oversight or other error failed to so provide. Thus, the City of New Haven is a PM–10 nonattainment area, as described in the March 1991 notice.

c. Pinehurst, Idaho. The Administrator of the Idaho Division of Environmental Quality (IDEQ), on behalf of the Governor, requested that EPA significantly adjust the City of Pinehurst nonattainment area. Believing the nonattainment problem in this area to be a valley airshed problem, IDEQ requested that EPA expand the boundaries to include additional townships along Silver Valley.

There is no documented evidence that EPA committed an error when it modified the boundary for this area in its October 1990 notice or as reiterated in its March 1991 notice announcing the initial PM–10 nonattainment designations. Thus, there is no basis to alter the boundaries identified as the "City of Pinehurst" and set forth in the March 1991 notice.

Nevertheless, to the extent that the boundaries described in the State's correspondence are broader than those initially designated nonattainment, EPA is considering whether the State's submittal should be treated as an unsolicited redesignation request within the meaning of section 107(d)(3)(D) of the Act. Under that provision EPA must "approve or deny" a revised designation "[w]ithin 18 months of receipt of a complete State redesignation submittal * * *."

If EPA finds that the submittal is complete and approves the submittal, then the City of Pinehurst and any revised nonattainment area surrounding it in the Silver Valley will be subject to somewhat different statutory deadlines for SIP submittal, attainment demonstration, etc. Compare, e.g., section 189(a)(2)(A) (first SIP for initial nonattainment area due 1 year from enactment) and section 189(a)(2)(B) (first SIP for later redesignated nonattainment area due 18 months from the nonattainment designation). However, EPA notes that nothing in the Act prohibits the State from submitting a SIP for the entire area they have identified by November 15, 1991, the SIP submittal deadline applicable to the portion of the area initially designated nonattainment and announced in the March 15, 1991 notice.

d. Pocatello, Idaho. The Administrator of the IDEQ submitted information to EPA indicating what portion of the Pocatello area in Bannock and Power counties should be designated nonattainment. In the October 1990 and March 1991 notices, this area was listed as "City of Pocatello." Both of those notices identified Bannock and Power as the affected counties. After reviewing IDEQ's submittal, EPA realized that the "City of Pocatello" sits only in Bannock County. Thus, there is a disconnect or gap between EPA's listing of the "City of Pocatello" as the nonattainment area for both Bannock and Power Counties.

As evidenced by its listing of both counties, EPA intended to include that portion of the Pocatello area in both Bannock and Power Counties in the October 1990 notice. The EPA now realizes that listing was in error. This error, then, was adopted inadvertently in EPA's March 1991 notice announcing the initial nonattainment areas for PM–10. The EPA corrects this error in today's notice as explained in the "Legal Framework" discussion above. The EPA has clarified the boundary for this area consistent with IDEQ's request and EPA's original intent.

The Shoshone-Bannock Tribes also submitted information addressing the boundary for the Pocatello nonattainment area. The Tribes indicated that they agreed with the clarification and expansion of the Pocatello nonattainment area as indicated in IDEQ's submittal. They also requested that EPA include an additional section which they said would include a seasonally operated "open pit silica mine with a rock crushing operation and attendant storage piles * * *."

The EPA has corrected the error it committed with respect to Pocatello as described previously. However, EPA does not believe that the additional section identified by the Tribes was among those intended to be included with the initial Pocatello nonattainment area. Thus, at this time, EPA will not adjust the boundaries for this area to include this section. Nevertheless, if after further study EPA concludes that there is evidence that this area violates the PM–10 standards or significantly contributes to such a violation in a nearby area, then EPA would initiate the process to redesignate this area nonattainment pursuant to section 107(d)(3)(A) of the Act.

e. Cook County, Illinois. The EPA received no formal comments about the portion of Cook County, Illinois, designated nonattainment for PM–10. However, in reviewing records subsequent to the publication of the March 1991 notice, EPA realized that a highway number in the description of this area had been inadvertently mislabeled. This announcement corrects that error in accordance with the legal rationale described above.

f. Presque Isle, Maine. The Maine Department of Environmental Protection (MDEP) and the City of Presque Isle submitted comments addressing EPA's designation of the City of Presque Isle as an initial PM–10 nonattainment area. The City of Presque Isle commented that Presque Isle was incorrectly placed in Group I in August 1987, the notice first announcing groupings after EPA revised the NAAQS for PM–10 in July 1987. Thus, the city requested that it be removed from nonattainment status. The MDEP also objected to the designation of the city as nonattainment and, alternatively, argued that the boundaries of the nonattainment area should be reduced to include a ½ mile radius in the city's urban center. The MDEP submitted a number of supporting documents.

The designation of Presque Isle as nonattainment and the scope of its boundaries appears to be a judgment dispute. In its October 1990 notice, EPA modified the boundaries for this Group I area as it believed appropriate. This area and attendant boundaries then became nonattainment for PM–10 by operation of law upon enactment of the Act. The EPA regrets any miscommunication between EPA and MDEP which may have occurred during the development of the October notice. Nevertheless, this is not a situation where EPA intended that the boundaries in the October 1990 notice be different and, through an error, failed to so provide. Thus, as announced in EPA's March 1991 notice, the boundaries of the Presque Isle PM–10 nonattainment area will consist of the entire city (see section 107(d)(4)(B)(i)).

g. Libby, Montana. The State of Montana submitted information to EPA in conjunction with EPA's development of the October 1990 notice. The EPA reviewed this information and intended to modify the boundaries for this area in accordance with the State's submittal. Through administrative oversight, this modification was not reflected in the October 1990 notice and, consequently, was not announced in the March 1991 notice. The EPA has corrected that error

in today's notice in accordance with the legal rationale described above.

h. Missoula County, Montana. The Governor of Montana submitted comments to EPA indicating that EPA committed an error in modifying the Group I area of concern for this county in EPA's October 1990 notice. Through administrative oversight EPA inadvertently omitted sections of this area that records indicate it intended to include. This error then was reiterated in EPA's March 1991 notice announcing the initial nonattainment areas. The EPA has corrected its error in accordance with the legal rationale explained above.

i. Butte, Montana. As was the case with Libby, the State of Montana submitted information to EPA in conjunction with EPA's development of the October 1990 notice and, after deciding to include it in the notice, EPA inadvertently omitted the information. As with Libby, this error was reiterated in the March 1991 notice announcing the initial PM–10 nonattainment areas. The EPA has remedied its administrative oversight and corrected the boundaries as originally intended in accordance with the legal rationale described above.

In a February 27, 1991 letter to EPA, the Governor of Montana submitted additional information addressing Libby's PM–10 boundaries. The Governor indicated that Montana had completed technical analyses since the publication of the October 1990 notice and submitted detailed boundaries. The Governor indicated that the suggested boundaries would expand the Butte nonattainment area, as listed in the October 1990 notice, far beyond the city limits. Upon comparing the nonattainment boundary submitted by the Governor and the corrected boundary in today's notice, EPA has determined that the boundaries are similar; however, the Governor's suggested boundary for the area is slightly broader. There is no evidence that EPA intended to include the additional area identified in the Governor's letter when EPA modified Group I areas in the October 1990 notice (or announced the initial PM–10 nonattainment areas in the March 1991 notice, in reliance on the October 1990 notice) and through administrative error failed to so provide. Thus, EPA will not adjust the boundary for this area to include the additional area identified in the Governor's letter.

However, to the extent that the boundary described in the Governor's correspondence is broader than that listed in today's notice, EPA will treat the Governor's submittal as an unsolicited request for redesignation with the meaning of section 107(d)(3)(D) of the Act. Under that provision, EPA must approve or deny a revised designation within 18 months of receipt of a complete State redesignation submittal.

If EPA finds that the submittal is complete and approves the submittal, then the additional area submitted by the Governor for the Butte nonattainment area will be subject to somewhat different statutory deadlines for SIP submittal, attainment demonstrations, etc. Compare, e.g., section 189(a)(2)(A) (first SIP for initial nonattainment area due 1 year from enactment) and section 189(a)(2)(B) (first SIP for later redesignated nonattainment areas due 18 months from the nonattainment designation). However, EPA notes that nothing in the Act prohibits the State from submitting a SIP for the entire area they have identified by November 15, 1991, the SIP submittal deadline applicable to the portion of the area initially designated nonattainment and announced in today's notice.

j. Anthony, New Mexico (Dona Ana County). The State of New Mexico Environment Department (NMED) submitted comments addressing the nonattainment designation of the Anthony, New Mexico, area. The NMED stated that Anthony is a rural fugitive dust area (RFDA) and under EPA's "Rural Fugitive Dust Policy" (RFDP), "RFDA sites shall not be designated nonattainment." Further NMED stated that EPA's RFDP remains in effect because EPA indicated "in the October 29, 1990 **Federal Register**, the existing RFDA policy shall remain in effect until it is revised by EPA." Finally, NMED requested that former RFDA's now designated nonattainment have most of their requirements waived if EPA discontinues the RFDP.

Two 1977 EPA memoranda constitute what has been called EPA's "Rural Fugitive Dust Policy." These memoranda set forth treatment of areas identified as "Rural Fugitive Dust Areas" for the purposes of attainment/nonattainment status as well as SIP development and new source review under the Act before the 1990 Amendments (see, e.g., 52 FR 24716 (July 1, 1987) (historical discussion)). This policy was issued when TSP was the indicator for particulate matter. When EPA revised the particulate matter NAAQS in July 1987, changing the indicator to PM–10, EPA proposed a number of alternative policies. In that notice EPA indicated that the existing policy would remain in effect until EPA adopted a final policy (see 52 FR 24716 (July 1, 1987)).

Since then, the 1990 Amendments to the Act were enacted. As discussed, section 107(d)(4)(B)(i) of the Act provides that all former Group I areas were designated nonattainment by operation of law upon enactment of the Amendments. Further, EPA is unaware of any error it may have committed when it modified the boundary for the Anthony area in its October 1990 notice. Thus, on November 15, 1990 the Anthony, New Mexico, area (as listed in the October 1990 notice) became nonattainment for PM–10 by operation of law. The EPA announced this designation in its March 1991 notice.

The EPA believes the waiver provision alluded to in NMED's comments provides a statutory alternative to EPA's RFDP (see section 18(f) of the Act). The EPA intends to provide guidance to the States on the meaning of section 188(f) later this year. In the meantime, areas designated nonattainment for PM–10, including former RFDA's, should proceed with SIP development in accordance with the new law.

The October 29, 1990 **Federal Register** notice referenced by NMED was EPA's semiannual Regulatory Agenda (see 55 FR 45134, 45198). This notice is published for informational purposes and has no regulatory effect. In addition, the October publication preceded enactment of the Act. Any confusion created by the reference to the RFDA in that notice should be cleared by today's notice. Finally, EPA notes that former RFDA's will receive the same treatment that all other areas requesting a waiver will receive. If EPA finds that an area satisfied the operative legal standard then, within the construction of the law, EPA will waive those requirements it believes appropriate.

k. Jefferson County, Ohio. Ohio EPA (OEPA) submitted comments indicating that EPA erred in setting the boundaries for that portion of Jefferson County, Ohio, that was designated nonattainment at enactment. After examining the documentation submitted by OEPA, EPA agrees that an error was committed. In both the October 1990 and March 1991 notices, EPA identified a boundary for this area that was incomplete. It appears, for example, that EPA failed to clearly delineate a western boundary. The EPA has corrected its error in accordance with legal rationale described above.

l. El Paso, Texas. The Texas Air Control board submitted comments on this area noting that "on March 8, 1991, the Texas Air Control Board (TACB) passed a resolution * * * approving the Texas Air Control Board Designation Proposal, where the nonattainment area for PM–10 in El Paso was changed to the

City of El Paso including Fort Bliss." Apparently, TACB sought to clarify that Fort Bliss, which is within the city limits but not part of the municipal entity, was included in the City of El Paso nonattainment area. Generally, when EPA lists municipal boundaries or other boundaries identifying a perimeter, all of the area within those boundaries is part of the nonattainment area unless otherwise specified. More specifically, Federal facilities are subject to the requirements of the Act unless thay have been expressly exempted from a requirement because the President has determined that it is in the "paramount interest of the United States to do so" (see section 118 of the amended Act). The EPA is unaware of any such exemption for Fort Bliss. Thus, as indicated in EPA's March 1991 notice, the City of El Paso, and any area within its municipal boundaries, is an initial PM–10 nonattainment area.

m. Wallula, Washington. The Governor of Washington submitted information to EPA requesting that the Wallula nonattainment area be expanded to include Kennewick, Washington. The Governor's submittal stated that these two areas should be combined into one nonattainment area because the Wallula nonattainment area does not include all of the major sources which contribute to the air quality problem in the area. The Governor also noted the close proximity of the monitoring sites in the two areas.

The Wallula area, as described in the October 1990 and March 1991 Federal Register notices, was designated nonattainment by operation of law upon enactment. Further, there is no evidence that in developing either of these notices EPA intended the boundary to be different, but through an error failed to so provide. Thus, the Wallula area is currently a moderate PM–10 nonattainment area. As such, the State of Washington must submit a SIP revision for the area by November 15, 1991 containing the applicable statutory requirements and demonstrating attainment by December 31, 1994 (see generally subpart 4 of part D of title I of the Act).

The EPA agrees that Kennewick has a PM–10 air quality problem and has already initiated the process to redesignate this area nonattainment (see January 31, 1991 letter to the Governor of Washington from the Regional Administrator of EPA Region X; see also 56 FR 16274 (April 22, 1991)). However, absent error, EPA cannot expand the boundaries of the Wallula nonattainment area to include Kennewick. If Kennewick is designated as an additional PM–10 nonattainment area, it will be subject to statutory deadlines for SIP submittal, attainment demonstration, etc., which are different from those of Wallula. However, EPA notes that nothing prevents the State from submitting a SIP for the entire Wallula and Kennewick area by the November 15, 1991 SIP submittal deadline applicable to the initial PM–10 nonattainment areas and, consequently, treating this as a single nonattainment area. The opposite is not true. Under the law, the State of Washington cannot defer submittal of a SIP for Wallula until a SIP for Kennewick is due, assuming Kennewick is ultimately redesignated to nonattainment.

n. Yakima, Washington. The EPA received no formal comments about the portion of Yakima, Washington, designated nonattainment for PM–10. However, in reviewing records subsequent to the publication of the March 1991 notice, EPA realized that a set of coordinates were missing from the boundary description for the area. This announcement corrects that error in accordance with the legal rationale described above.

2. Former Group II and III Areas

a. Ajo, Arizona. Comments were submitted on behalf of the Phelps Dodge Corporation (Phelps Dodge) addressing EPA's announcement of the Ajo planning area as an initial PM–10 nonattainment area. Phelps Dodge commented that air quality data do not show "a violation of the national ambient air quality standard for PM–10 before January 1, 1989 (as determined under part 50, appendix K of title 40 of the Code of Federal Regulations)" because only one exceedance of the 24-hour standard has been measured (see section 107(d)(4)(B)(ii) of the Act). Phelps Dodge commented that, alternatively, the exceedance in question should be treated as an exceptional event.

The PM–10 standard is expressed in terms of an expected value. Section 3.1 of 40 CFR part 50, appendix K, describes the adjustments that must be made to 24-hour data in order to estimate the number of expected exceedances when PM–10 sampling is not conducted on a daily basis. Section 3.1 states that "[i]n this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level." The regulations recognize that this adjustment may lead to overprediction. Thus, § 3.1 also states as follows: "To reduce the potential for overestimating the number of expected exceedances, the correction for missing data will not be required for a calendar quarter in which the first observed exceedance has occurred if: (a) There was only one exceedance in the calendar quarter, (b) everyday sampling is subsequently initiated and maintained for 4 calendar quarters in accordance with 40 CFR 58.13, and (c) data capture of 75 percent is achieved during the required period of everyday sampling."

Sampling is conducted once every 6 days at the Ajo Station monitoring site. After the exceedance in question was measured, daily sampling was not commenced. Thus, the regulations require correction for the missing data. After applying the adjustment referenced above, the expected exceedances of the 24-hour standard at Ajo constitute a violation of the PM–10 standard consistent with part 50, appendix K.

Section 2.4 of part 50, appendix K, governs the inquiry of whether the exceedance measured at Ajo should be treated as an "exceptional event." That regulation states that an exceptional event is "an uncontrollable event caused by natural sources of particular matter or an event that is not expected to recur at a given location." Phelps Dodge commented that "gusts in excess of 20 mph" were measured at the closest meteorological station on the day the exceedance was measured. The level of the wind gusts was noted presumably to illustrate the anomalous nature of the event. However, Phelps Dodge submitted no information indicating whether that high wind was the cause of the exceedance and, if so, whether the wind was likely to recur. In fact, Phelps Dodge suggested that the wind gusts were due to the area's seasonal monsoon. Specifically, Phelps Dodge stated that "[t]he conditions at Ajo were characteristic of monsoon weather patterns in southern Arizona." Further, recent meteorological data collected near Ajo by the Arizona Department of Environmental Quality indicate that hourly wind gusts greater than or equal to 20 miles per hour occur at least 7 days per year. The EPA, therefore, does not believe the event is properly deemed exceptional. Thus, as described in the March 1991 notice, the Ajo planning area is an initial PM–10 nonattainment area.

Finally, the State of Arizona appears to agree with the Ajo boundaries. In a May 15, 1991 letter to EPA, the Governor of Arizona suggested boundaries for the Ajo nonattainment area that were consistent with those set forth in EPA's March 1991 announcement.

b. Bullhead City, Arizona. The Arizona Center for Law in the Public

Interest (the Center) commented that "EPA should add the Bullhead City, Arizona, planning area (Mohave County) to the list of initial PM–10 nonattainment areas based on its violation of the annual standard in 1989 and its exceedance of the 24-hour standard in the same year."

Bullhead City was a former PM–10 Group III area. Section 107(d)(4)(B)(ii) governs the initial nonattainment designations of former Group II and III areas. That provision indicates that a former Group II or III area can be designated nonattainment by operation of law upon enactment of the Act only if "monitoring data show a violation of the NAAQS for PM–10 before January 1, 1989 * * *." Violations of the standard occurring in 1989 would not qualify as a violation occurring before January 1, 1989.

Note, however, that pursuant to section 107(d)(3) of the Act, EPA has initiated the process to redesignate this area as nonattainment for PM–10. By letter dated January 24, 1991, the Regional Administrator of EPA Region IX notified the Governor of Arizona that available information indicates that Bullhead City should be redesignated nonattainment for PM–10 and, on that basis, called on the State to submit a redesignation for the area (see also 56 FR 16274 (April 22, 1991)).

c. Payson, Arizona. The Center submitted comments claiming that Payson, Arizona, should be designated as an initial PM–10 nonattainment area. The Center stated that "Payson violated the annual mean PM–10 standard in 1988 and 1989, and also recorded five violations of the 24-hour standard in 1989 * * *"

Payson was a former Group III area. For the reasons noted in the Bullhead City response, those violations occurring on or after January 1, 1989 cannot be a basis for designating Payson as an initial PM–10 nonattainment area.

Further, the 1988 data record for this area did not meet EPA's general data capture requirements (i.e., was incomplete) and was not otherwise sufficiently unambiguous to establish nonattainment (see § 2.3 of part 50, appendix K). More specifically, § 2.3 states that it is "generally necessary" for a monitoring site to have data which includes a minimum of 75 percent of the scheduled PM–10 samples per quarter in order to assess whether a violation of the standard has been recorded. With a minimum sampling frequency of once in 6 days, a valid annual mean must be based on at least 48 observations (12 observations per calendar quarter). However, § 2.3 also states that there are "less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the particulate matter standard." Section 2.3 sets out examples of how nonattainment may be demonstrated when a monitoring site does not meet the completeness criteria. With respect to the annual standard, § 2.3 provides, for example, that nonattainment may be demonstrated "on the basis of quarterly mean concentrations developed from observed data combined with one-half the minimum detectable concentration substituted for missing values."

Applying this analysis to the data collected in 1988 at the Payson monitoring station, EPA concluded that Payson should not be an initial PM–10 nonattainment area. First, according to the State of Arizona data report, a total of 19 PM–10 samples were produced in 1988 by the Payson monitor. This clearly fails the completeness requirement. If, then, one-half the minimum detectable concentration of (4.0 micrograms per cubic meter ($\mu g/m^3$)) is substituted for the missing values (say, 29, i.e., 29+19=48), then the resulting annual mean would be approximately 32 $\mu g/m^3$, which is below the annual PM–10 standard.

However, similar to the Bullhead City situation, pursuant to section 107(d)(3) of the Act, EPA has initiated the process to redesignate this area as nonattainment for PM–10. By letter dated January 24, 1991, the Regional Administrator of EPA Region IX notified the Governor of Arizona that available information indicates that Payson should be redesignated nonattainment for PM–10, and on that basis called on the State to submit a redesignation for the area (see also 56 FR 16274 (April 22, 1991)).

d. Tucson, Arizona. The Arizona Center for Law in the Public Interest also commented that Tucson should be an initial PM–10 nonattainment area. The Center's request was based on monitoring data from three different sites in the Tucson area.

First, the Center stated that the Orange Grove Road sampling station monitored one 24-hour exceedance in 1985 and two in 1988. Since the 1985 exceedance was produced prior to the promulgation of the PM–10 NAAQS (see generally 52 FR 24634, July 1, 1987), EPA did not adjust it for incompleteness of sampling and counted it as 1.0 in the calculation of the average number of estimated exceedances.[12] The analysis specified in § 3.2 of part 50, appendix K, was then applied to the two exceedances observed in 1988.[13] On this basis, EPA calculated 3.1 exceedances for 1988. Section 2.1 specifies that the number of exceedances is determined by averaging the number of exceedances over the past 3 calendar years. Therefore, the number of expected exceedances for the 3-year period from 1986–88 is 1.033. After the rounding called for in § 2.1, 1.033 would be less than or equal to 1.0 which does not constitute a violation of the standard. Assuming for purposes of illustration that the 4-year period from 1985–88 is representative, then, consistent with § 2.3, the 1985 exceedance may be considered. In this situation, the

[12] Generally when sampling is not conducted on a daily basis, EPA adjusts exceedances of the 24-hour standard in order to estimate the number of expected exceedances (see § 3.1 of 40 CFR part 50, appendix K). Section 3.1 states that "(i)n this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level."

However, some monitoring of PM–10 occurred prior to the promulgation of part 50, appendix K. This is true of the 24-hour exceedance measured in 1985 at the Orange Grove Road sampling site in Tucson. Part 50, appendix K, was published on July 1, 1987 (effective date of July 31, 1987) when EPA revised the indicator for particulate matter to PM–10 (see generally 52 FR 24634). When it revised the PM–10 standards and promulgated appendix K, EPA did not designate areas and, therefore, could not have intended to subject pre-promulgation data to adjustment due to less than daily sampling for the purpose of designating an area nonattainment. Further, because those collecting data before the rule's promulgation had no notice of the consequences of less-than-every-day sampling, it would be unfair to adjust data collected pre-promulgation at this time. Thus, EPA interprets appendix K such that data collected prior to the rule's promulgation and used for establishing an area's designation is not construed as constituting "incomplete data" within the meaning of appendix K for the narrow purpose of adjusting data for less than daily sampling.

The manner in which the Agency has implemented part 50, appendix K, provides evidence of the Agency's general concern with the unfairness of subjecting pre-promulgation data to adjustment for incompleteness, even before the newly revised Act provided designation for PM–10. In a June 1988 policy document, EPA noted that if the first exceedance in an area occurred prior to the promulgation of the PM–10 standard, it would be exempt from the daily sampling requirement (see generally Response to Questions Regarding PM–10 State Implementation Plan (SIP) Development at page 27). Finally, there is no evidence in the newly revised Act that Congress intended EPA to apply appendix K in a manner different from how the Agency had applied it prior to enactment.

[13] The computations for estimating exceedances to adjust for missing data are performed quarterly. There are special appendix K formulas to address the situation with unscheduled samples in order to reduce a bias which may be introduced by nonuniform sampling during the quarter. During the third quarter of 1988, when the two exceedances occurred, there was a change in sampling frequency from every-other-day to every-day. Accordingly, for the purposes of estimating exceedances, the sample schedule was assumed to be every-other-day for the entire quarter and, for computational purposes, some of the every-day samples are treated as unscheduled.

expected number of exceedances would be 4.1 over a 4-year period which is 1.025. After the rounding called for in § 2.1, this would be less than or equal to 1.0 and would not constitute a violation of the standard.

The Center commented that elevated levels of PM–10 were monitored at the Congress Street station. Specifically, the Center states that the annual standard was violated in 1989 and that three exceedances were monitored in 1989. Tucson was a former Group II area. As noted, under section 107(d)(4)(B)(ii) a former Group II area can be designated nonattainment by operation of law upon enactment of the Act only if "monitoring data show a violation of the national ambient air quality standard for PM–10 before January 1, 1989 * * *." Because the violations cited by the Center occurred on or after this date, they would not constitute a basis for designating Tucson as an initial PM–10 nonattainment area.

The Center also commented that the monitor located at Prince Road monitored a violation of the 1989 annual standard. Again, EPA notes that a violation must be monitored prior to January 1, 1989 to constitute a basis for designating Tucson as an initial PM–10 nonattainment area.

Correcting EPA's announcement of the initial PM–10 nonattainment areas is the narrow question addressed by the Agency in today's action. Nevertheless, the Center has alerted EPA to possible attainment problems in the Tucson area which may be a basis for redesignating this area as nonattainment pursuant to section 107(d)(3) of the Act. The EPA will review the PM–10 data collected in Tucson on or after January 1, 1989 and expects that it will reach a conclusion about Tucson's status (and whether to initiate the section 107(d)(3) redesignation process) sometime this Fall.

e. Bonner County, Idaho. The Administrator of the IDEQ submitted comments addressing the Bonner County nonattainment area. The EPA announced that "Bonner County" was an initial nonattainment area in the March 1991 notice. The IDEQ submitted a more detailed description, isolating that portion of Bonner County believed to warrant nonattainment designation. Consistent with the definition of nonattainment area in section 107(d)(1)(A)(i) of the Act, in today's notice EPA has refined the boundaries for this area as requested by IDEQ.

f. Oglesby, Illinois. The Governor of Illinois submitted information to EPA requesting that an additional section be added to that portion of Oglesby designated nonattainment for PM–10. Consistent with the definition of nonattainment area in section 107(d)(1)(A)(i), EPA has added the section and announces that the Oglesby PM–10 nonattainment area is as described in Table I.

In January 28, 1991 correspondence to the Governor of Illinois, the Regional Administrator of EPA Region V had initiated the process to redesignate as nonattainment this portion of LaSalle County. That process has been mooted by the action announced in today's notice.

g. Clinton Township, Indiana. The Indiana Department of Environmental Management (IDEM) requested that the boundaries for the Clinton Township nonattainment area be reduced to include eight sections in the Township and submitted technical information supporting their request. The EPA has reviewed the information submitted by IDEM and agrees that the area should be modified to include only the eight sections identified. The IDEM's information shows that violations of the standard are attributable to a coal mine in the area. The EPA believes that limiting the boundaries to the eight sections suggested by IDEM does not exclude any significant sources or any likely nonattainment portions of this area. Thus, EPA is refining the boundaries of that portion of Clinton Township that is designated as nonattainment for PM–10 to include these eight sections, consistent with the definition of nonattainment area in section 107(d)(1)(A)(i) of the Act.

h. Rochester, Minnesota. The Minnesota Pollution Control Agency (MPCA) commented on the City of Rochester's nonattainment status. The MPCA requested that the boundaries for the nonattainment area not include the entire city. They submitted information supporting this request including documents indicating that EPA had intended to include the modified boundaries in its March 1991 notice but through administrative oversight failed to do so.

The EPA believes that the nonattainment area should be less than the entire city, and EPA intended to provide more refined boundaries in its March 1991 notice. Violations in Rochester have been attributed to coal storage at a power plant. This facility is the only significant source in the city. The EPA's refined nonattainment area includes the source and all the area EPA believes to be monitoring violations of the NAAQS due to the source. Thus, consistent with the definition of nonattainment area in section 107(d)(1)(A)(i) of the Act, EPA has refined the nonattainment area.

Rochester Public Utilities (RPU) also submitted comments addressing this area. The RPU requested that EPA reconsider Rochester's nonattainment designation. The RPU commented that no violation of the NAAQS has occurred in the area. Specifically, RPU asserted that there has been no violation of the NAAQS because only one exceedance of the standard has been measured and there have never been two exceedances during any 1 year. Further, RPU commented that the event causing the exceedance was an "exceptional meteorological event" and should not trigger a nonattainment designation. The RPU also commented that the sampler malfunctioned and did not reliably measure PM–10 on the day the exceedance occurred.

The PM–10 NAAQS is expressed in terms of an expected value. Section 3.1 of 40 CFR part 50, appendix K, describes the adjustments that must be made to 24-hour data in order to estimate the number of expected exceedances when PM–10 sampling is not conducted on a daily basis. Section 3.1 states that "[i]n this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level." The regulations recognize that this adjustment may lead to overprediction. Thus, § 3.1 also states as follows: "To reduce the potential for overestimating the number of expected exceedances, the correction for missing data will not be required for a calendar quarter in which the first observed exceedance has occurred if: (a) There was only one exceedance in the calendar quarter, (b) everyday sampling is subsequently initiated and maintained for 4 calendar quarters in accordance with 40 CFR 58.13, and (c) data capture of 75 percent is achieved during the required period of everyday sampling."

Sampling is conducted once every 6 days at the site where the exceedance in Rochester was measured. Daily sampling was not commenced after the exceedance. Thus, the regulations require a correction for the missing data. After applying the adjustment referenced above, the expected exceedances of the 24-hour NAAQS at Rochester constitutes a violation of the PM–10 NAAQS consistent with part 50, appendix K.

Section 2.4 of part 50, appendix K, governs the inquiry of whether the exceedance measured at the Rochester monitoring site should be treated as an "exceptional event." That regulation states that an exceptional event is "an uncontrollable event caused by natural sources of particulate matter or an event

that is not expected to recur at a given location." The RPU commented that extremely high winds occurred on the day the exceedance was measured. The RPU cited a memorandum by MPCA requesting that EPA treat the exceedance as an exceptional event and noting that the Rochester National Weather Service Office measured wind speeds in excess of 40 miles per hour on the day the exceedance was measured.

As noted, EPA believes that coal storage at a power plant is responsible for the exceedance. Thus, the event in question would not qualify for treatment as an exceptional event under the first prong of the exceptional events standard since it is controllable and was not caused by natural sources. Further, EPA has no basis to believe the event would meet the second prong of the operative legal standard. While high winds were cited, no information was submitted indicating whether that high wind was the cause of the exceedance and, if so, whether the wind was likely to recur.

The EPA also believes there is insufficient technical basis to cast doubt upon the reliability of the measurement. The RPU noted that it had been informed by MPCA that the sampler was encumbered with large particles and possibly a dirty sampler head "such that quantification of PM–10 could not be accurately and reliably measured * * *." Previously, MPCA had submitted to EPA a microscopist's analysis of the filter sample. The analysis concluded that large particles were collected which should not have been measured and suggested that the sample point be invalidated. The EPA found the microscopist's analysis technically deficient since it did not document the quantity of large particles collected and encumbering the sampler. Thus, EPA will not disregard the data due to the inadequately substantiated claim that the sampler malfunctioned.

In sum, EPA has adjusted the boundaries for this area in light of MPCA's comments and consistent with the definition of nonattainment area under section 107(d)(1)(A)(i) of the Act. However, for all of the reasons explained above, EPA denies RPU's request to totally eliminate this area's nonattainment designation.

i. Audrain County, Missouri. The Missouri Department of Natural Resources (MDNR) submitted comments addressing EPA's designation of Audrain County, Missouri, as an initial PM–10 nonattainment area. The EPA identified Audrain County as an initial nonattainment area because of an exceedance of the PM–10 24-hour standard occurring on August 1, 1987. The MDNR submitted information suggesting that these data were invalid. After reviewing the technical information associated with this measured exceedance, EPA has concluded that the PM–10 sampler malfunctioned on August 1, 1987 and operated for a period exceeding 24 hours. Section 1.0 of part 50, appendix K, specifies that a "daily value" is a "24-hour average concentration of PM–10 calculated or measured from midnight to midnight * * *." The EPA has invalidated the exceedance since EPA believes the sampler ran for longer than 24 hours and was not measured from midnight to midnight. By today's notice EPA removes Audrain from the list of initial PM–10 nonattainment areas because EPA believes Audrain County has not measured a "violation" of the PM–10 NAAQS within the meaning of part 50, appendix K.

j. Columbia Falls, Montana (Flathead County). The Governor of Montana requested that EPA expand, by adding one section, the Columbia Falls nonattainment area. In light of the Governor's comments and consistent with the definition of nonattainment area set forth in section 107(d)(1)(A)(i) of the Act, EPA has adjusted the boundaries set forth in the March 1991 notice.

k. Lubbock, Texas. The TACB as well as the City of Lubbock submitted comments on the March 15, 1991 **Federal Register** notice providing an analysis of the Lubbock PM–10 air quality data collected over a 4-year period from 1986–1989. The TACB commented that they had performed an analysis of all PM–10 filters showing an exceedance of the NAAQS. These analyses included an interpretation and evaluation of soil samples and particulate matter collected on the filters. The results of the analysis of the filter and soil samples indicated that there was a distinct difference between the particulate matter deposited on the filters from routine monitoring days and those from the days of high gusty winds and blowing dust. The three exceedances of the PM–10 24-hour standard at the Lubbock monitoring sites since 1986 were determined by the TACB to be influenced by wind-blown dust transported from out of State sources. As a result, the TACB and the City of Lubbock contend that the days on which exceedances were measured were days with unusually high wind gusts and, as such, these days should be considered as exceptional events and excluded from the records in accordance with EPA's exceptional events policy under 40 CFR part 50, appendix K, § 2.4. They also contend that if the days with the high winds were excluded as exceptional events, the highest 24-hour concentration recorded at the Lubbock monitoring sites would be 126 $\mu g/m^3$, which is below the national standard of 150 $\mu g/m^3$.

The EPA has reviewed all data submitted by the TACB and the City of Lubbock in making its decision on the attainment status of the Lubbock area. Section 2.4 of part 50, appendix K, indicates that certain exceedances of the PM–10 NAAQS can be adjusted to take exceptional events and trends into account. The data available indicate that Lubbock has monitored a limited number of PM–10 levels in excess of the 24-hour PM–10 standard. Further, the influence of long-range transport of wind-blown dust on these measured exceedances makes it difficult to determine the associated frequency and nature of these exceedances. This results in uncertainty in how to treat these exceedance events. Because of this uncertainty, EPA feels that an unclassified status is appropriate for Lubbock while additional information is collected.

III. Table Describing the Initial Moderate PM–10 Nonattainment Areas Corrected by Today's Notice

Based on the foregoing discussion, EPA today is changing its March 15, 1991 (56 FR 11101) announcement of the initial PM–10 nonattainment areas. The nonattainment designations for those areas corrected by today's notice are set forth in the following table. Consistent with EPA's announcement in the March 1991 notice, all of these areas were classified as "moderate" PM–10 nonattainment areas by operation of law, pursuant to section 188(a) of the Act.

TABLE I.—PM–10 INITIAL NONATTAINMENT AREAS[14,15,16,17]

State and counties	Area of concern
Idaho:	
Bannock and Power	The City of Pocatello: Sections 13–36 of range 33 east and township 5 south; Sections 15–23 and 25–36 of range 34 east and township 5 south; Section 31 of range 35 east and township 5 south; Sections 1–36 of range 33 east and township 6 south; Sections 1–36 of range 34 east and township 6 south; Sections 5–36 of range 35 east and township 6 south; Sections 7, 8, 15–22, and 27–35 of range 36 east and township 6 south; Sections 4–6 of range 33 east and township 7 south; Sections 1–4, 10–14, and 24 of range 34 east and township 7 south; Sections 1–30, and 32–36 of range 35 east and township 7 south; Sections 2–11, 14–23, and 26–35 of range 36 east and township 7 south; Sections 1–4 of range 35 east and township 8 south; Sections 3–6 of range 36 east and township 8 south.
Bonner County	The Sandpoint area: Sections 1–3, 9–12, 15, 16, 21, 22, 27, 28 of range 2 west and township 57 north; and the western ¾ of Sections 14, 23, and 26 of the same township and range coordinates.
Illinois:	
Cook	a. Lyons Township. b. The area bounded on the north by 79th Street, on the west by Interstate 57 between Sibley Boulevard and Interstate 94 and by Interstate 94 between Interstate 57 and 79th Street, on the south by Sibley Boulevard, and on the east by the Illinois/Indiana State line.
LaSalle	Oglesby including the following Townships, ranges, and sections: T32N, R1E, S1; T32N, R2E, S6; T33N, R1E, S24; T33N, R1E, S25; T33N, R2E, S31; T33N, R1E, S36; and T33N, R2E, S30.
Indiana:	
Vermillion	Part of Clinton Township including the following sections: Sections 15, 16, 21, 22, 27, 28, 33 and 34.
Minnesota:	
Olmsted	The area bounded on the south by U.S. Highway 14; on the west by U.S. Highway 52; on the north by 14th Street NW. between U.S. Highway 52 and U.S. Route 63 (Broadway Avenue), U.S. Route 63 north to Northern Heights Drive, NE., and Northern Heights Drive NE. extended east to the 1990 City of Rochester limits; and on the east by the 1990 City of Rochester limits.
Montana:	
Flathead	The area bounded by lines from Universal Transmercator (UTM) coordinate 700000mE, 534700mN, east to 704000mE, 5347000mN, south to 704000mE, 5341000mN, west to 703000mE, 5341000mN, south to 703000mE, 5340000mN, west to 702000mE, 5340000mN, south to 702000mE, 5339000mN, east to 703000mE, 5339000mN, south to 703000mE, 5338000mN, east to 704000mE, 5336000mN, south to 704000mE, 5336000mN, west to 702000mE, 5336000mN, south to 702000mE, 5335000mN, west to 700000mE, 5335000mN, north to 700000mE, 5340000mN, west to 695000mE, 5340000mN, north to 695000mE, 5345000mN, east to 700000mE, 5345000mN, north to 700000mE, 5347000mN. Columbia Falls and vicinity: Township T30N, R20W—Sections 7, 8, 9, 16, 17, and 18.
Lincoln	Libby and vicinity: T30N, R31W—Sections 2, 3, 4, 5, 9, 10, 11, 14, 15, 23, 26, 35, and west ½ of Section 24, west ½ of Section 25, and west ½ of Section 36; plus T31N, R31W—Sections 26, 27, 29, the east ½ of Sections 30, 32, 33, 34, and 35.
Missoula	Missoula and vicinity including the following sections: T13N, R19W—Sections 2, 8, 11, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, and 34; T12N, R19W—Sections 4, 5, 6, 7; T13N, R20W—Sections 23, 24, 25, 26, 35, and 36.
Silver Bow	Butte: The Northwest corner of section 2, T.3N., R.8W., thence Easterly to Northeast corner Section 5, T.3N, R.7W.; thence Southerly to Northwest corner Section 9, T.3N., R.7W; thence Easterly to Northeast corner Section 10, T.3N, R.7W.; thence Southerly to Southeast corner Section 22, T.2N., R.7W.; thence Westerly to Southwest corner Section 19, T.2N., R.7W.; thence Northerly to Northwest corner Section 19, T.2N., R.7W.; thence Westerly to Southwest corner Section 14, T.2N., R.8W.; thence Northerly to Southwest corner Section 35, T.3N., R.8W.; thence Westerly to Southwest corner Section 34, T.3N., R.8W.; thence Northerly to Northwest corner Section 27, T.3N., R.8W.; thence Westerly to Southwest corner Section 20, T.3N., R.8W.; thence Northerly to Northwest corner Section 17, T.3N., R.8W.; thence Easterly to Northwest corner Section 14, T.3N., R.8W.; thence northerly to the point of beginning.
Ohio:	
Jefferson	The area bounded by Market Street (State Route 43) from the West Virginia/Ohio border west to Sunset Blvd. (U.S. Route 22). Sunset Blvd. west to the Steubenville Township/Cross Creek Township boundary, the township boundary south to the Steubenville Corporation limit, the corporation boundary east to State Route 7, State Route 7 South to the Steubenville Township/Wells Township boundary, the township boundary east to the West Virginia/Ohio border, and North on the border to Market Street.
Washington:	
Yakima	The area bounded on the south by a line from UTM coordinate 694000mW, 5157000mN, west to 681000mW, 5157000mN, thence north along a line to coordinate 681000mN, 5172000mN, thence east to 694000mW, 5172000mN, thence south to the beginning coordinate 694000mW, 5157000mN.

[14] When cities or towns are shown, the area of concern is defined by the municipal boundary limits as of November 15, 1990 (the date of enactment of the Act) except for areas which were formerly Group I, in which case the area of concern is defined by the municipal boundary limits as of October 31, 1990 (See 55 FR 45799). (This footnote is applicable to today's action and also corrects the first footnote to the table listed in the March 15, 1991 FEDERAL REGISTER notice (56 FR 11105).)

[15] When a planning area is shown, the area of concern includes the entire planning area as of November 15, 1990 (the date of enactment of the Act) except for areas which were formerly Group I, in which case the area of concern is defined by the entire planning area as of October 31, 1990 (see 55 FR 45799). This is true except to the extent the planning area is further defined (e.g., by township, range, and/or section). Such geographical descriptors remain a part of the nonattainment boundaries irrespective of whether they are included in the planning area. (This footnote is applicable to today's action and also corrects the second footnote to the table listed in the March 15, 1991 FEDERAL REGISTER notice (56 FR 11105).)

[16] Audrain County, Missouri, was removed as an initial PM–10 nonattainment area. See comments above.

[17] Lubbock, Texas, was removed as an initial PM–10 nonattainment area. See comments above.

IV. Significance of Today's Action

By November 15, 1991, States must adopt and submit to EPA a SIP revision for all those areas that were classified as moderate PM–10 nonattainment areas by operation of law upon enactment of the Act (see subpart 4 of part D of title I of the Act as amended). In particular, section 189(a) of the Act requires that all of the initial moderate PM–10 nonattainment areas submit a SIP by November 15, 1991 which includes the following: (1) Either a demonstration (including air quality modeling) that the plan will provide for attainment by December 31, 1994 or a demonstration that attainment by that date is impracticable; and (2) provisions to assure that reasonably available control measures (including reasonably available control technology) for the control of PM–10 are implemented by December 10, 1993. In addition, a new source permit program meeting the requirements of part D of the Act is required for the construction and operation of new and modified major stationary sources of PM–10 (including, in some cases, PM–10 precursors). A SIP revision meeting this requirement is due by June 30, 1992 for all of the initial moderate PM–10 nonattainment areas. The EPA will provide additional

guidance on SIP requirements for these areas in the near future. Also note that EPA will be reclassifying some of these initial PM–10 nonattainment areas from moderate to serious because they cannot practicably attain the PM–10 air quality standards by December 31, 1994 (see section 188(b)(1) of the Act). If reclassified as serious, these areas will be subject to additional control requirements and a new attainment date. The EPA will work with the States in order to develop a proposed list of moderate areas to be reclassified as serious.

V. Effective Date of This Notice

As mentioned, the effective date of the announcement of the designation and classification of areas adjusted or corrected in today's notice is August 8, 1991. While 5 U.S.C. 553(d) (the APA) states that the effective date of certain administrative actions must be 30 days after publication, EPA does not believe that provision of the APA is applicable to this action. Section 107(d)(2) of the Act expressly states that "promulgation or announcement" of a designation under section 107(d)(4) shall not be subject to 5 U.S.C. 553–557. The provision establishing the PM–10 designations that occurred by operation of law upon enactment of the Act (the designation of the "initial PM–10 nonattainment areas") appears at section 107(d)(4)(B). Thus, announcement of the initial PM–10 nonattainment areas is exempt from the notice-and-comment rulemaking procedures set forth in 5 U.S.C. 553–557, including the § 553(d) requirement that the effective date of certain actions must be 30 days after publication.[18]

VI. Finality

The EPA will take final action on the initial designations for PM–10 (under section 107(d)(4)(B) of the Clean Air Act) for the purposes of section 307(b) of the Act when EPA formally codifies these designations in 40 CFR part 81. This includes those designations announced in the March 15, 1991 notice and any subsequent modifications made in this notice. As noted, EPA is expected to complete a part 81 codification for PM–10 and other title I air pollutants in the near future.

VII. Authority

Sections 107(d)(2), 107(d)(4), 110 (including 110(k)(6)), 188(a), and 301 of the Act provide authority for today's action.

Dated: July 31, 1991.

Michael Shapiro,

Assistant Administrator for Air and Radiation.

[FR Doc. 91–18827 Filed 8–7–91; 8:45 am]

BILLING CODE 6560–50–M

[18] If the APA requirement that publication precede the effective date of certain actions by 30 days was deemed applicable to today's action, EPA believes this action would be within the purview of the good cause exception to this requirement. See 5 U.S.C. 553(d)(3). The March 15, 1991 Federal Register notice announcing the initial PM–10 nonattainment areas was effective 60 days after publication (i.e., May 14, 1991) in order to allow for a 30-day comment period and any appropriate follow-up adjustments by EPA. In this Federal Register notice, EPA responds to comments addressing the March 1991 notice. Thus, there is no reason to defer the effective date further.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 91–217]

Standards for Assessing Forfeitures

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: This policy statement establishes standards to be used by the Commission in assessing forfeitures. Adoption of the Policy Statement will assist the Commission in ensuring that similarly situated violators are treated in a similar manner and will provide guidance to the public regarding the forfeitures that can be expected in connection with specific violations.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: David H. Solomon, Office of General Counsel, Federal Communications Commission (202) 632–6990.

SUPPLEMENTARY INFORMATION:

Policy Statement

Adopted: July 11, 1991; Released: August 1, 1991.

By the Commission:

I. Introduction

1. In this Policy Statement, we establish standards for assessing forfeitures. These standards are set forth in the appendix. We intend to be guided in the future by these standards, although we note that we remain "free to exercise * * * discretion in situations that arise" in specific case. See *Guardian Federal Savings & Loan Ass'n* v. *Federal Savings and Loan Insurance Co.*, 589 F. 2d 658, 666 (DC Cir. 1978).

II. Background

2. The Commission has traditionally assessed forfeitures on a case-by-case basis, in light of relevant precedent. In 1989, Congress substantially increased the dollar amounts of our forfeiture authority. Public Law No. 100–239, 103 Stat. 2131. As the Commission implements this increased forfeiture authority, we believe it is appropriate to depart from our traditional case-by-case approach and adopt more specific standards for assessing forfeitures. Such standards will assist the Commission in ensuring that similarly situated violators are treated in a comparable manner, and will provide guidance to the public regarding the forfeitures that can be expected in connection with specific violations. (The Commission remains free, of course, to respond to violations with other or additional action, for example, admonishment, revocation or non-renewal.) Establishing forfeiture standards is consistent with a recommendation of the Administrative Conference of the United States (ACUS), and is similar to approaches taken by some other independent regulatory agencies. See Agency Assessment and Mitigation of Civil Money Penalties, Recommendation No. 79–3, 1 CFR 305.79–3; General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR chapter 1, part 2, appendix C.

III. Discussion

3. *Section 503 Forfeitures.* Most Commission forfeitures are issued under the Commission's general forfeiture authority contained in section 503 of the Act. Under section 503(b)(2), for each violation or each day of a continuing violation, the Commission may now assess forfeitures of up to $25,000 against broadcasters, cable operators or applicants for such facilities, $100,000 against common carriers or applicants for such facilities, and $10,000 against others. In addition, there is a limit on forfeitures for continuing violations involving a single act or failure to act of $250,000 for broadcasters, cable operators or applicants for such facilities and $1,000,000 for common carriers or applicants for such facilities. A limit of $75,000 applies to continuing violations involving a single act or failure to act by others.

4. Our new standards for section 503 forfeitures establish base forfeiture amounts for specific classes of section 503 forfeitures. The base forfeiture amounts are based on a ranking of a relative gravity of the violation involved. The base amounts are computed as a percentage of the statutory maximum for the service involved. For example, failure to comply with prescribed tower lighting and

marking requirements is generally an extremely grave offense and thus has a base forfeiture amount of 80 percent of the relevant statutory maximum—$20,000 for broadcasters and cable operators, $80,000 for common carrier and $8,000 for others. In contrast, failure to provide required station identification is generally a more minor offense and thus has a base forfeiture amount of 10 percent of the relevant statutory maximum—$2,500 for broadcasters and cable operators, $10,000 for common carriers and $1,000 for others. We recognize that one effect of this approach is that licensees in different services will receive different forfeitures for the same offense. We believe this approach is consistent with congressional intent in establishing different statutory maxima for different services, and at the same time ensures that all similarly situated entities are treated similarly.

5. Once the relevant base forfeiture amount is determined for a section 503 forfeiture, the next step under our standards is to apply the relevant upward and downward adjustment criteria to the base amount. Each of the upward and downward adjustment criteria is assigned a specific percentage range that is applied against the base forfeiture amount. The adjustment criteria we have selected are derived from section 503(b)(2)(D) of the Act, which instructs the Commission to "take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." In establishing specific criteria to carry out this statutory mandate, we have also been guided by the ACUS recommendation on forfeiture standards. See 1 CFR 305.79–3 (suggesting that agencies take into account the economic benefit of the violation, the harm caused by the violation and the violator's financial condition).

6. How the standards work can be illustrated with the following example involving a broadcast licensee who, for one day, broadcasts using unauthorized equipment. Under the standards, a base forfeiture amount of $10,000 is established. If the relevant upward adjustment criteria were determined to be a 70% increase for intentional violation and a 40% increase for substantial harm, each of which is within the range established in the standards, increases of $7,000 (70% of $10,000) and $4,000 (40% of $10,000) would be added to the base forfeiture, for an adjusted forfeiture of $21,000. If it were also determined that there should be a 30% downward adjustment for a history of overall compliance by the licensee, which is also within the established range, the forfeiture would be reduced by $3,000 (30% of 10,000) to $18,000. If the broadcaster made a specific showing that an $18,000 forfeiture would cause substantial economic hardship, the forfeiture would be further reduced.[1] If application of the criteria led to an amount exceeding the statutory ceiling, the forfeiture amount would be reduced to the statutory ceiling.

7. *Non-Section 503 Forfeitures.* Various sections of the Communications Act provide the Commission with forfeiture authority regarding specific statutory violations. These sections of the Act generally state a prescribed forfeiture amount (rather than a maximum) for violation of that section. For example, section 220(d) of the Act provides that a common carrier that fails to comply with prescribed accounting and other record-keeping requirements shall forfeit $6,000 per day. Under our forfeiture standards, such statutory amounts will be used as the base forfeiture amounts for non-section 503 forfeitures. Consistent with section 504(b) of the Act, which permits remission or mitigation of the Commission the same downward adjustment criteria to be used in section 503 forfeiture proceedings will also be used in non-section 503 forfeiture proceedings.

[1] See appendix, note 6.

IV. Conclusion

8. We believe adoption and publication of these forfeiture policies will assist the Commission in ensuring that similarly situated violators are subjected to comparable forfeitures and will aid our enforcement efforts by making clear in advance the likely consequences of violations.

9. Accordingly, it is ordered that this Policy Statement is adopted, to be effective upon publication in the **Federal Register.**

10. The notice and comment and effective date provisions of the Administrative Procedure Act do not apply to this Policy Statement. 5 U.S.C. 553(b)(A), (d)(2).

11. This action is taken pursuant to sections 4(i), 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223, 303(r), 364, 386, 503(b), 504, 506 and 634 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223, 303(r), 362, 386, 503(b), 504, 507, 554.

List of Subjects in 47 CFR Part 1

Penalties.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

APPENDIX—STANDARDS FOR ASSESSING FCC FORFEITURES

I. Base Amounts for Section 503 Forfeitures

Violation	Percent of Stat. Max.[1]	BC/Cable ($25,000)	CC ($100,000)	Other ($10,000)
Misrepresentation/lack of candor	80	20,000	80,000	8,000
Failure to comply with prescribed lighting and marking	80	20,000	80,000	8,000
Construction and/or operation without an instrument of authorization for the service	80	20,000	80,000	8,000
Unauthorized substantial transfer of control	80	20,000	80,000	8,000
Violations of rules relating to distress and safety frequencies	80	20,000	80,000	8,000
False distress communications	80	20,000	80,000	8,000
Failure to permit inspection	75	18,750	75,000	7,500
Violations of operator services requirements	75	N.A.	75,000	7,500
Malicious interference	70	17,500	70,000	7,000
Failure to respond to Commission communications	70	17,500	70,000	7,000
Importation or marketing of unauthorized equipment	70	N.A.	70,000	7,000
Exceeding authorized antenna height	60	15,000	60,000	6,000
Exceeding power limits	50	12,500	50,000	5,000
Unauthorized emissions	50	12,500	50,000	5,000

APPENDIX—STANDARDS FOR ASSESSING FCC FORFEITURES—Continued

Violation	Percent of Stat. Max.[1]	BC/Cable ($25,000)	CC ($100,000)	Other ($10,000)
Using unauthorized frequency	50	12,500	50,000	5,000
EBS equipment not installed or operational	50	12,500	N.A.	N.A.
Transmission of indecent/obscene material	50	12,500	N.A.	5,000
Violation of broadcast EEO rules	50	12,500	N.A.	N.A.
Violation of political rules: reasonable access, lowest unit charge, equal opportunities and discrimination	50	12,500	N.A.	N.A.
Unauthorized discontinuance of service	40	10,000	40,000	4,000
Use of unauthorized equipment	40	10,000	40,000	4,000
Violation of children's television commercialization or programming requirements	40	10,000	N.A.	N.A.
Violation of main studio rule	40	10,000	N.A.	N.A.
Construction or operation at unauthorized location	40	10,000	40,000	4,000
Failure to engage in required frequency coordination	40	10,000	40,000	4,000
Failure to file required forms or information	30	7,500	30,000	3,000
Violation of public file rules	30	7,500	N.A.	N.A.
Violation of sponsorship ID requirements	25	6,250	N.A.	N.A.
Violation of requirements pertaining to broadcasting of lotteries or contests	25	6,250	N.A.	N.A.
Violation of technical logs/time brokerage agreements file requirements	20	5,000	N.A.	N.A.
Broadcasting telephone conversations without authorization	20	5,000	N.A.	N.A.
Failure to make required measurements or conduct required monitoring	10	2,500	10,000	1,000
Violation of enhanced underwriting requirements	10	2,500	N.A.	N.A.
Failure to provide station ID	10	2,500	10,000	1,000
Unauthorized pro forma transfer of control	10	2,500	10,000	1,000
Failure to maintain required records	10	2,500	10,000	1,000
Miscellaneous violations	5	1,250	5,000	500

[1] The forfeiture ceilings per violation or per day of a continuing violation contained in section 503 of the Communications Act and the Commission's Rules are $100,000 for common carriers or applicants, $25,000 for broadcasters and cable operators or applicants, and $10,000 for all others. 47 U.S.C. 503(b)(2); 47 CFR 1.80. In addition, for continuing violations involving a single act or failure to act, there is an overall limit of $1,000,000 for common carriers or applicants, $250,000 for broadcasters and cable operators or applicants, and $75,000 for all others. *Id.* The base amounts listed are for a single violation or single day of a continuing violation. Unless Commission authorization is required for the behavior involved, a section 503 forfeiture proceeding against a non-licensee or non-applicant who is not a cable operator or is not operating in the radio control or citizens band radio services can only be initiated for a second violation, after issuance of a citation in connection with a first violation. 47 U.S.C. 503(b)(5). Forfeitures issued under other sections of the Act are dealt with separately in Section III below.

II. Adjustment Criteria for Section 503 Forfeitures

Upward Adjustment Criteria [2]	
(1) Egregious misconduct	50–90%.
(2) Ability to pay/relative disincentive [3]	50–90%.
(3) Intentional violation	50–90%.
(4) Substantial harm	40–70%.
(5) Prior violations of same or other requirements	40–70%.
(6) Substantial economic gain	20–50%.
(7) Repeated or continuous violation	Varies.[4]
Downward Adjustment Criteria	
(1) Minor violation [5]	50–90%.
(2) Good faith or voluntary disclosure	30–60%.
(3) History of overall compliance	20–50%.
(4) Inability to pay	Varies.[6]

[2] Both upward and downward adjustments are applied to the base forfeiture amount. More than one factor may apply in a given case.
[3] The Commission is required by the Communications Act to take ability to pay into consideration in assessing forfeiture amounts. 47 U.S.C. 503(b)(2)(D).
[4] The percentage adjustment for this criterion could vary up to the statutory maximum per violation or per day of a continuing violation.
[5] A "minor" violation is misconduct which is at a low level of seriousness within the violation category. A minor violation is the opposite of "egregious misconduct."
[6] As noted above, the Commission is required by the Communications Act to take ability to pay into consideration in assessing forfeiture amounts. 47 U.S.C. 503(b)(2)(D). The application of a downward adjustment for inability to pay is based upon a showing of substantial financial hardship. Inability to pay would generally be considered as a downward adjustment factor only upon a specific showing by the entity against whom forfeiture action is taken.

III. Non-Section 503 Forfeitures

Violation		Statutory amount [7]
Section 202(c)	Common carrier discrimination	$6,000 + $300/day.
Section 203(e)	Common carrier tariffs	$6,000 + $300/day.
Section 205(b)	Common carrier prescriptions	$12,000.
Section 214(d)	Common carrier line extensions	$1,200/day.
Section 219(b)	Common carrier reports	$1,200.
Section 220(d)	Common carrier records & accounts	$6,000/day.
Section 223	Dial-a-Porn	$50,000 maximum.
Section 364/386	Ship radio	$5,000 (owner). $1,000 (master).
Section 506	Great Lakes Agreement	$500 (owner). $100 (master).
Section 634	Cable EEO	$200.

NOTE: Non-section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for section 503 forfeitures in section II above.
[7] Unlike section 503, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. The one exception is section 223 of the Act, which provides a maximum of $50,000. For convenience, the Commission will treat the $50,000 set forth in section 223 as if it were a prescribed base amount, subject to downward adjustments.

[FR Doc. 91–18900 Filed 8–7–91; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Part 352

Acquisition Regulation; Publication; Correction

AGENCY: Department of Health and Human Services (HHS).

ACTION: Interim rule with request for comments; correction.

SUMMARY: The Department of Health and Human Services is correcting the signature block in the preamble which appeared in the **Federal Register** on July 24, 1991 (56 FR 33881).

FOR FURTHER INFORMATION CONTACT: Mr. Ed Lanham at (202) 245–8890.

SUPPLEMENTARY INFORMATION: The signature block which appeared in the referenced **Federal Register** is corrected to read as follows:

Terrence J. Tychan,

Acting Deputy Assistant Secretary for Management and Acquisition.

Dated: August 1, 1991.

Terrence J. Tychan,

Director, Office of Acquisition and Grants Management.

[FR Doc. 91–18868 Filed 8–7–91; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB67

Endangered and Threatened Wildlife and Plants; Emergency Rule to List the Kanab Ambersnail as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the Kanab ambersnail (*Oxyloma haydeni* ssp. *kanabensis*) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Only two populations of this snail are known to exist, both on wetlands on private lands in Kane County, Utah. A status survey completed in 1991 discovered that one population is nearly extirpated, while the other population has been subjected to major habitat alteration and destruction. Both populations are exceptionally vulnerable to extinction from natural or human-caused events. Immediate listing would trigger the protections in sections 7 and 9 of the Act, and allow the Service to begin pursuing land acquisition. The Service finds that good cause exists to make this emergency rule effective upon publication. The emergency rule will implement Federal protection for 240 days. A proposed rule to list the Kanab ambersnail as endangered will follow this emergency rulemaking, and will allow for public comment.

DATES: This emergency determination is effective on August 8, 1991, and expires on April 3, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Salt Lake City Fish and Wildlife Enhancement Field Office, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: Clark D. Johnson at the above address, telephone 801/524–4430 or FTS 588–4430.

SUPPLEMENTARY INFORMATION:

Background

The Kanab ambersnail is a terrestrial snail in the family Succineidae. It has a mottled grayish-amber to yellowish-amber colored shell. The shell is dextral, thin-walled, with an elevated spire and a broad, patulous (expanded) aperture. Fully mature individuals are about 14 to 19 mm (½ to ¾ inch) long, 7 to 9 mm (¼ to ⅓ inch) in diameter, with 3¼ to 3¾ whorls in a drawn out spire. Its eyes are borne at the ends of long peduncles (stalks), while the tentacles are reduced to small protuberances at the base of the eye stalks (Pilsbry 1948, Clarke 1991).

Specimens of the Kanab ambersnail were first collected in 1909 by James Ferriss from " 'The Greens,' 6 miles above Kanab, on Kanab Wash, on a wet ledge among moss and cypripediums" (Ferriss 1910, Pilsbry 1948). These specimens were originally placed in the species *Succinea hawkinsi* (Ferriss 1910, Chamberlin and Jones 1929). Henry Pilsbry (1948) transferred these specimens to the genus *Oxyloma* and erected the subspecies *kanabensis* in the species *haydeni* for them. Clarke (1991) notes that Pilsbry's decision to accord the Kanab ambersnail subspecific status was based on shell features alone, and that, as Pilsbry himself noted, its taxonomic status should be reevaluated. Clarke (1991) suggests that the Kanab ambersnail may deserve species status. For the purpose of this listing action, the Service will recognize this taxon at the subspecies level. If the Kanab ambersnail is later recognized as a species, this will not affect its designation as endangered.

The Kanab ambersnail lives in marshes watered by springs and seeps at the base of sandstone cliffs. It is absolutely associated with a perennially wet soil surface or shallow standing water. None were found in drier areas, even under logs or in other microhabitats commonly frequented by other land snails (Clarke 1991).

The presence of cattail (*Typha domingensis*), or at least the permanently wet ground which *Typha* indicates, is believed to be a critical component of the species habitat. It is most densely aggregated under fallen *Typha* stalks at the edges of thick *Typha* stands. The snails are also frequently seen just within the mouths of vole burrows. *Typha* may provide crucial vegetative cover for the snails. The American robin (*Turdas migratorius*) has been observed to feed on the Kanab ambersnail and may be the snail's principal natural predator (Clarke 1991).

The Kanab ambersnail is known from two populations about 2.1 km (1.3 miles) apart. Both populations are on privately owned lands. Other likely sites in the area have been searched on foot by a knowledgeable local biologist (Mr. Blaine Lunceford) and during the recent status survey effort (Clarke 1991), but no other snail colonies were discovered.

The nearly extirpated population is located in a marsh at the foot of a cliff in Kanab Creek Canyon. The Kanab ambersnail was once common at this site. Though once larger, this habitat was discovered to have been reduced to a long narrow marsh measuring about 46 m (150 feet) long and 15 cm (6 inches) wide in 1990. The marsh is watered by a seep, but had been partially dewatered by the installation of a ditch and drainpipe by the landowner to provide water for domestic livestock which graze in a field below. An intensive search of this habitat in 1990 revealed only three live snails (Clarke 1991).

The larger population is located in Three Lakes Canyon, a tributary drainage of Kanab Creek, about 10 km (6 miles) northwest of the town of Kanab, Utah. The Kanab ambersnail occurs throughout the marshes and wet meadows which surround the "Three Lakes" ponds, an area about 0.8 km (0.5 miles) long and up to 91 m (100 yards) wide. This population was estimated to have as many as 100,000 individuals in June 1990. Soon thereafter, a significant portion of this snail colony was

destroyed by earth-moving equipment (Clarke 1991, U.S. Fish and Wildlife Service 1991). In February 1991, the landowners were alerted by a service representative to the presence of this imperiled snail on their property. At that time, the owners indicated a willingness to conserve the Kanab ambersnail.

Federal action on this species began on May 22, 1984, when the Service published a notice of review of invertebrate wildlife for listing as endangered or threatened species, which included the Kanab ambersnail as a category 2 species (49 FR 21664). Category 2 comprises species for which the Service has information indicating the appropriateness of a proposal to list the species as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats. On January 6, 1989, the Service published an updated notice of review of animals for listing as endangered or threatened which maintained the Kanab ambersnail as a category 2 species (54 FR 554).

In 1990, the Service commissioned a status survey of candidate Utah snails, including the Kanab ambersnail. The final report was completed in April 1991 and concluded that the Kanab ambersnail was in imminent danger of extinction and that immediate action should be taken to save it (Clarke 1991). The Service considers the information developed in the 1991 report sufficient to elevate the Kanab ambersnail from a category 2 to a category 1 species. The recent precipitous decline of the snail, combined with the species' extreme vulnerability to further habitat modification or other catastrophes has prompted the Service to prepare this emergency listing (see "Reason for Emergency Determination"). In July 1991, the Service informally notified the Utah Department of Natural Resources of the Service's intent to pursue an emergency listing for the Kanab ambersnail. Pursuant to 16 U.S.C. 1533(b)(7), the Service will immediately provide the Utah Department of Natural Resources formal notice of the emergency listing.

Summary of Factors Affecting the Species

Section 4 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 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 the Kanab ambersnail (*Oxyloma haydeni* ssp. *kanabensis* Pilsbry) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* As noted previously, the Kanab ambersnail is absolutely associated with a perennially wet soil surface or shallow standing water at the two locations described earlier. This habitat type is rare in extreme south-central Utah.

The smaller population in Kanab Creek Canyon was much bigger previously, but the recent dewatering of this habitat to provide water for livestock has nearly extirpated this population.

The larger population in Three Lakes Canyon was estimated to number 100,000 snails in June 1990. Early in 1991, the open marshy area above the uppermost of the three lakes was graded in an attempt to smooth its contours to improve its aesthetic appeal for future development purposes. The private landowner had seriously contemplated draining the largest pond, which could devastate the snail population, but appears to have abandoned the idea for the time being (U.S. Fish and Wildlife Service 1991). The private landowner also has plans for building a retirement home and/or developing a recreational vehicle park and campground in the Three Lakes area, which could result in further habitat alteration or destruction.

Historically, the snail's habitat has been used for grazing purposes, which could have impacted the snails in the past and may have been a factor in the species' current limited distribution. A low level of grazing continues in the species' known habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a threat. However, the Kanab ambersnail may be vulnerable to collecting either for scientific or private shell collections.

C. *Disease or predation.* Disease and predation are not believed to be major problems affecting the continued survival of the Kanab ambersnail. The snail is preyed upon by the American robin (*Turdus migratorius*), but this is a natural condition. At present, predation is not thought to be significant to the species, provided crucial environmental factors that reduce the degree of predation are not significantly altered, such as loss of vegetative cover.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws or regulations mandate protection of the Kanab ambersnail or its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Almost all known individuals of the Kanab ambersnail are found in the Three Lakes Canyon population. This extremely localized population may be vulnerable to natural disasters such as extreme drought, flood, fire, or disease. It can also be jeopardized by human activities such as periodic burning to improve the area for cattle grazing or other economic activity, or poisoning of the ponds so that more desirable sportfish might thrive (Clark 1991). The Kanab Creek population may be nearly extirpated, but is potentially important as a source of genetic diversity (Clark 1991).

Critical Habitat

This emergency listing will not address the question of whether critical habitat should be designated for the Kanab ambersnail. Per section 4(b)(6)(C)(i) of the Act, it is not necessary to designate critical habitat concurrently with a final rule determining that a species is endangered or threatened if it is essential to the conservation of such species that the regulation implementating such determination be promptly published. The Kanab ambersnail is on the edge of extinction, and immediate listing is necessary. Emergency listing will trigger the protections of sections 7 and 9 of the Act and will allow important recovery measures to be initiated expeditiously. The question of whether to propose critical habitat will be addressed in the proposed rulemaking to list the Kanab ambersnail as endangered that will soon follow this emergency rule.

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. The protection required of Federal Agencies and the prohibitions against taking and harm 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)(2) requires Federal Agencies to insure 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 known populations of the Kanab ambersnail are on private lands. The Federal Government may have programs or regulatory authority capable of influencing privately undertaken activities in the habitat of the Kanab ambersnail. Private activities involving dredge and fill of wetlands would be required to have a 404 permit issued by the Corps of Engineers under the authority of the Clean Water Act. In addition, the landowners may avail themselves of technical assistance offered by the Soil Conservation Service for onfarm soil and water conservation programs which may affect the snail.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. Under section 9 of the Act, these prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect: or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations on animals and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia (telephone 703/358–2093; FTS 921–2093)

Reason for Emergency Determination

In February 1991, the Secretary reviewed the draft status survey on Utah snails. The near-extirpation of the Kanab Creek Canyon population and the major losses documented for the Three Lakes Canyon population were sufficient to cause the Service to consider immediately proposing the Kanab ambersnail as an endangered species.

On February 25, 1991, a Service field biologist met with the private landowners of the Three Lakes Canyon property to inform them of the existence of the Kanab ambersnail on their property and to request and encourage them to provide for the conservation of the species. At that time, the landowners explained their current activities in the wetlands area (surface soil grading in order to improve the aesthetic appeal of the their property) and their future development plans for this property (which ranged from building a retirement home to possibly developing a recreational vehicle park and campground and using the area for grazing common and exotic livestock, such as Shetland ponies and ostriches). The landowners were, however, willing to discuss the possibility of having the Service or another group such as The Nature Conservancy acquire the property. At that time, the landowners indicated a willingness to conserve the Kanab ambersnail.

On June 13, 1991, the Service field biologist received a phone call from one of the landowners. Neither the Service nor anyone else had contacted him since February 25, 1991. Among other things, the landowner was concerned about the length of time it was taking to pursue possible land acquisition. The Service field biologists explained that the process of land acquisition takes a long time and, for the Federal Government, could not begin until after the snail is listed. A listing proposal already had been prepared by the Service's field office and was undergoing review in the Service's Regional Office. Given the landowner's concerns, the Service field biologist indicated that the Service's field office would recommend expediting the listing.

The Nature Conservancy is working with the landowners in an effort to work out a mutually agreeable arrangement for land acquisition. The Service believes the landowners are willing to take conservation of the Kanab ambersnail into consideration, but the Service is concerned about the precarious status of the snail.

If the normal listing process was used to list the snail, the Kanab ambersnail would not be listed until late 1992. This length of time is unlikely to be acceptable to the landowners, who have indicated that they may proceed with their original plans to develop the property before the normal listing process could be completed. Such development could cause the extinction of the Kanab ambersnail. Thus, the Service decided this emergency rule was essential to protect the snail. Emergency listing will legally protect the snail from actions that would lead to its extinction and expedite the Service's ability to begin negotiations to acquire the property containing the largest snail population.

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 (49 FR 49244).

References Cited

Chamberlin, R.V. and D.T. Jones. 1929. A descriptive catalog of the Mollusca of Utah. Bull. of the Univ. of Utah 19(4):i–x + 1–203.

Clarke, A.H. 1991. Status survey of selected land and freshwater gastropods in Utah. Unpublished report prepared for the U.S. Fish and Wildlife Service, Denver, Colorado. 70 pp + cxii.

Ferriss, J.H. 1910. A collecting excursion north of the Grand Canyon of the Colorado. The Nautilus 23:109–112.

Pilsbry, H.A. 1948. Land Mollusca of North America. The Acad. of Nat. Sci. of Philadelphia Monographs. Vol. II (part 2):i–xlvii + 521–1113.

U.S. Fish and Wildlife Service. 1991. Supplemental status report for the Kanab ambersnail (*Oxyloma haydeni kanabensis*). U.S. Fish and Wildlife Service. Salt Lake City, Utah. 3 pp.

Authors

The primary authors of this emergency rule are John L. England, U.S. Fish and Wildlife Service (see **ADDRESSES** above, telephone 801/524–4430 or FTS 588–4430) and Nancy Chu, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado (telephone 303/236–7398 or FTS 776–7398).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, until April 3, 1992, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended 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. 99–265, 100 Stat. 3500, unless otherwise noted.

2. Amended § 17.11(h) by adding the following, in alphabetical order under "SNAILS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* *	* *	* *	*		*	*	
SNAILS							
* *	* *	* *	*		*	*	
Kanab ambersnail	*Oxyloma haydeni kanabensis.*	U.S.A. (UT)	NA	E		NA	NA
* *	* *	* *	*		*	*	

Dated: July 25, 1991.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 91–18892 Filed 8–7–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498–1098]

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

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

ACTION: Emergency interim rule; extension of effective date and request for comments.

SUMMARY: An emergency interim rule setting the Oregon Coastal Natural (OCN) coho ocean harvest rate at 46 percent and providing for management of Hood Canal coho to protect long-term productivity is in effect until August 6, 1991. The Secretary of Commerce (Secretary) extends the emergency interim rule for an additional 90 days (through November 4, 1991). This action is necessary because the conditions justifying the emergency action remain unchanged. These regulations are intended to prevent overfishing and to apportion the ocean harvest equitably among non-treaty commercial and recreational and treaty Indian fisheries. These regulations also are calculated to allow a portion of the salmon runs to escape the ocean fisheries to provide for treaty Indian and non-treaty inside fisheries and spawning escapement.

DATES: *Effective:* The emergency amendments to part 661 published at 56 FR 21328 are effective from 0001 hours Pacific Daylight Time (P.d.t.) August 7, 1991, through 2400 hours P.d.t., November 4, 1991.

Comments: Comments on the extension of the effective date of the emergency interim rule will be accepted until August 22, 1991.

ADDRESSES: Comments on the extension of the effective date of the emergency interim rule may be submitted to, and copies of the environmental assessment may be obtained from, Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule on May 8, 1991, which was published with the notice of the 1991 fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California (56 FR 21311). The emergency rule provided for two deviations from the regulations implementing the 1984 framework amendment to the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California. The ocean harvest rate for OCN coho was reduced from 53 percent to 46 percent to compensate for an apparent faulty ocean abundance predictor that would have allowed an insufficient number of natural spawners to escape the ocean fisheries to meet spawning needs. An ocean coho salmon total allowable catch north of Cape Falcon, Oregon, is established that does not meet the 19,100 fish spawning escapement goal because that goal could not be attained without almost complete closure of both non-treaty and treaty ocean and inside fisheries. There was no biological evidence to indicate that reducing the ocean total allowable catch to 200,000 coho would justify the economic hardships and dislocation that would result. Therefore, an ocean harvest of 320,000 coho was specified that would result in a difference of 400 spawners.

This rule became effective May 2, 1991, and remains effective for 90 days after the publication date, through August 6, 1991. At its July 10–12, 1991, meeting in Seattle, Washington, the Pacific Fishery Management Council recommended this extension. The Secretary concurs and extends the emergency interim rule for an additional 90 days, under section 305(c)(3)(B) of the Magnuson Act, because conditions justifying the emergency action remain unchanged. The 90-day extension will allow continuation of the management regime for the ocean salmon fisheries through the end of the 1991 fishing season. All provisions of the emergency interim rule remain in effect through November 4, 1991.

Response to Comments Received

Comment: The commenter stated that the 1991 ocean fishery management

measures do not provide sufficient protection for stocks that have been petitioned for listing under the Endangered Species Act (ESA), specifically Snake River spring, summer, and fall chinook salmon and lower Columbia River coho salmon. The commenter also asserted that Snake River fall chinook salmon need a harvest reduction of at least 35 to 40 percent if they are to continue to exist.

Response: Proposed rules to list Snake River spring/summer and fall chinook salmon as threatened species under the ESA were published in the **Federal Register** on July 27, 1991 (56 FR 29542 and 29547). On the same date, a notice of determination was published announcing that lower Columbia River coho salmon do not constitute a "species" under the ESA. Therefore, a proposal to list is not warranted at this time (56 FR 29553). At the request of the Pacific Fishery Management Council (Council), the Salmon Technical Team (Team) assessed the impacts of the 1991 management measures on Snake River spring, summer, and fall chinook salmon stocks by ocean salmon fisheries off the coasts of Washington, Oregon, and California. This assessment is included in the Team's "Preseason Report III, Analysis of Council-Adopted Management Measures for 1991 Ocean Salmon Fisheries." Snake River spring/summer chinook salmon are minor contributors (5 percent or less) to the fisheries off Washington, Oregon, and California. Since the stocks contribute to the fishery at a very low level, the impacts of the 1991 management measures are relatively minor. With respect to Snake River all chinook salmon, the fishery impacts of the 1991 management measures were estimated to reduce the total ocean exploitation rate by 20 percent relative to 1990 harvest rates. This reduction coupled with the proposed improvements in the freshwater environment are expected to result in increased numbers of spawners. There is no current information supporting the commenter's assertion that a harvest reduction of at least 35 percent to 40 percent is needed.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule was reported to the Director of the Office of Management and Budget with an explanation of why following the procedures of that order was impracticable.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Recordkeeping and reporting requirements.

Dated: August 2, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-18806 Filed 8-5-91; 11:17 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56. No. 153
Thursday, August 8, 1991

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 356

RIN 3064-AA94

Insider Transactions—Conflicts of Interest

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to add a new part to its regulations that would: (1) Provide that business dealings (other than extensions of credit) between an insured nonmember bank and its directors, executive officers, principal shareholders and related interests of such persons ("bank insiders") must meet an arms-length standard, (2) require that covered business dealings be approved by the bank's board of directors in advance if the dollar value of the business dealings exceeds a certain aggregate figure, (3) require bank insiders to disclose their conflicts of interest, (4) provide for certain recordkeeping requirements, (5) require the bank's board of directors to adopt written guidelines governing covered business dealings, and (6) prohibit insured nonmember banks from investing in real estate in which any of the bank's directors, executive officers, principal shareholders or related interests of such persons has an equity interest.

DATES: Comments must be received no later than October 7, 1991.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F-402, 1776 F St., NW., Washington, DC 20429 on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F-402 between 8:30 a.m. and 5 p.m. on business days. (FAX number: (202) 898-3838).

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Counsel, (202) 898-3730, Legal Division, FDIC, 550 17th Street, NW., Washington, DC, 20429; Michael Jenkins, Examination Specialist, (202) 898-6896, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429; or David S. Holland, Senior Financial Analyst, (202) 898-3947, Division of Research and Statistics, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to Steven F. Hanft, Assistant Executive Secretary (Administration), room F-453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The collection of information in this regulation is in §§ 356.4(a), (b), and (d), 356.5(c) and (d), 356.6, 356.7, and 356.8. This information is required by the Federal Deposit Insurance Corporation so that examiners can ensure that boards of directors of banks properly discharge their fiduciary obligations. It will also aid significantly in the detection and investigation of insider fraud and abuse. Banks should directly benefit from the requirement to maintain the records as the collected information will help them to monitor insider transactions and prevent transactions from arising that are not in the best interests of the bank.

It is estimated that all but 700 of the banks covered by this proposed regulation are already in compliance. Therefore, the estimated annual reporting burden for the collection of information in the regulation is summarized as follows:

Number of Preparers: 700.

Number of Policies and Record Systems Prepared: 1.

Total Annual Preparations: 700.

Hours Per Policy and Record System: 32.

Total Annual Burden Hours: 22,400.

Discussion of Proposed Regulation

The proposal is designed to address conflicts of interest in two areas and can be divided into two segments. The first major portion of the proposal consists of provisions covering the business dealings, other than extensions of credit, between an insured nonmember bank and its directors, executive officers and principal shareholders, as well as their related interests ("bank insiders"). The second segment of the proposal carves out business dealings involving investments in real estate and establishes a prohibition on an insured nonmember bank investing in real estate in which one of its insiders has an equity interest. While the second category of transactions is prohibited, the first is merely subjected to a requirement that business dealings must meet an arms-length type standard, must receive board approval in certain instances, and must be recorded by the bank. The purpose, basis and need for the proposal, as well as the specific details of the various provisions of the proposal, are discussed at length below.

Basis and Purpose

The purpose of the proposal is to establish certain requirements designed to ensure that business dealings between insured nonmember banks and the bank's insiders are conducted in the arm's length fashion necessary to promote safe and sound banking including adequate review and control by the bank's board of directors.[1] Where the risks that arise from the conflicts of interest are considered too great (*i.e.*, in the case of investments in real estate along with insiders) the business dealing is prohibited. The reason the FDIC feels that there is a need to propose this regulation is set out below.

In today's complex, competitive and rapidly changing banking environment,

[1] The proposal only addresses FDIC-insured State chartered banks that are not members of the Federal Reserve System ("insured nonmember banks"). It is the FDIC's understanding that the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System are considering similar action for national banks and State banks that are members of the Federal Reserve System, respectively.

it is imperative for all members of a financial institution's management team to be aware of the responsibilities entrusted to them and to discharge those responsibilities in a manner that will ensure the stability and soundness of the institutions they serve. This is necessary so that the financial institutions will be able to provide the communities in which they are located the financial services for which they were created. In order to adequately fulfill its responsibilities, management needs to avoid self-serving practices and conflicts of interest that could endanger the institution's safety and soundness and undermine confidence in the financial system. Management must act so as to put the performance of their duties above personal gain and must never abuse, for personal advantage, their influence with respect to the institution's management. Insider abuse is a threat to safety and can lead to insolvency. Left unchecked, insider abuse could eventually threaten the solvency of the federal deposit insurance fund.

Over the past several years the FDIC has encountered insider abuse and fraud in banks in numerous instances. Significant insider abuse was identified in 42% of the 184 banks that failed in 1987; 31% of the 200 banks that failed in 1988; and 25% of the 206 banks that failed in 1989. Insider fraud has accounted for over one half of *all* the financial institution fraud and embezzlement cases brought by the FBI during the past several years. The total losses involved in those cases amount to several hundred million dollars.

Insider abuse and fraud is not confined to the loan area. The FDIC has seen losses stemming from other practices as well. The following are examples thereof:

(1) Failure by an insider to disclose that his/her interests have business dealings with the bank;

(2) Diversion of bank assets and income by an insider for the insider's own use;

(3) Abuse of expense accounts by insiders;

(4) Existence of insider "perks" such as expensive automobiles, boats, airplanes and housing which are excessive for the extent and type of business conducted by the bank;

(5) Approval of questionable transactions that involve an insider's relatives;

(6) Acceptance of bribes and gratuities;

(7) Sale by a bank of its assets to an insider or to an insider's related interest for less than fair market value;

(8) Purchase by a bank of assets from an insider or an insider's related interest for more than fair market value;

(9) Exclusive or extensive use of the related interest of an insider to perform services for the bank at inflated prices that result in significant financial gain for the related interest;

(10) Purchase of furniture, fixtures and leasehold improvements by a bank from an insider or an insider's related interest at fair market value but in amounts that are excessive given the bank's needs, financial condition and business plan;

(11) Payment of fees to the related interest of an insider for services that were never rendered; and

(12) Compensating insiders in excessive amounts on the basis of work performed for the benefit of the insider rather than for the benefit of the bank.

The FDIC's past experience has shown that insider abuse is difficult to detect. What is more, investigations for insider fraud and abuse, when suspected, are very time consuming. Our experience has shown that the lack of adequate recordkeeping nearly always contributes to insider abuse and that investigations for such abuse are often hampered by the lack of adequate records. It is typical to find in the case of fraud and abuse that the institution involved lacked policies and procedures designed to detect insider involvement in transactions early enough to prevent abuse. In short, the internal routines and controls of the banks in question were inadequate in the monitoring of insider conflicts. It is the FDIC's strong opinion that policies governing insider transactions and adequate recordkeeping are imperative if a bank is to be managed in a safe and sound manner. A board of directors is not properly discharging its fiduciary obligations unless it pays sufficient attention to these issues. Proper policies and procedures would include reviewing and acting upon any significant transactions in which an insider or a related interest of an insider is involved either directly or indirectly. Such transactions should not be permitted to arise unless the transaction is in the best interests of the bank.

The dangers presented by transactions by bank and thrift insiders with their institutions have been well-documented. A General Accounting Office review of regulatory and examination documents related to the 184 insured banks that failed in 1987 found some form of insider abuse in 64 percent of the cases.[2] Poor quality loans to directors or officers were present in 22 percent of the banks, and an excessive number of loans to directors or officers in 17 percent.

Another General Accounting Office study, this one of 26 thrifts that failed between January 1, 1985, and September 30, 1987, found conduct amounting to fraud and insider abuse in 100 percent of the cases.[3] In its cover letter transmitting the study to Congress, the GAO stated: "Serious internal control weaknesses contributed significantly to virtually all of these thrift failures." [4] A 1988 congressional committee report on fraud, abuse, and misconduct in federally insured financial institutions found that over three-fourths of S&L insolvencies were linked to serious abuses by insiders.[5] In a study of bank insider borrowing, Kummer, Arshadi, and Lawrence concluded that "excessive insider borrowings are associated with inferior performance." [6] Their study covered a sample of banks for the years 1984 through 1987 and further concluded that banks with high levels of insider borrowings had relatively lower returns on equity and relatively higher failure rates. A study by the Comptroller of the Currency of 171 national banks that failed between 1979 and 1987 found insider abuse and fraud to be significant factors in more than one-third of the cases.[7] All but 7 percent of the banks had significant internal problems related to management.

In addition to establishing certain requirements governing insider business dealings, the FDIC proposes to prohibit one class of insider dealing, investments by an insured nonmember bank in real estate in which a bank insider has an equity interest. There are two interrelated reasons for the prohibition: (1) Real estate investment activities where otherwise authorized involve significantly greater degrees of risk than

[2] General Accounting Office, *Bank Failures: Independent Audits Needed to Strengthen Internal Control and Bank Management*, GAO/AFMD-89-25 (May 1989), at 25, 27. Using narrower criteria requiring a more substantial showing of insider abuse, the FDIC has identified such abuse in 42 percent of the banks that failed in 1987.

[3] General Accounting Office, *Thrift Failures: Costly Failures Resulted From Regulatory Violations and Unsafe Practices*, GAO/AFMD-89-62 (June 1989), at 23.

[4] *Id.*, at 1.

[5] *Combating Fraud, Abuse, and Misconduct in the Nation's Financial Institutions: Current Efforts Are Inadequate*, House Government Operations Committee, House Report No. 100-1088, October 13, 1988, at 10.

[6] Donald R. Kummer, Nasser Arshadi, and Edward C. Lawrence, "Incentive Problems in Bank Insider Borrowing," 3 *Journal of Financial Services Research* (1989) 17, 29.

[7] "An Evaluation of the Factors Contributing to the Failure of National Banks: Phase II," 7 *Quarterly Journal*, Comptroller of the Currency (1988 No. 3) 9.

do most other activities in which banks are permitted to engage, and (2) the dangers of bank real estate investment activities are exacerbated when a bank insider has an interest in the real estate.

With regard to the first reason, a number of factors make real estate investment activities more risky than most permissible bank activities. As a general matter, making equity investments in any given industry is more risky than making loans to individuals or business entities engaged in activities in the industry. Investors are usually risk takers fully aware of the rewards and losses that can result from their decisions. Lenders, on the other hand, normally make greater efforts to minimize risk. Although loans can be risky, they are often repaid in full even when a project shows no profit or shows a loss. Returns on equity investments are dependent upon the eventual success of a project, and a project that does not show a profit can result in a total loss for the equity holder. Another consideration arising from the distinction between loans and equity investments is that projects offered to financial institutions for direct investment are probably riskier than projects for which straight loans are sought. Real estate developers are likely to be less willing to share the rewards of equity that are provided by their better projects.

The profitability of many real estate investments depends on two factors: (1) Income, and (2) capital appreciation. Income to be derived from a project can be estimated in advance with at least a small degree of confidence, but capital appreciation is much more subject to the vagaries of the marketplace.[8] Thus, to the extent that the profitability of a particular real estate investment rests upon hopes of capital appreciation rather than on estimates of operating revenues, expected returns are largely speculative.

The cyclical nature of real estate markets contributes to the riskiness of real estate investments by increasing the volatility of the returns on those investments. Time lags between initial construction and the final completion of real estate development projects are both a cause of these cycles and a major hazard for real estate equity investors. Projects initiated when markets are strong are often completed after the markets have weakened, the result being that the profit expectations of equity investors cannot be met in the deteriorated market. In fact, instead of profits being made, losses are incurred.

A prime recent example of the devastating nature of real estate cycles is provided by Texas real estate markets during the 1980s. For much of the decade, growth in office space outpaced growth in office employment. The over building resulted in office vacancy rates of 25 to 30 percent in the major metropolitan areas in the years 1986 through 1989.

Real estate investments present still other difficulties for banks. Compared to many bank assets, real estate equity investments are illiquid. In periods of economic distress when cash flow considerations are most likely to require the selling of assets, real estate assets might be particularly difficult to dispose.

Information gaps involving real estate can increase the riskiness of real estate investment activities. Millions of active traders and frequent transactions keep stock prices near their "true" or realizable value. The thinness of real estate markets, on the other hand, makes them more prone to pricing errors. Knowledge about a given property is likely to be highly specialized and costly to obtain because there may be a mere handful of potential buyers having an interest in a property's value at any given time.

Moreover, few transactions involving similar, neighboring properties may have transpired in the recent past. Thus buyers and sellers may have little guidance as to what prices are "realistic." Locating those who have the best information may be difficult, especially if the potential buyer, or seller, is not familiar with the local real estate market. The high cost of obtaining adequate information creates a significant probability that uneconomic purchases and sales will be made. The problem is compounded by the need to diversify real estate investments geographically for safety purposes. Real estate investors may be exposed to markets about which they have little first-hand knowledge.

A number of studies have confirmed the relatively risky nature of real estate investments.[9] From a portfolio analysis standpoint, the fact that real estate activities are more risky than most banking activities does not necessarily mean that bank investments in real estate are unwise. In theory, the addition of risky assets to a portfolio can sometimes reduce the variability of the portfolio's earnings. Such a result would occur if a "risky" asset produced most of its earnings when earnings from the rest of the portfolio were weak but produced few earnings when earnings from the rest of the portfolio were strong. Several studies, however, have concluded that the theoretical benefits from the diversification of banks into real estate investment activities are minimal at best.[10]

[8] For example, the FRC Property Index, which measures the historic performance of income-producing properties owned directly and indirectly by certain institutional investors, had one-year returns ranging from 5.7 percent to 14.8 percent for the years 1983 through 1989 (see Table I). The income portion of the returns showed little volatility, ranging from 6.8 percent to 8.0 percent. The capital appreciation portion of the returns, on the other hand, varied significantly: the low was −1.3 percent, and the high was 7.1 percent.

TABLE I—RETURNS FOR FRC PROPERTY INDEX ONE-YEAR PERIODS ENDING 3RD QUARTER

[In percent]

	Income	Appreciation	Total
1989	6.8	−0.1	6.7
1988	7.0	−0.2	6.8
1987	7.0	−1.3	5.7
1986	7.3	0.3	7.7
1985	7.5	3.0	10.7
1984	7.3	7.1	14.8
1983	8.0	2.9	11.0

Source: *The NCREIF Real Estate Performance Report, Third Quarter 1989.*

[9] Richard J. Rosen, Peter R. Lloyd-Davies, Myron L. Kwast, and David B. Humphrey, "New Banking Powers: A Portfolio Analysis of Bank Investment in Real Estate," 13 *Journal of Banking and Finance* (1989) 355. Steven Felgran, "Bank Participation in Real Estate: Conduct, Risk, and Regulation," *New England Economic Review* (November/December 1988) 57. Other studies that have found more variability in returns from the real estate industry than in returns from the banking industry include: L. Wall and R. Eisenbeis, "Risk Considerations in Deregulating Banking Activities," 6 *Economic Review*, Federal Reserve Bank of Atlanta, (May 1984) 12; J. Boyd, G. Hanweck, and P. Pithyachariyakul, "Bank Holding Company Diversification," *Proceedings of a Conference on Bank Structure and Competition*, Federal Reserve Bank of Chicago, (1980) 105; and P. Eisemann, "Diversification and the Congeneric Bank Holding Company," 7 *Journal of Bank Research* (Spring 1976) 68.

[10] Felgran, *supra* note 5, at 71. (Felgran concluded that the real estate share of a bank's portfolio could not exceed 6 percent before the portfolio became more risky). Rosen, Lloyd-Davies, Kwast, and Humphrey, *supra* note 4, at 357–355. (Rosen, Lloyd-Davies, Kwast, and Humphrey found the diversification benefits of real estate investments by banks to be either nonexistent or extinguished at a level of 4 percent of assets). G.S. Sirmans, "Deriving a Thrift Institution's Efficient Frontiers in Constrained and Unconstrained Environments," Office of Policy and Economic Research, Federal Home Loan Bank Board (Nov. 29, 1984), and "Reestimation of a Thrift Institution's Efficient Frontiers," Office of Policy and Economic Research,

Continued

Moreover, even if some benefits of diversification into real estate investment activities exist, there are practical problems in achieving them. Adequate diversification requires diversification in terms of both number and location of investments. Indeed, in most of the studies concerning the variability of returns on real estate investments, the real estate data were aggregated for a number of projects. The return on any individual real estate investment could show a substantial deviation from the mean return of the investments in the data set. Achieving adequate diversification in terms of number of investments, however, can tax the financial and analytical capabilities of many prospective real estate investors.

Regarding geographic diversification, a real estate investor who does not diversify geographically is most likely subject to greater risk than one who does. The reason is that real estate investments in any particular area are usually strongly correlated. On the other hand, investors who do try to diversify geographically may expose themselves to markets about which they have little knowledge.

In summary, real estate investment activities are risky activities. Furthermore, any portfolio benefits from the inclusion of real estate investments in bank portfolios are minimal at best and are negated by practical problems involving investment diversification. As indicated above, it is the FDIC's view that the dangers of real estate investment are exacerbated when a bank insider has an interest in real estate along with the bank.[11] A review of some of the specific types of internal problems in failed national banks reveals situations that might be particularly likely to give rise to difficulties when banks and insiders are allowed equity interests in the same real estate transaction. Among the problems found in the Comptroller's study, along with the percentage of banks experiencing the problems, were the following:

Nonexistent or poorly followed loan policies (81%);

Inadequate systems to ensure compliance with internal policies or banking laws (69%);

Inadequate controls or supervision of key bank officers or departments (63%);

Decisions made by one dominant individual, such as the CEO, chairman, or principal shareholder (57%);

Nonexistent or poorly followed asset and liability management policies (49%); and

Inappropriate lending policies, including liberal repayment terms, lax collection practices, and loose credit standards (86%).

These types of problems are likely to be exacerbated in situations in which a bank and a bank insider have interests in the same real estate transaction or project.

One area in which the existence of common interests poses particular difficulties concerns appraisals. Real estate appraising is not an exact science, and inaccurate appraisals contributed to the difficulties experienced by banks and thrifts in the 1980s. Indeed, the purpose of title XI ("Real Estate Appraisal Reform Amendments") of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") was to bring about reform in the appraisal industry. The existence of a common equity interest with an insider in a real estate project may prevent a bank from reviewing an appraisal with sufficient objectivity. The bank insider may be able to influence both the appraisal process and the bank's review of that process.

Another area that could produce difficulties when a bank and an insider are both involved in real estate equity investments is portfolio selection. A bank allowed to invest in real estate projects should select projects on the basis of the impact on its entire portfolio of loans and investments. The correlation between the project's risk and return and the remainder of the portfolio's risk and return needs to be considered. An unbiased examination of these considerations is difficult if an insider also has an interest in the real estate project.

To summarize, insider transactions are not easily policed. They have been a major contributor to bank and thrift troubles in the 1980s. The problems that arise from insider transactions, and the extreme difficulties encountered in supervising those transactions, are only amplified when the subject of a transaction is a risky activity such as a real estate equity investment. We therefore conclude that investments by an insured nonmember bank in real estate in which a bank insider has an equity interest should be prohibited.

Statutory Authority

As discussed at length above, the FDIC has determined that insider business dealings have given rise to unsafe and unsound banking practices that have resulted in losses to the deposit insurance fund. In order to prevent those losses from occurring the FDIC is proposing the regulatory action more fully described below. The FDIC's action in doing so is fully consistent with the FDIC's purpose and is authorized by sections 6, 8, 9, and 30 of the Federal Deposit Insurance Act ("FDI Act", 12 U.S.C. 1816, 1818, 1819, and 1831(g)).

The FDIC has the broad general authority to adopt these regulations under section 9 of the FDI Act which authorizes the FDIC to issue whatever regulations "it may deem necessary to carry out the provisions of the (Federal Deposit Insurance Act) or of any other law which it has the responsibility of administering or enforcing * * *" 12 U.S.C. 1819 (Tenth). Pursuant to this authority the FDIC may adopt substantive regulations designed to further the purposes for which the federal deposit insurance system was established. It is settled that binding legislative-type rules based on general rulemaking authority may be issued so long as the rules are reasonably related to the purpose of the enabling legislation containing the general rulemaking authority. *Mourning* v. *Family Publications Services*, 411 U.S. 336, 369 (1973) (quoting *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, 280–281 (1969). It is clear from the legislative history of the FDI Act that in the shadow of the banking collapse Congress sought to restore public confidence in the banking system, promote safe and sound banking practices, eliminate runs on banks by depositors, and safeguard deposits. It did so through the mechanism of providing for a system of federal deposit insurance and creating the FDIC to administer the deposit insurance program. *FDIC* v. *Allen*, 584 F.Supp. 386 (E.D. Tenn. 1984). Administering that program means, among other things, taking action to protect the solvency of the deposit insurance fund. As the safety and soundness of the deposit insurance fund is inextricably linked with the safety and soundness of insured banks, *Federal Deposit Insurance Corporation* v. *Citizens State Bank*, 130 F.2d 102, 104 n.6 (8th Cir. 1942), and the FDIC is directed under section 11(f) of the FDI Act to pay

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Federal Home Loan Bank Board (Dec. 10, 1985). (Sirmans found portfolio benefits only at very low levels of direct real estate investment by the thrifts. Depending on the real estate data used, portfolio benefits disappeared when direct real estate investments exceeded either 2.8 percent or 9.5 percent of total assets).

[11] The FDIC is presently undertaking a review of "expanded" powers and is studying real estate investment as well as other activities in conjunction with that study. It is possible that as a result of that study the FDIC will propose to limit or prohibit real estate investment activities on the part of insured institutions.

insured deposits whenever an insured depository institution is closed "on account of inability to meet the demands of its depositors" (12 U.S.C. 1821(f)), the FDIC must preserve the solvency of the insurance fund in order to fulfill its mandate when called upon. Any banking practice that may jeopardize bank safety and soundness and which could ultimately affect the deposit insurance fund is therefore a proper target of the FDIC's regulatory oversight.

From the outset it was recognized that in order to safeguard the banking system, the FDIC must have the ability to admit to the insurance fund only sound banks. Almost more importantly, however, it was also recognized that the FDIC must also have the ability to supervise banks on an ongoing basis. 79 Cong. Rec. 6743 (May 1, 1935, remarks of Rep. Dirksen); H.R. Rep. No. 74–742, 74th Cong. 1st Sess. 3 (1935); 79 Cong. Rec. 6944 (May 4, 1935, remarks of Rep. Farley); 79 Cong. Rec. 6945 (May 4, 1935, remarks of Rep. Spence); Hearing before the Committee on Banking and Currency, House of Representatives, 74th Cong. 1st Sess. 48, 67, 72–74, 90, 99, 109 (1935) (testimony of Leo T. Crowley, Chairman, FDIC).

The surest way to defeat deposit insurance and to bring about another paralysis of our banking is to deny to the Corporation its right to examine banks before and after they are admitted to the Fund and to make it a mere disbursing agency without a voice in the supervision of going banks and the liquidation of closed banks. 79 Cong. Rec. 6922 (May 3, 1935, remarks of Rep. Igoe).

The FDIC was, therefore, clearly intended to act on an ongoing basis to bring about the purposes for which the deposit insurance system was created and to do so pursuant to regulations reasonably expected to accomplish those goals.

The ability of a federal bank regulatory agency to adopt regulations in harmony with the types of concerns described above based upon general rulemaking authority was judicially recognized long ago. *Continental Banking and Trust Company* v. *Woodall*, 239 F.2d 707, 710 (10th Cir.), *cert. denied*, 353 U.S. 909 (1957). It was reaffirmed by the D.C. Circuit in a case involving a challenge to a regulation adopted by an agency which at the time was another federal insurer of deposits. *Lincoln Savings and Loan Association* v. *Federal Home Loan Bank Board*, 856 F.2d 1558 (D.C. Cir. 1988). The D.C. Circuit Court of Appeals held that the Federal Home Loan Bank Board ("FHLBB") (the predecessor agency to the Office of Thrift Supervision) had the authority to regulate the direct investments of institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") based upon that agency's general authority to prescribe rules and regulations to carry out the purposes of the National Housing Act (12 U.S.C. 1725(a)). The FHLBB had determined that the increasing trend of thrifts to make direct investments (primarily in the area of real estate) had a direct correlation to increasing financial difficulties in thrifts. In short, such investments were found to pose undue risks to FSLIC insured institutions and the FSLIC insurance fund and FHLBB acted accordingly to prohibit or restrict those investments. Appellants charged that FHLBB's general rulemaking authority only extended to the authority to adopt rules governing the insurance fund itself and would not support the FHLBB's action. In response the court said,

> [The National Housing Act] is concerned with far more than the operations of the FSLIC. It deals with every aspect of the savings and loan insurance program, one of whose specific purposes is to protect savings through a system of deposit insurance. The ability of the FSLIC to provide that protection depends in substantial part on the integrity of the fund created under the NHA to meet potential claims. As in the case of other insurers, it is to be expected that the FSLIC would take measures from time to time to require insured institutions to meet certain standards as a condition to continued protection. Otherwise, excessive risks created by the improvident practices of certain institutions could jeopardize the FSLIC's ability to meet its commitments to depositors nationwide. Therefore, absent evidence that Congress intended otherwise, it appears to us that the Board's authority to issue the challenged rule is inherent in its mandate, under section 1725(a), to prescribe the rules and regulations required for carrying out the purposes of the (National Housing Act). *Lincoln*, 1561.

As the purpose of the National Housing Act is very similar to the FDI Act and the general rulemaking authority conferred on the FHLBB thereunder is virtually identical to that conferred on the FDIC by section 9 of the FDI Act, it stands to reason that section 9 (FDIC's general rulemaking authority) would be found by a reviewing court to be sufficient authority for the Board of Directors' to propose this regulation.

There is additional support for the Board's action, however, elsewhere in the FDI Act.[12] The FDIC was given the authority, and the responsibility, under section 8 of the FDI Act to ensure that banks observe safe and sound banking practices. This was done so that the FDIC might act to ensure that the banking system will function properly; that the public confidence in the banking system does not falter; and that the solvency of the deposit insurance fund is not endangered due to bank failures. Over the years the FDIC's enforcement powers have been strengthened by Congress in an ever increasing recognition that the FDIC needs strong tools to accomplish its purposes. A wide latitude of discretion was given to the FDIC "in filling in and administering the details embodied by the general standard" in the FDI Act to promote safe and sound banking practices. *Independent Bankers Association* v. *Heimann*. 613 F.2d 1164, 1169 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980). what is and is not an unsafe or unsound banking practice and what constitutes an unsafe or unsound condition is left to the FDIC to determine in its expertise as "* * * one of the purposes of the banking acts is clearly to commit the progressive definition and eradication of (unsafe and unsound banking) practices to the expertise of the appropriate regulatory agencies." *Groos National Bank* v.

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[12] In general the FDIC carries out its functions through a system of supervision, regulation, and examination. The FDIC is required by statute (12 U.S.C. 1815) to grant or deny deposit insurance to state chartered nonmember banks and branches of foreign banks, based upon the agency's evaluation of the factors set forth in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816). Among the factors listed therein is whether or not the applicant's corporate powers are consistent with the purposes of the FDI Act. The FDIC may issue cease and desist orders against an insured nonmember bank or any insured branch of a foreign bank (with certain limitations, see 12 U.S.C. 1813(q)) that is engaging in, or about to engage in, any unsafe or unsound banking practice (12 U.S.C. 1818(b)) and may terminate deposit insurance for any insured bank or insured branch of a foreign bank in accordance with the provisions of section 8(a) of the FDI Act if an institution is engaging in an unsafe or unsound banking practice or is in an unsafe or unsound condition (12 U.S.C. 1818(a). The FDIC is specifically directed to prescribe regulations to carry out the provisions of a newly enacted section of the FDI Act (section 30) which prohibits insured depository institutions from entering into any contract under which goods, products, or services would be provided to the institution if the performance of the contract would adversely affect the institution's safety or soundness. (12 U.S.C. 1831(g)). The FDIC may examine any state chartered insured nonmember bank and any insured state branch of a foreign bank and may conduct special examinations of any other insured bank or affiliate thereof. (12 U.S.C. 1820). The FDIC is empowered to require reports as it deems necessary to carry out its functions (12 U.S.C. 1817(a)) and as described above may prescribe rules and regulations as it deems necessary to carry out the provisions of the FDI Act (12 U.S.C. 1819). Upon the failure of any insured bank the FDIC is required by statute to pay the insured deposits of said institution as soon as possible (by cash or by making available to each depositor a transferred deposit in another insured institution). (12 U.S.C. 1821(f).)

Comptroller of the Currency, 573 F.2d 889, 897 (5th Cir. 1978). The FDIC may do so either by order or regulation. It was established by the court in *Heimann* that the Office of the Comptroller of the Currency, which has the authority to initiate a cease-and-desist action against a national bank, is not confined to initiating individual enforcement actions under section 8 but may, at its discretion, adopt substantive regulations defining what constitutes an unsafe or unsound practice and what practices involve the violation of particular statutes or regulations.

(A) Regulation giving advance notice of conduct which the Comptroller disapproves as threatening to the safety and soundness of the banks he regulates is wholly consistent with the statutory scheme * * *. His ability to forewarn by specifying and clarifying the nature and scope of his concerns will at the same time minimize the necessity for recurrent and costly investigation into the conduct of the many individual banks under his supervision. *Heimann*. 1168–1169.

That the principle in *Heimann* applies equally in the case of other federal financial regulators which were given cease-and-desist authority over the institutions they supervise was made clear in *Lincoln*, 856 F.2d at 1563. The *Lincoln* court citing *Heimann* as precedent equally applicable to the FHLBB found that the FHLBB's power to issue an order to cease-and-desist engaging in an unsafe and unsound banking practice carries with it the authority to announce by regulation what constitutes an unsafe or unsound banking practice. Like the Comptroller of the Currency and the FHLBB, the FDIC can rely upon the provisions of the FDI Act granting it authority to issue cease-and-desist orders (section 8(b)) and to promulgate rules with respect to such proceedings (section 8(n)) as authority for this regulation.

The proposed rule is also authorized by section 8(a) of the FDI Act. As indicated above, section 8(a) permits the FDIC to terminate deposit insurance when it is determined that an institution is in an unsafe or unsound condition. That provision provides the authority for the adoption of substantive rules designed to protect bank safety and soundness and protect the deposit insurance fund in much the same way that section 8(b) authorizes the adoption of substantive regulations. The FDIC is permitted to announce by regulation the banking practices which it has determined to be unsafe and unsound and thereby forewarn of the circumstances in which termination of deposit insurance may be sought. *National Council of Savings Institutions* v. *Federal Deposit Insurance Corporation*, 664 F.Supp. 572 (D.D.C. 1987).

Section 6 of the FDI Act represents an additional source of authority for the FDIC to adopt the proposed regulation apart from that derived from the FDIC's authority to terminate insurance and to issue cease-and-desist orders. Section 6 provides the FDIC with express authority to determine what activities are appropriate to banking in light of the federal deposit insurance safety net. Before a bank receives deposit insurance the FDIC must be satisfied that the bank will exercise its corporate powers properly, that those powers are not inconsistent with the purposes for which the deposit insurance system was established, and that the admission of the bank to the deposit insurance system will not pose an undue risk to the fund. The FDIC's ability to determine what corporate powers of an insured bank are consistent with the purposes of the FDI Act in essence creates a fundamental condition of deposit insurance. This provision of the Act confers an important power and responsibility on the FDIC to assess its insurance risk and the corollary responsibility and authority to take steps to limit that risk. Clearly then, Congress intended for the FDIC to have effective means to define those powers by banks that would be inconsistent with their entry into, or continued presence in, the deposit insurance fund. That intent is evidenced by the Act's legislative history.

Lastly, the proposal is in part specifically authorized by section 30 of the FDI Act which, as referenced above, prohibits insured depository institutions from entering into certain contracts that could adversely effect their safety and soundness.

Section 30 specifically directs the FDIC to adopt regulations to carry out the purposes of, and prevent evasions of, that section.

The proposal is not an unreasonable, nor unwarranted, intrusion upon the exercise of powers granted insured nonmember banks by their chartering authority nor is it an unlawful preemption of state law. In fact, any conflict between the proposal and state law is not properly considered a preemption as membership in the federal deposit insurance system is voluntary for state nonmember banks. *Lincoln*, 856 F.2d at 1562. Even if the rule is characterized as a preemptive rule, when an institution seeks deposit insurance, it agrees to be governed by the FDIC's rules and regulations. The dual banking concept does not require the FDIC to abdicate its responsibilities to carry out the purposes of the FDI Act. *Lincoln*. Lawfully promulgated regulations within the authority of a federal agency may preempt state law. *City of New York* v. *FCC*, ____ U.S. ____, 108 S.Ct. 1637, 1642 (1988); *Louisiana Public Service Comm* v. *FCC*, 476 U.S. 355 (1986); *Fidelity Federal Savings and Loan* v. *De La Cuesta*, 458 U.S. 141 (1982); *Conference of State Bank Supervisors* v. *Conover*, 710 F.2d 878 (D.C. Cir., 1983). Such regulations will be upheld if they represent a reasonable accommodation of policy choices left to the discretion of the agency and the agency has not acted arbitrarily nor has exceeded its statutory authority. The agency's statute need not expressly authorize the agency to adopt preemptive regulations. The policy choices left to agency discretion should not be disturbed unless it appears from the statute or its legislative history that the policy choice made is one that Congress would not have sanctioned. *U.S.* v. *Shimer*, 367 U.S. 374 (1961); *De La Cuesta*. The definition of what is and is not an unsafe or unsound banking practice has been clearly left to the FDIC's discretion and the policy choice embodied in this proposal is undeniably consistent with the FDIC's purpose.

Summary of Proposal

1. Prohibited Transactions

Business Dealings—Under § 356.3(a)(1) of the proposal, an insured nonmember bank is prohibited from entering into any insider transaction unless certain conditions are met. For the purposes of part 356 an "insider transaction" is any business dealing with a director, executive officer, principal shareholder or any related interest of any such person in connection with which the director, executive officer, principal shareholder or related interest receives any direct or indirect economic benefit. The FDIC considered covering any business dealing which "benefits" an insider in some fashion as an insider transaction.

For the purposes of the proposal, however, the Board of Directors opted to propose covering only those transactions that provide an economic benefit to a bank insider. Comment is specifically requested on whether the regulation should cover as an insider transaction any transaction in which one can identify a quid pro quo that benefits a bank insider.

Section 356.2(a) of the proposal defines "business dealing" to include: (1) The sale, purchase or other conveyance of assets, goods or services to or from an insured nonmember bank;

(2) the use of the bank's facilities, real or personal property, or its personnel; (3) the lease of property, equipment or other assets to or from an insured nonmember bank; (4) the payment by the bank of commissions and/or fees, including, but not limited to, brokerage commissions and management, consultant, architectural and legal fees; (5) service agreements; and (6) the payment of interest on deposits to the extent that the rate of such interest exceeds the amount paid to other depositors on similar deposits. It should be noted that it is the FDIC's opinion that § 356.2(a)(1) includes within its scope the sale or purchase of all types of non-deposit liabilities and the payment of interest thereon by an insured nonmember bank.

In order to be permissible under the proposed regulation, a business dealing between an insured nonmember bank and a bank insider must meet three tests: (1) The business dealing must be intended for the benefit of the bank and not be entered into by the bank merely as an accommodation for the benefit of the bank insider; (2) the business dealing must be made on terms, and under circumstances, that are substantially the same, or at least as favorable, as those prevailing at the time for comparable business dealings with persons not covered by the regulation; and (3) the business dealing must be approved in advance by a majority of the bank's board of directors in accordance with, and as required by, § 356.5 of the proposed regulation. In the absence of comparable business dealings, the terms and circumstances of the business dealing with the bank insider must be substantially the same, or at least as favorable, as those that would in good faith be offered to, or that would apply to, business dealings with persons not covered by the proposed regulation.

In essence, § 356.3(a)(1) subjects business dealings between an insured nonmember bank and its "official family" to an arm's-length standard similar to that applicable to extensions of credit to such persons under § 18(j)(2) of the FDI Act (12 U.S.C. 1828(j)(2)) and § 337.3 of the FDIC's regulations (12 CFR 337.3). Section 18(j)(2) makes the provisions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375) applicable to insured nonmember banks. Section 337.3 of the FDIC's regulations cross references Federal Reserve Board Regulation O (12 CFR 215). The requirement that a business dealing shall not be entered into merely as an accommodation for the benefit of a bank insider does not have a similar parallel in the FDI Act or elsewhere in FDIC's regulations. This language is designed to ensure that the bank does not enter into a business transaction or business relationship with a bank insider solely to accommodate the interests of the insider when to do so would either be detrimental to the bank's interests or would not serve the interests of the bank. For example, if an insured nonmember bank enters into a long term lease for a large number of automobiles with an automobile leasing company in which a director has a substantial interest when the bank has no immediate or foreseeable need for that number of automobiles, the FDIC would consider the business dealing to have been entered into as an accommodation for an insider. It would not matter that the terms of the lease were substantially the same as would be made available to the bank by any automobile leasing company. In short, it is expected that a bank's board of directors will fully consider whether or not the overall business transaction, as well as its particular terms, is one that is appropriate for the bank and serves the bank's best interests.

Attribution of Business Dealings—Sections 356.3 (a)(2), (a)(3), and (a)(4) set forth attribution rules which are designed to prevent evasions of the proposed regulation. Under (a)(2), any business dealing between an insured nonmember bank and any person that is not a bank insider that results in a direct or indirect economic benefit to a bank insider shall be considered an insider transaction subject to the proposed regulation. Under (a)(3), any business dealing between an insured nonmember bank and the spouse, child, parent, or sibling of a bank insider shall be considered an insider transaction subject to the proposed regulation. In this instance there is no need to establish that the bank insider obtained an economic benefit. Under (a)(4), any business dealing between a subsidiary of an insured nonmember bank and a bank insider shall be considered to be an insider transaction subject to the proposed regulation.

Real Estate Investments—Section 356.3(b) provides that no insured nonmember bank may invest in real estate in which a bank insider has an equity interest. Any investment by a subsidiary of an insured nonmember bank in real estate in which a bank insider holds an equity interest shall be considered to be made by the insured nonmember bank thus making the investment prohibited under the regulation. (The phrase "invest in real estate", which is defined in § 356.2(k) of the proposal, is discussed below in paragraph #7.) The FDIC has found, as discussed in the Basis and Purpose portion of this **Federal Register** notice, that equity investments in real estate can pose a significant risk to the safety and soundness of insured depository institutions. Given the risk attendant to such investments, it is the FDIC's opinion that it is especially inappropriate for an insured nonmember bank to participate in real estate equity investments along with bank insiders. The conflicts of interest that would arise in such instances will only serve to magnify the risks naturally attendant to real estate investments. The FDIC is of the opinion that these magnified risks cannot be adequately controlled by anything less than a flat prohibition on banks and their insiders jointly investing in real estate. The proposal does not prohibit sales of real estate owned by an insider to the bank. However, those sales are subject to the requirements applicable to insider transactions under the proposal.

2. Written Policies Governing Insider Business Dealings

Section 356.4 of the proposal requires that all insured nonmember banks must adopt written guidelines governing the circumstances and the conditions under which the bank may enter into business dealings with bank insiders. In addition, the bank must establish and maintain procedures for the review of transactions subject to the proposed regulation. If the guidelines are found by the FDIC not to be reasonable and consistent with the purposes of part 356, then the bank will not be considered to have satisfied the regulatory requirement to adopt guidelines under § 356.4. This will be done as part of the examination process. The guidelines must be reviewed and approved at least annually by the bank's board of directors and disseminated annually to all of the bank's directors, executive officers, and principal shareholders. Related interests of such persons are not required to be sent the guidelines. It is expected that insured nonmember banks will satisfy the requirement to adopt procedures to ensure the review of insider transactions by making the review of insider business dealings part of their normal internal routines and controls and/or their internal audit. For the most part, any well run institution already has guidelines governing insider business dealings with the bank and the review of such transactions is a part of its normal internal controls. It is anticipated, therefore, that the requirement in the proposal to establish such guidelines and procedures should

not be burdensome. It is expected that the guidelines will set forth the extent to which, if any, an insider who is an interested party with respect to any given business dealing may participate (other than in board discussions or a board vote) in the bank's consideration of the business deal.

Commentors should note that the proposal specifically requires that the written guidelines address the conditions and circumstances under which the insured nonmember bank will make the use of its facilities, real or personal property or its personnel available to bank insiders for their personal use and enjoyment. The proposal further allows insured nonmember banks to specify by category, dollar amount, or by some other means, business dealings with bank insiders that the bank's board of directors has determined to be inconsequential and as such should be considered insignificant for the purposes of the regulation. Insignificant transactions are excluded from the class of insider "business dealing" transactions that would otherwise be subject to the proposal (see proposed definition of "insider transaction" contained in § 356.2(g)). The board of directors thus has the discretion under the proposal to cause certain events that would otherwise give rise to insider transactions to fall outside of the regulation in all respects save one. Insider transactions that are determined to be "insignificant" are to be included in the bank's policies and procedures regarding the review of insider transactions. It is expected that the board of directors will act to ensure that the criteria it has established for treating certain business dealings as inconsequential are being followed. Thus the requirement in § 356.4(b) of the proposal that procedures for the review of insider transactions are to be established should be read to include measures to ensure that business dealings that do not in fact satisfy the identified criteria are treated as insider transactions subject to the proposal.

Both of these aspects of the proposal are designed to deal with fringe benefits, "perks" of office, and the ordinary, insubstantial "personal" use by bank insiders of bank property such as use of copying machines, etc. As the term "business dealing" includes the use of the bank's facilities, real or personal property, or personnel, the proposed regulation could have an unjustifiably broad impact on fringe benefits, "perks" of office, and certain minor or incidental uses of bank property. Upon careful reflection, it is the opinion of the FDIC that the best way to keep the regulation from being overly broad, but at the same time not leave an area of potential abuse, would be to require each bank to carefully review insider use of property, etc. and to establish what terms and conditions are appropriate in its estimation regarding such use. The FDIC does not intend, however, to abdicate supervision in this area. The bank's guidelines, as well as its determination as to what is and is not an inconsequential transaction not deserving of coverage under the regulation, will be subject to careful review as part of the examination process. Any guidelines and determinations found to be unreasonable, inconsistent with the purposes of Part 356, or inconsistent with safe and sound banking practices, will be treated accordingly.

Insured nonmember banks should note that the proposal does not represent an attempt by the FDIC to define the entire class of conflicts of interest that can give rise to an unsafe or unsound banking practice and thus trigger a cease-and-desist action or other appropriate supervisory response on the part of the FDIC. The FDIC is therefore not precluded from identifying practices or circumstances not set out herein as unsafe or unsound banking practices and/or breaches of fiduciary obligation on the part of bank insiders.

3. Prior Approval of Insider Transactions

Section 356.5 of the proposal sets forth prior board of directors' approval requirements with respect to insider transactions. Under the proposal, "major" insider transactions must be approved in advance by a majority of the entire board of directors of the bank. A major insider transaction is defined under § 356.2(1) of the proposal as any insider transaction having a value that when aggregated with the value of all other insider transactions involving the same insider during the bank's current fiscal year exceeds the *lower* of $500,000 or 2 and ½ percent of the bank's tier 1 capital. (Tier 1 capital has the meaning as set forth in Part 325 of the FDIC's regulations. 12 CFR 325.)

This section requires that the minutes of the board meeting at which an insider transaction is approved must contain: (1) The names of the parties to the transaction other than the bank, (2) the relationship of the parties to the bank (or the insider as the case may be), (3) a brief description of the transaction and its terms, and (4) a notation of any dissenting votes cast along with the basis of the dissent. All interested parties must abstain from voting or participating directly or indirectly in the deliberations regarding approval. It is expected that any director who is an interested party will disclose to the board all relevant, material, nonconfidential information regarding the transaction for the purposes of allowing for full and adequate evaluation of the transaction by the board.

The FDIC considered proposing a prior approval requirement on all insider transactions regardless of amount but rejected that approach as impractical. Instead the agency opted for a regulatory scheme in which board approval would be required once the bank's exposure as a result of transactions with any particular bank insider exceeded a certain dollar figure. Only those transactions which cause the aggregate trigger figure to be exceeded need be approved. It should be noted that insider transactions that are not required to be approved in advance must nonetheless satisfy the arm's-length standards of the proposal. In sum, one could describe the proposal as creating three classes of business dealings between an insured nonmember bank and its bank insiders:

(1) Business dealings that are insignificant in nature and effect which do not warrant the protections established by the regulation;

(2) Business dealings that while significant enough to warrant coverage under the arm's-length standards of the regulation do not need prior approval; and

(3) Business dealings that rise to such a level as to warrant prior approval by the bank's board of directors.

Directors of insured nonmember banks should be aware that the approval of a particular transaction as required by the proposal will not necessarily preclude an action by the FDIC as a receiver of a closed bank against directors of the closed institution for breach of fiduciary obligation. In short, this provision should not be read as a safe harbor in all circumstances.

Timing of Prior Approval—For the purposes of the proposed regulation an insider transaction will be considered to have occurred at the *earlier* of (1) the time the bank enters into a contract, binding commitment, or other agreement which gives rise to the transaction in question, (2) the time the bank transfers any economic benefit to the insider, or (3) in the case of the use of bank facilities, real or personal property, or personnel, at the time of such use.

Valuing Insider Transactions for Purpose of Identifying "Major" Insider

Transactions—Section 356.2(r) of the proposal defines the value of an insider transaction as the total dollar amount to be paid or received by an insured nonmember bank under the contract or other agreement; the sale price of an asset, good, or service purchased or sold; the total payments to be made over the term of a lease, unless the property is acquired by the bank to be leased to the insider in which case the value of the lease is the purchase price of the property; the fair market value of the use of the bank's facilities, real or personal property, or personnel, (*i.e.*, the dollar amount that the insider would have paid some other entity for the use of similar facilities, etc.); or the dollar amount of commissions and fees paid.

Prior Approval of a Series of Related Transactions—Section 356.5(c) of the proposal attempts to relieve what could otherwise be a burden in the prior approval of a series of continuing business dealings with the same insider. Under the proposal, if an insured nonmember bank enters into a major insider transaction of a continuing nature with the same bank insider, the bank may elect to satisfy the prior approval requirements of the regulation by approving the transactions in advance for a reasonable maximum dollar amount without the need for individually approving each transaction in the series. The approval of the continuing insider transactions as a series of related transactions is only good until the earlier of: (1) The beginning of the bank's next fiscal year, or (2) such time as the value of the transactions exceed the amount approved. For example, if an insured nonmember bank regularly purchases office supplies to satisfy its needs for two months at a time from a related interest of one of the bank's executive officers, the bank may approve several purchases at once up to a maximum dollar figure. Additional purchases need not be approved in advance until the earlier of the next fiscal year or until such time as the value of purchases would exceed the dollar figure previously approved.

4. Duty To Disclose Conflicts of Interest and Major Insider Transactions

The purpose of this provision is to clearly establish an obligation upon bank insiders to disclose their conflicts of interests in regard to any business dealings that come before the bank. Section 356.6 of the proposal does so by requiring that a bank insider that is an interested party with respect to a business deal before the bank must disclose his/her interest in the deal to the bank along with all relevant, material, nonprivileged information regarding the deal. Section 356.6 also imposes a requirement on a bank insider that has engaged in a major insider transaction which was not reviewed and approved in advance as required by the regulation to promptly disclose the transaction to the bank's board of directors. This provision is intended to reinforce the obligation to disclose conflicts and to act as an internal control mechanism.

Prior Approval by a Committee—The FDIC is requesting comment on whether to allow a committee of the board of directors to review and approve insider transactions as an alternative to approval by the full board of directors.

5. Recordkeeping

Section 356.7 of the proposal requires that an insured nonmember bank keep adequate, centralized records of all insider transactions (whether or not they qualify as "major" insider transactions) in a form and manner that will enable easy, independent review. The records must identify all directors, executive officers and principal shareholders of the bank and the related interests of such persons. In addition, the records should contain the names of the parties to the transaction other than the bank; the relationship of the parties to the bank (or a bank insider as appropriate); a brief description of the transaction and its terms; and a notation of any dissenting votes cast at the time the transaction received board prior approval. As these four items of information are the same as that required to be reflected in the bank's minutes from its board meetings at which insider transactions are approved, those minutes may be used to satisfy this portion of the recordkeeping requirements.

Insured nonmember banks are already required by existing federal regulation pertaining to extensions of credit to bank insiders (See 12 CFR 337.3, and 12 CFR 215) to maintain records identifying their directors, executive officers, principal shareholders and the related interests of such persons. Therefore, the requirement imposed by this section of the proposal to keep such records will not create any new recordkeeping burden. To the extent the relevant definitions differ for the purposes of this proposal from the definitions used in 12 CFR 337.3 and 12 CFR 215 (see discussion of definitions in Paragraph #8 below) there may be some additional information that insured nonmember banks will need to keep.

6. Board Review of Violations

Section 356.8 of the proposal requires that the bank's board of directors shall review any violation of part 356 brought to its attention and consider measures to correct the violation. The minutes of the board of directors meeting at which the violation is reviewed should indicate the specific measures so adopted. This provision of the proposal places an affirmative obligation on the bank's board of directors to specifically oversee the bank's compliance with part 356 and to consider what measures are appropriate in light of any particular violation to correct the problem. Banks should be advised, however, that the FDIC would not thereby relinquish its authority under section 8 of the FDI Act to take whatever enforcement measures are appropriate in its opinion to redress violations of the regulation.

7. Definition of the Phrase "Invest in Real Estate"

As indicated above, the proposal would prohibit any insured nonmember bank from investing in real estate in which a bank insider has an equity interest. Under § 356.2(k) of the proposal, the phrase "invest in real estate" is defined to mean any form of direct or indirect ownership of any interest in real property, whether in the form of an equity interest, partnership, joint venture or other form, that is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or that is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council call report instructions for schedule RC–M, Memoranda Item on Direct and Indirect Investments in Real Estate Ventures. The FDIC will look to guidance prepared by the American Institute of Certified Public Accountants (AICPA) in assessing whether or not something should be considered an investment in real estate. Specifically, we will look to the Notices to Practitioners issued by the AICPA in November, 1983, November, 1984 and February, 1986. Real estate acquisition, development or construction arrangements which are accounted for as direct investments in real estate or as real estate joint ventures in accordance with the generally accepted accounting principles set out therein will be considered investments in real estate for the purposes of the prohibition in the proposal. Likewise, any other loans secured by real estate or advanced for real estate acquisition, development or

investment purposes that are found, in accordance with the call report instructions, to give the bank virtually the same risks and potential rewards as an investor in the borrower's real estate will be considered investments in real estate.

Real Estate Lending—The following considerations will be considered by the FDIC to provide evidence that a transaction structured as a real estate loan, or some other form of transaction, is in substance an investment in real estate: (1) The bank provides all or substantially all of the funds for the real estate venture while the borrower, although legally holding title to the property, has little or no equity in the property, (2) the bank funds the loan commitment or origination fees for the borrower by including them in the amount of the loan, (3) the bank funds accrued interest during the term of the loan by adding interest to the borrower's loan balance, or by debiting an interest reserve account established from a portion of the loan proceeds, (4) the loan is secured only by the real estate and the lender has no or limited recourse to other substantive assets of the borrower and the borrower has not guaranteed the debt, (5) the bank, in addition to receiving interest rates at a fair market rate, participates in a substantial percent of the expected residual profits during the life of the real estate project or upon the sale of the real property, (6) the bank in order to recover its investment must rely on the ability of the borrower to sell the real property or obtain refinancing from another source, and (7) the bank structures the lending arrangement so that foreclosure during the project's development is unlikely as the borrower is not required to fund any payments until the project is completed.

Exclusions From Definition of "Investment in Real Estate"—The proposal contains three exceptions from the definition. An insured nonmember bank's interests in real property that is primarily used or intended to be used by the bank, its subsidiaries, or affiliates as offices or related facilities for the conduct of business or future expansion of business will not be considered an investment in real estate subject to the prohibition. Thus, a bank could acquire an interest in property owned by a bank insider if the property is used, or intended to be used, for the conduct of the bank's business now or in the future. That acquisition, however, would be subject to the arm's-length standards contained in § 356.3(a); may be subject to prior board or committee approval; the bank would need to maintain certain records with regard to the transaction; and the acquisition would have to conform to the bank's written guidelines adopted pursuant to § 356.4.

In addition to this exception, the proposal excepts interests in real property that are acquired in satisfaction of a debt previously contracted for in good faith, acquired in sales under judgments, decrees or mortgages held by the bank, or acquired under deed in lieu of foreclosure provided that the real estate so acquired is not held for investment purposes but is expected to be disposed of in a timely fashion. This exception basically covers what is known as DPC property. Lastly, the proposal excepts interests in real property that are primarily in the nature of charitable contributions to community development. Again, although neither of the interests described in this paragraph is subject to the prohibition contained in § 356.3(b) of the proposal, the acquisition of such interest may, depending upon the circumstances, be subject to the other provisions of the proposed regulation.

8. Definition of "Director", "Executive Officer", "Principal Shareholder", "Related Interest", "Subsidiary", "Company", and "Control".

With one exception, the term "director" and "executive officer" have the same meaning as those terms have for the purposes of § 337.3 of the FDIC's regulations concerning extensions of credit to bank insiders. Any person who is a director or an executive officer of a company that controls an insured nonmember bank (regardless of whether that company is a bank holding company for the purposes of the Bank Holding Company Act (12 U.S.C. 1841)) or that is controlled by a company that controls an insured nonmember bank, will be considered a director or executive officer of the bank for the purposes of part 356.

Likewise, the term "principal shareholder" essentially has the same meaning as that term is used for the purposes of § 337.3 of the FDIC's regulations (any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of the voting stock of a bank). The definition in the two sections of FDIC's regulations are the same, including the 18 percent ownership to qualify as a principal shareholder in towns with a population of less than 30,000 and the attribution of ownership within a family, with two exceptions. For the purposes of proposed part 356, a principal shareholder includes any company that controls 10 percent of the bank's voting securities (regardless of whether or not that company is a bank holding company for the purposes of the Bank Holding Company Act), any person that controls 10 percent of the voting securities of a company that controls the bank, and any person that controls 10 percent of the voting securities of any company also controlled by such a company.

"Related interest" has the same meaning as used for the purposes of § 337.3 of the FDIC's regulations as does the term "control". The term "company" has the same meaning as in § 337.3 of the FDIC's regulations except that a bank is a company for the purposes of part 356 whereas banks are excluded from that term for the purposes of § 337.3. "Subsidiary" is defined to mean any company that is directly or indirectly controlled by an insured nonmember bank.

Regulatory Flexibility Analysis

If adopted, these amendments would establish certain regulatory compliance requirements including the obligation (1) to maintain certain records, (2) to adopt written guidelines covering insider business dealings with the bank, (3) to review insider business dealings for compliance with the regulation, and (4) to ensure that all insider business dealings subject to the regulation are done on an arm's-length basis. The Board of Directors is of the opinion that the amendments, if adopted, would not have a differential adverse impact on small banks in terms of the compliance required. Therefore, for the reasons set forth below, the Board of Directors hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (12 U.S.C. 605) that the amendments, if adopted, will not have a significant economic impact on a substantial number of small entities.

It is the Board of Directors' considered opinion that compliance with this regulation will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers, or managers on the part of small institutions. For example, the recordkeeping requirements of the proposal will, for the most part, not entail any additional recordkeeping on the part of insured nonmember banks. The records are in some instances already being kept pursuant to other regulatory requirements and in other instances would normally be kept by any well managed institution in the proper course of its business. Section 356.7 of the proposal which requires that insured nonmember banks maintain a

list of their executive officers, directors, principal shareholders, and the related interests of such persons should be easily satisfied provided that the bank is complying with similar requirements contained in Federal Reserve Board Regulation O (12 CFR 215.7). Although there are some differences in the relevant definition of the terms "executive officer", "director", "principal shareholder", and "related interest" for the purposes of the proposal and Regulation O, those differences should not pose a significant added burden in terms of compliance. Likewise, the requirement established by § 356.4 of the proposal for insured nonmember banks to adopt written guidelines governing business dealings between the bank and the bank's insiders should not result in added costs for insured nonmember banks. Nor should the development of those guidelines necessitate the hiring of additional personnel or consultants. In fact, the requirement that the guidelines be approved annually and sent to the bank's insiders will probably be less costly for small banks than larger banks. Although the proposal does require that insured nonmember banks establish procedures for the review of business dealings with bank insiders, it is expected that banks can simply expand their internal audit to include the review of insider business dealings. This should not significantly add to a bank's costs. What is more, the well run bank should already have such a review in place. While the proposal does require that business dealings between a bank and its insiders must be on terms and conditions are least as favorable as those prevailing at the time for comparable transactions with persons not covered by the regulation, it is not felt that this requirement will necessitate the hiring of consultants or market analysts. It should be sufficient if the bank can establish that it was satisfied that it could not have entered into the business dealing with a non-insider on terms more favorable to the bank. While it may take some effort on the part of banks in general to satisfy this requirement, small and large insured nonmember banks alike must be able to make this type of determination in order to comply with the existing requirement in section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) (made applicable to insured nonmember banks by (12 U.S.C. 1828(j)) that sales of securities and other assets to an affiliate of the bank, and the furnishing of services to an affiliate, must be on terms substantially the same, or at least as favorable as, those prevailing at the time for comparable transactions with nonaffiliates. The requirement in the proposal should not, therefore, add to the compliance burden for small banks.

List of Subjects in 12 CFR Part 356

Banks, banking, Conflicts of interest, Reporting and recordkeeping requirements, Investments, Real property acquisitions.

In consideration of the foregoing, the FDIC is proposing to add part 356 to subchapter B of title 12 CFR to read as follows:

PART 356—INSIDER TRANSACTIONS—CONFLICTS OF INTEREST

Authority 12 U.S.C. 1818, 12 U.S.C. 1819, 12 U.S.C. 1831(g).

§ 356.1 Purpose and scope.

The purpose of this part is to ensure that business dealings (other than extensions of credit) between insured nonmember banks and state licensed insured branches of foreign banks and their "insiders" are conducted in an arms length fashion so that insiders do not abuse their position for personal gain.

§ 356.2 Definitions.

For the purposes of this part, the following terms shall be defined as set forth below:

(a) *Business dealing* shall include:

(1) The sale, purchase or other conveyance of assets, goods or services to or from an insured nonmember bank;

(2) The use of an insured nonmember bank's facilities, real or personal property, or its personnel;

(3) The lease of property, equipment or other assets to or from an insured nonmember bank;

(4) The payment by an insured nonmember bank of commissions and/or fees, including, but not limited to, brokerage commissions and management, consultant, architectural and legal fees;

(5) Service agreements; and

(6) The payment by an insured nonmember bank of interest on the deposits of an insider to the extent that the rate of such interest exceeds the amount paid to other depositors on similar deposits with the bank.

(b) *Company* shall mean any bank, corporation, partnership, business trust, association, joint venture, pool syndicate, sole proprietorship, or other similar business organization.

(c) *Control* of a company shall mean that a person directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote 25 per centum or more of the voting stock of a company; has the ability to control in any manner the election of a majority of a company's directors; or has the ability to exercise a controlling influence over the management and policies of a company. A person is presumed to have control, including the power to exercise a controlling influence over the management or policies, of a company if:

(1) The person is an executive officer or director of the company and directly or indirectly owns, controls, or has the power to vote more than 10 per cent of any class of voting securities of the company; or

(2) The person directly or indirectly owns, controls, or has the power to vote more than 10 per cent of any class of voting securities of the company and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities. A person is not considered to have control, including the power to exercise a controlling influence over the management or policies of a company solely by virtue of the person's position as an officer or director of the company.

(d) *Director* shall mean any director, advisory director or trustee of an insured nonmember bank or subsidiary of an insured nonmember bank, whether or not that individual receives compensation; any director, advisory director or trustee of a company which controls the insured nonmember bank; and any director, advisory director or trustee of any other company controlled by the company which controls the insured nonmember bank. An advisory director is not considered a director if the advisory director is not elected by the shareholders of the company; is not authorized to vote on matters before the board of directors or trustees; and provides solely general policy advice to the board of directors or trustees.

(e) *Executive officer* of an insured nonmember bank shall mean a person who participates or has the authority to participate (other than in the capacity of a director) in major policymaking functions of a bank whether or not such

person has an official title, the title designates such person as an assistant, or such person is serving without salary or other compensation.[1] The chairman of the board, the president, every vice president, the cashier, the secretary and the treasurer of an insured nonmember bank are considered executive officers unless:

(1) Such person is excluded, by resolution of the board of directors or by the bylaws of the bank from participation (other than in the capacity of a director) in major policymaking functions of the bank; and

(2) Such person does not actually participate therein.

For the purposes of this part an executive officer of an insured nonmember bank includes an executive officer of any subsidiary of an insured nonmember bank or any company which controls the insured nonmember bank. Any executive officer of any other company controlled by such company will also be considered an executive officer of the insured nonmember bank unless such person is excluded from participation in major policymaking functions with respect to the insured nonmember bank by the board of directors of both the bank and the controlled company, and such person does not actually participate in major policymaking functions with respect to the bank.

(f) *Insider* shall mean a director, executive officer, or principal shareholder of an insured nonmember bank and any related interest of any such person.

(g) *Insider transaction* means any business dealing with an insider, other than an insignificant transaction as defined in § 356.2(h), in which an insider receives any direct or indirect economic benefit.

(h) *An insignificant transaction* is a business dealing that the board of directors of the insured nonmember bank has determined, pursuant to § 356.4, to have so little value as to be inconsequential for purposes of this part.

(i) *Insured nonmember bank* means, for the purposes of this part, any insured state bank which is not a member of the Federal Reserve System and any state licensed insured branch of a foreign bank.

(j) *Interested party* means, with respect to an insider transaction, an insider who is expected to receive any direct or indirect economic benefit from the transaction.

(k) The phrase *invest in real estate* shall mean any form of direct or indirect ownership of any interest in real property, whether in the form of an equity interest, partnership, joint venture or other form, which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council Call Report instructions. The term shall include, for example, real estate acquisition, development or construction arrangements which are accounted for as direct investments in real estate or as real estate joint ventures in accordance with generally accepted accounting principles,[2] and any other loans secured by real estate or advanced for real estate acquisition, development or investment purposes if the bank in substance has virtually the same risks and potential rewards as an investor in the borrower's real estate.[3] The phrase *invest in real estate* shall not include the following:

(1) An interest in real property that is primarily used or intended to be used by the bank, its subsidiaries, or affiliates as offices or related facilities for the conduct of its business or future expansion of its business;

(2) An interest in real property that is acquired in satisfaction of debts previously contracted for in good faith or acquired in sales under judgments, decrees or mortgages held by the bank or acquired under deed in lieu of foreclosure provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of in a timely fashion as permitted by any applicable law or regulation; and

(3) Interests in real property that are primarily in the nature of charitable contributions to community development.

(l) *Major insider transaction* means any insider transaction having a value that, when aggregated with the value of all other insider transactions involving the same insider during the bank's current fiscal year, exceeds the lower of $500,000 or 2½ percent of the bank's tier 1 capital.

(m) *Person* shall mean an individual or a company.

(n) *Principal shareholder* of an insured nonmember bank shall mean any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 per cent of any class of voting securities of an insured nonmember bank. If the insured nonmember bank is located in a city, town or village with a population of less than 30,000, the requisite percentage shall be 18 per cent. Shares owned or controlled by the spouse of an individual, the individual's minor children, or any of the individual's children (including adults) residing in the individual's home, shall be considered to be held by the individual. A principal shareholder of an insured nonmember bank includes a principal shareholder of a company which controls the insured nonmember bank as well as a principal shareholder of any other company controlled by such a company.

(o) *Related interest* shall mean a company that is controlled by a person, or a political or campaign committee that is controlled by a person or the funds or services of which will benefit a person.

(p) *Subsidiary* shall mean any company directly or indirectly controlled by an insured nonmember bank.

(q) *Tier 1 capital* has the meaning as set forth in 12 CFR 325 as calculated as of the date of the bank's latest report of income and condition.

(r) The *value* of an insider transaction shall mean the total dollar amount to be paid or received by the insured nonmember bank under the contract or other agreement; the sale price of an asset, good, or service purchased or sold; the total payments to be made over the term of a lease, unless the property is acquired by the bank to be leased to the insider, in which case the value of the lease is the purchase price of the property; the fair market value of the use of the bank's facilities, real or personal property, or its personnel, (*i.e.*, the dollar amount that the insider would have paid some other entity for the use of similar facilities, real or personal

[1] The term is not intended to include persons who may have official titles and may exercise a certain measure of discretion in the performance of their duties but who do not participate in the determination of major policies of the bank and whose decisions are limited by policy standards fixed by the senior management of the bank or company. For example, the term does not include a manager or assistant manager of a branch of a bank unless that individual participates, or is authorized to participate, in major policymaking functions of the bank.

[2] See guidance prepared by the American Institute of Certified Public Accountants (AICPA) in Notices to Practitioners issued in November 1983, November 1984, and February 1986, available from the AICPA, 1211 Avenue of the Americas, New York, New York, 10036.

[3] See Federal Financial Institutions Examination Council Call Report Instructions on Schedule RC–M—Memoranda Item on Direct and Indirect Investments in Real Estate Ventures, available from Federal Deposit Insurance Corporation, Office of Corporate Communications, 550 17th Street, NW., Washington, DC 20429.

property, or personnel); or the dollar amount of commissions and fees paid.

§ 356.3 Prohibited transactions involving bank insiders.

(a) *Business dealings.* (1) No insured nonmember bank may enter into an insider transaction unless the business dealing is:

(i) Intended for the benefit of the bank and is not merely an accommodation for the bank insider's benefit;

(ii) The transaction is made on terms, and under circumstances, that are substantially the same, or at least as favorable as, those prevailing at the time for comparable business dealings with persons not covered by this part (or in the absence of comparable business dealing, on terms and under circumstances that in good faith would be offered to, or would apply to, business dealings with, persons not covered by this part); and

(iii) The bank complies with the prior approval requirements set forth in § 356.5 to the extent that they are applicable.

(2) A business dealing between an insured nonmember bank and any person not covered by this part which results in a direct or indirect economic benefit to a bank insider shall be considered to be a business dealing between the bank and the insider.

(3) For the purposes of this part, a business dealing between an insured nonmember bank and the spouse, child, parent, or sibling of a bank insider shall be considered to be a business dealing subject to this part.

(4) Any business dealing between a subsidiary of an insured nonmember bank and a bank insider shall be considered to be a business dealing between the insured nonmember bank and such insider.

(b) *Real estate investments prohibited.* No insured nonmember bank may invest in real estate in which a bank insider has an equity interest. For the purposes of this section, an investment in real estate by a subsidiary of an insured nonmember bank shall be considered to be an investment by the insured nonmember bank.

§ 356.4 Written policies governing insider transactions.

(a) The board of directors or trustees of an insured nonmember bank shall adopt written guidelines consistent with the purposes of this part governing the circumstances, and the conditions under which, the bank may enter into insider transactions. The guidelines must specifically address the conditions and circumstances under which the bank will make the use of its facilities, real or personal property or its personnel available to bank insiders for their personal use and enjoyment. The guidelines should specifically identify by category, dollar amount, or some other means, business dealings that would otherwise be insider transactions which the board determines are inconsequential and as such do not warrant coverage under this part.

(b) All insured nonmember banks shall establish and maintain a policy and implementing procedures for the review of insider transactions.

(c) The bank's guidelines and procedures must be reasonable. Guidelines and procedures found by the FDIC not to be fully consistent with the purposes of this part will not satisfy the requirements of paragraph (a) of this section.

(d) Guidelines adopted pursuant to paragraph (a) of this section must be reviewed and approved at least annually by the bank's board of directors or trustees and disseminated annually to all of the bank's directors, executive officers, and principal shareholders.

§ 356.5 Prior approval of major insider transactions.

(a) *Board approval of major insider transactions.* Except as provided by paragraph (c) of this section, no insured nonmember bank may enter into any major insider transaction unless a majority of the entire board of directors of the bank approves the transaction in advance. Any interested party must abstain from voting or participating directly or indirectly in the deliberations regarding approval.

(b) An insured nonmember bank and an insider shall be considered to have engaged in an insider transaction at the earlier of:

(1) The time the bank enters into a contract, binding commitment, or other agreement which gives rise to the insider transaction in question;

(2) The time the bank transfers any economic benefit to the insider; or

(3) In a case in which the bank's facilities, real or personal property, or its personnel are used, at the time of such use.

(c) *Series of related transactions.* If an insured nonmember bank enters into a major insider transaction of a continuing nature with the same bank insider, the bank's board of directors may, at its option, elect to satisfy the prior approval requirements of this section by approving the transaction(s) in advance for a reasonable maximum dollar amount. The board need not approve the transaction(s) again until the earlier of:

(1) The beginning of the next fiscal year; or

(2) Such time as the value of the transaction(s) exceed(s) the amount approved. Records must be maintained with regard to the individual transactions in accordance with § 356.7.

(d) The minutes of the board meeting at which an insider transaction is approved must contain the information about the transaction required by § 356.7 of this part.

§ 356.6 Duty of insiders to disclose conflicts of interest and major insider transactions.

A bank insider that is an interested party within the meaning of § 356.2(j) with respect to any anticipated business dealing with the bank must disclose to the bank prior to the time the bank authorizes the business dealing the insider's interest in the business dealing along with all relevant, material, nonprivileged information regarding the anticipated business dealing known to the insider. Any bank insider that has engaged in a major insider transaction which has not been reviewed and approved in advance by the bank's board of directors must promptly disclose the transaction to the bank's board of directors.

§ 356.7 Recordkeeping.

Insured nonmember banks shall maintain adequate, centralized records in a form and manner that will enable easy, independent review of all insider transactions. The records shall identify all directors, executive officers and principal shareholders of the bank and the related interests of such persons. In addition, the records maintained on insider transactions should normally:

(1) Specify the names of the parties to the transaction other than the bank;

(2) Specify the relationship of the parties to the bank or where appropriate the relationship of the parties to any bank insider;

(3) Include a brief description of the transaction and its terms; and

(4) Contain a notation of any dissenting votes cast at the time the board approved the transaction along with the basis of the dissent. The bank may use the minutes from board meetings to comply with the requirements of this section.

§ 356.8 Board review of violations.

The board shall review any violation of this part brought to its attention and indicate in the minutes of the board meeting the specific measures adopted by the board to correct the violation.

By Order of the Board of Directors. Dated at Washington, DC this 30th day of July, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-18534 Filed 8-7-91; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 744

[OPTS-62100A; FRL 3938-5]

Proposed Regulation of Land Application of Sludge From Pulp and Paper Mills Using Chlorine and Chlorine Derivative Bleaching Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period and announcement of public hearing.

SUMMARY: Notice is hereby given that the period for filing public comment on the proposed rule for Land Application of Sludge from Paper Mills Using Chlorine and Chlorine-Derivative Bleaching Processes (56 FR 21802, May 10, 1991) is extended, and that an informal public hearing on the proposed rule will be held. The American Paper Institute (API) filed a request for an extension of the public comment period through September 17, 1991. API also filed a request for the scheduling of an informal public hearing.

DATES: Public comments must be received on or before September 17, 1991. Written notice of intent to participate in the informal hearing must be received on or before October 8, 1991. The informal public hearing will begin on October 29, 1991, in Washington, DC.

ADDRESSES: Non-confidential comments should be sent in triplicate to: U.S. Environmental Protection Agency, rm. NEG-004 (TS-793), 401 M St., SW., Washington, DC 20460, Attention: OPTS- 62100. Comments should also include the docket number (OPTS-62100). Non-confidential comments will be placed in the rulemaking record for public inspection. See SUPPLEMENTARY INFORMATION for information on submitting comments containing confidential business information (CBI). The exact time and location of the hearing may be obtained by contacting the Environmental Assistance Division at (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), U.S. Environmental Protection Agency, 401 M St., SW., rm. E-543B, Washington, DC 20460, telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: On May 10, 1991, EPA issued Land Application of Sludge from Pulp and Paper Mills Using Chlorine and Chlorine-Derivative Bleaching Processes; Proposed Rules (56 FR 21802). Written comments on the proposed rule were to be received on or before August 8, 1991. On July 3, 1991, the American Paper Institute (API) filed a request for an extension of the public comment period through September 17, 1991. API indicated that an extension would be necessary in order for it to complete its analysis of the risk assessment background documents which support the proposed rule. API also filed a request for the scheduling of an informal public hearing. EPA hereby grants an extension of time for the submission of public comments on this proposed rule. Written comments must be received on or before September 17, 1991. The informal public hearing will begin on October 29, 1991, in Washington, DC. This hearing will be conducted in accordance with EPA's "Procedures for Conducting Rulemaking Under Section 6 of the Toxic Substances Control Act" (40 CFR part 750). Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request must be sent to the Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT, and must be received on or before October 8, 1991. The written request must include:

1. A brief statement of the interest of the person or organization in the proceeding.
2. A brief outline of the points to be addressed.
3. An estimate of the time required.
4. If the request comes from an organization, a non- binding list of the persons to take part in the presentation.

Organizations are requested to bring with them, to the extent possible, employees or representatives with individual expertise in and responsibility for each of the areas to be addressed. Organizations which do not submit comments on the proposed rule will not be allowed to participate at the hearing, unless the Record and Hearing Clerk grants a waiver of this requirement in writing.

Reply comments on the proposed rule must be received no later than two weeks after the close of all hearings, and must be restricted to comments on:

1. Other comments.
2. Material in the hearing record.
3. Material which was not and could not reasonably have been available to the commenting party a sufficient time before main comments were due.

EPA is conducting a peer review of the risk assessments supporting the proposed rule. EPA anticipates that the review will be complete and its results entered into the rulemaking record on or about October 18, 1991. The peer review results may be addressed in oral comments made at the informal hearing and in the written reply comments.

Any person who submits written comments containing confidential business information (CBI) must mark the comments as "Confidential Business Information." Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as "Confidential Business Information" will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be CBI must prepare and separately submit a public version of the comments that EPA can place in the public file. CBI comments should be submitted in triplicate to: Document Control Office (TS-790), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. CBI comments should be mailed in a double envelope with "CBI" and the docket number OPTS-62100 marked on the inner envelope, and the comments should be marked with docket number OPTS-62100.

List of Subjects in 40 CFR Part 744

Environmental protection, Hazardous substances, Reportingand recordkeeping requirements, Sludge, Toxic substances.

Dated: August 1, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

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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

Forms Under Review by Office of Management and Budget

August 2, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Extension

- National Agricultural Statistics Service.
  Honey Survey.
  Annually.
  Farms; 9,000 responses; 1,500 hours.
  Larry Gambrell (202) 447–7737.

Reinstatement

- Agricultural Stabilization and Conservation Service.
  7 CFR part 700—Rural Clean Water Program (RCWP) Regulations and Form RCWP–1, Request for Cost-Sharing.
  RCWP–1.
  On occasion.
  Individuals or households; farms; 50 responses; 25 hours.
  Paul E. Smith (202) 447–5784.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 91–18865 Filed 8–7–91; 8:45 am]

BILLING CODE 3410–01–M

National Agricultural Statistics Service

Initiate Cotton Ginnings Report

The U.S. Department of Agriculture's National Agricultural Statistics Service will initiate the publication of "Cotton Ginnings" reports on August 12, 1991. The first report will contain cotton ginnings data for Texas. Following the initial August report, reports will be issued twice montly from September 1991 through March 1992, and a final report will be released in May 1992. The first report each month, issued on or about the 10th of the month, will contain U.S. and State cotton ginnings information as of the 1st of the month. The second report, issued on or about the 25th of each month, will contain U.S. and State cotton ginnings information as of the 15th of the month, and will also contain district and county ginnings data as of the 1st of the month. Also included in the report released on the 25th of each month will be any revisions to U.S. and State cotton ginnings data published in the report issued on or about the 10th. A detailed report covering the entire crop year will be issued in May.

Done at Washington, DC this 5th day of August 1991.

Charles E. Caudill,

Administrator.

[FR Doc. 91–18870 Filed 8–7–91; 8:45 am]

BILLING CODE 3410–20–M

Soil Conservation Service

Hatch Valley Arroyos Watershed Project Site #3 Rehabilitation, New Mexico

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 Regulations (40 CF part 1500); and the Soil Conservation Service Rules (7 CF part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hatch Valley Arroyos Watershed Project Site 3, Dona Ana County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ray T. Margo, Jr., State Conservationist, Soil Conservation Service, 517 Gold Ave., SW., rm. 3301, Albuquerque, NM 87102–3157, telephone 505–766–3277.

Hatch Valley Arroyos Watershed Project Site 3, New Mexico Notice of a Finding of No Significant Impact

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 human environment. As a result of these findings, Ray T. Margo, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns the treatment of a gully encroaching on the emergency spillway of an existing floodwater retarding structure (Hatch Valley Arroyos Site 3). A design oversight caused the gully because design and subsequent construction concentrated surface flow over the left abutment. The selected alternative is to construct a diversion above the gully and place earth fill in the gully. This treatment would safely dispose of the uncontrolled surface runoff and restore the integrity of the emergency spillway.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. The environmental assessment has had a 30 day review by concerned 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 assessment is on file and may be reviewed by contacting Ray T. Margo 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 an local officials).

Dated: July 25, 1991.

Ray T. Margo, Jr.,

State Conservationist.

[FR Doc. 91–18890 Filed 8–7–91; 8:45 am]

BILLING CODE 3420–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit: Sea World, Inc. (P2V)

On March 14, 1991, notice was published in the Federal Register (56 FR 10862) that an application had been filed by Sea World, Inc. for a permit to import one (1) killer whale (*Orcinus orca*) for public display at any of the Sea World parks.

Notice is hereby given that on July 31, 1991, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) the National Marine Fisheries Service issued a Permit for the above importation subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that Sea World, Inc. offers an acceptable program for education or conservation purposes. The Sea World facilities are open to the public on a regularly scheduled basis and access to the facilities is not limited or restricted other than by the charging of an admission fee.

The Permit is available for review by interested persons by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731 (213)/514–6196).

Dated: July 31, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–18779 Filed 8–7–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Czechoslovakia

August 2, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990). Also see 56 FR 21132, published on May 7, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 2, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Czechoslovakia and exported during the twelve-month period which began on June 1, 1991 and extends through May 31, 1992.

Effective on August 12, 1991, you are directed to amend the directive dated May 2, 1991 to increase the limit for Category 443 to 60,270 numbers [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and the Czech and Slovak Federal Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–18824 Filed 8–7–91; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

August 2, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Kim–Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6496. For information on embargoes and quota re-openings, call (202) 377–3715.

[1] The limit has not been adjusted to account for any imports exported after May 31, 1991.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 338/339, 347/348, and 638/639 are being increased by application of swing. The limit for Categories 300/301 is being decreased to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 49675, published on November 30, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 26, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and man-made fiber textiles and textile products, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on August 9, 1991, you are directed to amend further the directive dated November 26, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
300/301	1,928,741 kilograms.
338/339	759,617 dozen.
347/348	300,730 dozen.
638/639	331,049 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-18822 Filed 8-7-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of an Import Limit and Sublimit for Certain Cotton Textile Products Produced or Manufactured in Peru

August 2, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit and sublimit.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: J. Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/339 and sublimit for Categories 338-S/339-S are being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 50861, published on December 11, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on August 9, 1991, you are directed to increase the limit and sublimit for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Peru:

Category	Adjusted twelve-month limit [1]
Limit not in a group 338/339	742,000 dozen of which not more than 630,700 dozen shall be in Categories 338-S/339-S [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-18823 Filed 8-7-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OMB Clearance Request for Preaward Survey Forms

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of a request for an extension of a currently approved information collection requirement (9000-0011).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal

Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for an extension of a currently approved information collection requirement concerning Preaward Survey Forms.

DATES: Comments may be submitted on or before October 7, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of Federal Acquisition Policy, GSA (202) 501–0168.

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, i.e., capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. The information is used by Federal contracting officers to determine whether a prospective contractor is responsible.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 12,000; responses per respondent, .5; total annual responses, 6,000; preparation hours per response, 24; and total response burden hours, 144,000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request for Preaward Survey Forms, OMB Control No. 9000–0011, in all correspondence.

Dated: July 31, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–18781 Filed 8–7–91; 8:45 am]

BILLING CODE 6820–JC–M

OMB Clearance Request for SF 129, Solicitation Mailing List Application

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of a request for an extension of a currently approved information collection requirement (9000–0002).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for an extension of a currently approved information collection requirement concerning Standard Form 129, Solicitation Mailing List Application.

DATES: Comments may be submitted on or before October 7, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of Federal Acquisition Policy (202) 501–0168.

SUPPLEMENTARY INFORMATION:

A. Purpose.

The Standard Form 129, Solicitation Mailing List Application, is used by all Federal agencies as an application form for perspective contractors to provide information needed to establish and maintain a list of firms interested in selling to the Government. The information is used to establish lists of firms to be solicited when the products or services they provide are needed by the Government.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 243,000; responses per respondent, 4; total annual responses, 972,000; preparation hours per response, .58; and total response burden hours, 563,760.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request for SF 129, Solicitation Mailing List Application, OMB Control No. 9000–0002, in all correspondence.

Dated: July 31, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–18782 Filed 8–7–91; 8:45 am]

BILLING CODE 6820–JC–M

[90000—0097]

OMB Clearance Request for Information Reporting to the Internal Revenue Service and Taxpayer Identification Number

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of OMB request to review and approve an extension for information collection requirement.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve extension for an information collection requirement concerning Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number).

DATES: Comments may be submitted on or before October 7, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501-3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Supart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the clause at 52.204-3, Taxpayer Identification, implement statutory and

regulatory requirements pertaining to taxpayer identification and reporting. 26 U.S.C. 6041, 6041A, and 26 U.S.C. 6050M, in part, require payors, including Federal Government agencies, to report to the IRS certain payments made to certain contractors. The collection of the information specified in the clause assists in fulfilling these requirements.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents, 225,000; *responses per respondent,* 12; *total annual responses,* 2,700,000; *preparation per response,* .0028; *and total response burden hours,* 7,560.

Obtaining Copies of Proposals: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request for Information Reporting to the Internal Revenue Service (Taxpayer Identification Number), OMB Control No. 9000–0097, in all correspondence.

Dated: August 1, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–18834 Filed 8–7–91; 8:45 am]

BILLING CODE 6820–JC–M

Defense Logistics Agency

Meeting: Department of Defense Clothing and Textiles Board

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Deputy Director for Acquisition Management, Defense Logistics Agency, announces the final meeting of the Department of Defense Clothing and Textiles (DoD C&T) Board. This is an emergency meeting which is being held to meet time constraints of authorized tenure of the Board.

DATES: August 13, 1991.

ADDRESS AND TIME: The Pentagon, room 3D1019, Washington, DC, 1100–1145.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine James; Quality Assurance Specialist, Product Quality Management Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (202) 274–7141.

SUPPLEMENTARY INFORMATION: Purpose of the meeting is to present the final report to the Under Secretary of Defense (Acquisition).

Capt. M. J. Schildwachter, USN,

Executive Secretary, DoD C&T Board.

[FR Doc. 91–18901 Filed 8–7–91; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.021A]

Fulbright Hays Group Projects Abroad; Inviting Applications for New Awards Fiscal Year 1992

AGENCY: Department of Education.

ACTION: Notice inviting applications for New Awards under the Fulbright-Hays Group Projects Abroad program for Fiscal Year 1992.

Purpose of Program: The Group Projects Abroad program provides grants to institutions of higher education, State departments of education, and private nonprofit educational organizations to support overseas projects in training, research, and curriculum development in modern foreign languages and area studies by teachers, students, and faculty engaged in a common endeavor.

Eligible Applicants: Institutions of higher education, State departments of education, private nonprofit educational organizations, and consortia of such institutions, departments, and organizations.

Deadline for Transmittal of Applications: October 21, 1991.

Applications Available: August 30, 1991.

Available Funds: The Administration has requested $2,220,000 for this program of FY 1992. However, the actual level of funding is contingent upon final congressional action.

Estimated Range of Awards: $40,000 to $200,000.

Estimated Average Size of Awards: $69,000.

Estimated Number of Awards: 32.

Project Period: 5 weeks to 12 months.

Applicable Regulations: (a) Higher Education Programs in Modern Foreign Language Training and Area Studies—Group Projects Abroad program, 34 CFR part 664; and (b) Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85 and 86.

Priorities: Section 664.32 of the regulations governing the Group Projects Abroad program provides for the establishment of funding priorities for this program. These priorities will be applied in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105.

Pursuant to 34 CFR 75.105(c)(2), the Secretary gives a competitive preference to applications that meet the following priority: Short-term seminars that develop the improve foreign language and area studies at elementary and secondary schools. The Secretary may award up to 5 points to applications that address this priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program.

Pursuant to 34 CFR 75.105(c)(3), the Secretary also establishes an absolute preference for applications that meet one of the following priorities. The priorities are the following world areas: (1) Sub-Saharan Africa; (2) Latin America and the Caribbean; (3) East Asia; (4) Southeast Asia and the Pacific; (5) Eastern Europe and the U.S.S.R.; (6) the Near East and North Africa; or (7) South Asis. All available funds for this program will be reserved solely for applications that meet this priority. Applications that propose projects focusing on Western Europe or Canada will not be funded.

For Applications or Information Contact: Lungching Chiao or Gwendolyn Weaver, Telephone (202) 708–7238, U.S. Department of Education, 400 Maryland Avenue, SW., room 3052, ROB–3, Washington, DC 20202–5332. Deaf and hearing impaired individuals may call the Federal Dual Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300 between 8 a.m. and 7 p.m., Eastern time).

Authority: 22 U.S.C. 2452(b)(6).

Dated: August 1, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–18805 Filed 8–7–91; 8:45 am]

BILLING CODE 4000–01–M

[CFDA Nos. 84.016 and 84.153]

Undergraduate International Studies and Foreign Language Program and the Business and International Education Program; Inviting Applications for Fiscal Year 1992 New Awards

AGENCY: Department of Education.

ACTION: Combined notice inviting applications for Fiscal Year 1992 New Awards under the Undergraduate International Studies and Foreign Language Program and the Business and International Education Program.

Purpose

Applications are invited for new awards for Fiscal Year 1992 under title VI of the Higher Education Act of 1965, as amended (the HEA), for the Undergraduate International Studies and Foreign Language Program (34 CFR part 658) and the Business and International Education Program (34 CFR part 661).

The Undergraduate International Studies and Foreign Language Program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

The Business and International Education Program provides grants to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Deadlines for Transmittal of Applications: For the Undergraduate International Studies and Foreign Language Program—November 4, 1991, and

For the Business and International Education Program—November 8, 1991.

Deadlines for Intergovernmental Review: For the Undergraduate International Studies and Foreign Language Program—January 6, 1992, and

For the Business and International Education Program—January 7, 1992.

Applications Available: September 3, 1991.

Eligible Applicants: For the Undergraduate International Studies and Foreign Language Program, eligible applicants are institutions of higher education, combinations of institutions of higher education, and public and private nonprofit agencies and organizations, including professional and scholarly associations.

For the Business and International Education Program, eligible applicants are institutions of higher education.

INTERNATIONAL EDUCATION PROGRAMS

Title and CFDA number	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Undergraduate International Studies and Foreign Language Program (CFDA No. 84.016).	$1,350,000	$30,000 to $75,000	$54,000	25	24 to 36.
Business and International Education Program (CFDA No. 84.153).	1,095,000	$40,000 to $100,000	$73,000	15	24.

Applicable Regulations: (a) Undergraduate International Studies and Foreign Language Program, 34 CFR parts 655 and 658; (b) Business and International Education Program, 34 CFR parts 655 and 661; and (c) Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 82, 85 and 86.

For Applications or Information Contact: Christine Corey (Undergraduate International Studies and Foreign Language Program), telephone (202) 708–7283, and Susanna C. Easton (Business and International Education Program), telephone (202) 708–7283, U.S. Department of Education, 400 Maryland Avenue SW., room 3053, ROB–3, Washington, DC 20202–5332. Deaf and hearing impaired individuals may call the Federal Dual Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300 between 8 a.m. and 7 p.m., Eastern time).

Authority: Undergraduate International Studies and Foreign Language Program.

(20 U.S.C. 1124)

Business and International Education Program.

(20 U.S.C. 1130–1130b)

Dated: August 1, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–18804 Filed 8–7–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Financial Assistance Award; West Virginia Univ.—Grant

AGENCY: Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of noncompetitive financial assistance application for a grant to West Virginia University.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(B), which authorizes an award to be made if the activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a twelve (12) month Research Grant to West Virginia University, Morgantown, West Virginia in the approximate amount of $72,000 for research entitled "Ground Movements Associated with Gas Hydrate Production."

FOR FURTHER INFORMATION CONTACT: Ms. Diane Roth, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4090, Grant No.: DE–FG21–91MC28080.

SUPPLEMENTARY INFORMATION: The pending award is based on an application for a research project entitled, "Ground Movements Associated with Gas Hydrate Production" which was submitted by West Virginia University. The general objective of the research project is to perform modeling of subsidence caused by hydrate dissociation. The investigation will be based on the theories of continuum mechanics and thermomechanical behavior of frozen geo-materials.

Issued: July 30, 1991.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91–18893 Filed 8–7–91; 8:45 am]

BILLING CODE 6450–01–M

Conservation and Renewable Energy

Renewable Energy and Energy Efficiency Joint Ventures Advisory Committee; Notice of Open Meeting

Under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting: NAME: Renewable Energy and Energy Efficiency Joint Ventures Advisory Committee.

Date and Time: August 27, 1991 9 a.m.–5 p.m., August 28, 1991 9 a.m.–12 p.m.

Place: The Key Bridge Marriott, 1401 Lee Highway, Rosslyn, VA 22209.

Contact: Elaine S. Guthrie, Office of Technical Assistance (CE–54), Conservation and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone: 202/586–1719.

Purpose of Committee: To advise the Secretary of Energy on the development of the solicitation and evaluation criteria for joint ventures, and on otherwise carrying out his responsibilities under the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. 101–218, 42 U.S.C. 12005).

Tentative Agenda: Second Meeting of the Committee. Briefings and discussions of:

- Discussion of a Proposed Financial Structure for the Joint Ventures Program
- Presentation from the Private Investment Community
- Characteristics of the Draft Solicitation
- Overview of Reports to Congress
- Discussion of Criteria for Selection of Joint Venture Projects
- Other Matters Requiring Committee Consideration, and Public Comment Period.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Elaine Guthrie at the address or telephone number listed above. Requests to make oral presentations must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 2, 1991.

Stephen J. Garvey,

Deputy Advisory Committee Management Officer.

[FR Doc 91–18894 Filed 8–7–91; 8:45 a.m.]

BILLING CODE 6450–10–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration

ACTION: Notice of requests submitted for review by the Office of Management and Budget

SUMMARY: The Energy Information Administration (EIA) has submitted the energy informaton collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of responses per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by September 9, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address coments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION:

The energy information collection submitted to OMB for review was:

1. Energy Information Administraton.
2. EIA–876A/E.
3. 1905–0068.
4. Residential Transportation Energy Consumption Survey.
5. Revision.
6. Triennial.
7. Voluntary.
8. Individuals or households.
9. 3,000 respondents.
10. 1 response.
11. .251 hours per response.
12. 752 hours.
13. Forms EIA–876A/E will provide information on the number and types of vehicles per household, annual mileage, gallons of fuel consumed, fuel type used, price paid for fuel, annual fuel expenditures and fuel efficiency as measured by miles-per-gallon. Data will be published. Repsondents are households.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC., August 5, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc 91–18895 Filed 8–7–91; 8:45 a.m.]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CS91–11–000]

Mustang Fuel Corp. and Mustang Fuel Corp. of Oklahoma; Application for Small Producer Certificate

August 1, 1991.

Take notice that on July 18, 1991, Mustang Fuel Corporation and Mustang Fuel Corporation of Oklahoma (Applicants) of 2000 Classen Center-800 East, Oklahoma City, Oklahoma 73106 filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the

Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 19, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-18796 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-65-004]

Arkla Energy Resources; Tariff Filing

August 2, 1991.

Take Notice that on July 29, 1991, Arkla Energy Resources ("AER"), a division of Arkla, Inc., filed revised tariff sheets to Second Revised Volume No. 1 and First Revised Volumn No. 1-A of its FERC Gas Tariff to become effective July 1, 1991. AER states that these tariff sheets are filed in order to comply with the Commission's order dated July 22, 1991, which required AER to utilize total annual throughput determinants, including gathering only volumes, to calculate its Order 528 commodity charge. AER states that a copy of the accompanying tariff sheets has been served on all jurisdictional customers and interested state Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure, 18 CFR 385.211. All such protests should be filed on or before August 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18878 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-32-000]

Colorado Interstate Gas Co.; Filing of Annual Purchased Gas Adjustment

August 2, 1991.

On July 31, 1991, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect an annual purchased gas adjustment ("PGA"):

Eighth Revised First Revised Sheet No. 7.1
Eighth Revised First Revised Sheet No. 7.2
Eighth Revised First Revised Sheet No. 8.1
Eighth Revised First Revised Sheet No. 8.2

CIG requests that these proposed tariff sheets be made effective on October 1, 1991.

CIG notes that the tariff rates underlying Eighth Revised First Revised Sheet Nos. 7.1 through 8.2 reflect a net 0.51 cent decrease in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 Rate Schedules, which includes a 1.48 cent decrease in the current adjustment attributable to projected purchased gas costs for the quarter beginning October 1, 1991, and a 0.97 cent increase attributable to the expiration of the current "credit" surcharge (5.54 cents) on September 30, 1991. CIG states that there is no change in the Demand-1 or Demand-2 rates because it currently does not incur "as billed" charges from its suppliers. CIG states that the proposed rates compare with those it filed on May 31, 1991, in Docket No. TQ91-3-32, which rates were accepted by Commission Letter Order dated July 24, 1991, to become effective on July 1, 1991.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Spring, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before August 22, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18879 Filed 8-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-457-000]

Central Maine Power Co., Order Conditionally Accepting Rates as Modified and Notices of Termination, Ordering Refunds and Payment of Additional Filing Fees Announcing Policy Concerning the Timing of Electric Rate Filings

Issued August 2, 1991.

Background

On May 1991, Central Maine Power Company (Central Maine) filed 14 agreements providing for the separate sale of short-term capacity and energy from Central Maine to each of the following entities: Boston Edison Company (Boston Edison), Massachusetts Municipal Wholesale Electric Company (MMWEC), Public Service Company of New Hampshire (PSNH), New England Power Company (NEPCO), and Canal Electric Company (Canal). The agreements involve sales varying in duration from one month to 18 months. Service for these transactions commenced on various dates between May 1, 1987 and June 1, 1990, and terminated on various dates between October 31, 1987 and October 31, 1990. Central Maine asserts that:

All sales have occurred on mutually agreed terms and conditions, determined by arms'-length negotiation as evidenced by the executed agreements filed herewith.

The charges for capacity were separately negotiated for each transaction and vary with market conditions at the time each agreement was entered into.

Energy charges in each instance were (Central Maine's) actual unit fuel costs for the energy sold.[1]

[1] Central Maine Filing at 2. Central Maine adds that rates for two of the negotiated transactions (sales to PSNH and to NEPCO in October 1988) included a transmission component of $15.79 per kw/year (pro-rated monthly). Central Maine states that this transmission rate is identical to the rate filed by Central Maine and accepted by the Commission, for separate transmission service furnished to PSNH and to Boston Edison covering the same period of time (Central Maine Rate Schedule FERC No. 87). *Id.*

In support of these assertions, Central Maine refers to a number of the Commission's recent orders accepting market-based rates.[2] Central Maine claims that the 14 agreements submitted here meet the criteria for Commission approval set forth in those orders. Because Central Maine requests approval for the rates as market-based, Central Maine has submitted no cost of service data.

Central Maine also requests waiver of the Commission's notice and filing requirements to permit the agreements to become effective as of the date service commenced under each agreement. 18 CFR 35.3(a). Central Maine claims that the one-to-four-year delay in filing the 14 agreements was "inadvertent and unintentional." Central Maine further argues that good cause exists to grant the requested waivers because of the "consensual and short-term nature of the transactions, the short notice on which most of these sales commenced, and the press of other business."[3]

Because service under each of the 14 agreements terminated prior to Central Maine's filing, Central Maine submits a notice of termination for each agreement. Central Maine also requests waiver of the notice requirement so that the proposed notices of termination may become effective on the dates the agreements expired by their own terms. Finally, Central Maine requests waiver of the Commission's regulations concerning the filing of cost-of-service data.[4]

Notice of Central Maine's filing was published in the **Federal Register**,[5] with comments, protests, and interventions due on or before June 19, 1991. None were filed.

Discussion

As discussed below, we will conditionally accept Central Maine's rates as modified pursuant to this order. Further, we will order refunds, with interest pursuant to 18 CFR 35.19a.

We note that service under all 14 of the agreements at issue concluded before the agreements were even filed. The Commission has on several occasions expressed its disapproval of parties transacting business in violation of the Federal Power Act (FPA) and the Commission's regulations.[6] Section 205(c) of the FPA requires that agreements for jurisdictional transmission and sales be on file with the Commission.[7]

In *Portland General Exchange, Inc. (PGE–PGX)*,[8] *the Commission stated:*

> [W]e do not look favorably upon utilities undertaking sales such as these in violation of the section 205 FPA requirement that a rate schedule be on file for any wholesale sale in interstate commerce. It is particularly troublesome in a case such as this, where non-traditional rates are being sought for a long-term power sale and our ability to effectively remedy the defect in the rates is restricted as a result of the sales taking place without Commission approval.[9]

The reasoning in *PGE–PGX* applies *a fortiori* here: in *PGE–PGX*, the filing utility delayed filing a single, 30-year transaction until 11 months after service began. Here, Central Maine has delayed the filing of 14 separate agreements under which service commenced between one and four years before the date of filing; further, service under all 14 agreements is now complete. Central Maine's stated explanation for its delay in filing, focusing on the "short-term," "consensual" nature of the transactions and the "press of other business," simply does not excuse its noncompliance with the explicit filing requirements of the FFA and our regulations.

More recently, in Central Vermont Public Service Corporation (Central Vermont),[10] the Commission stated that prior Commission approval is absolutely necessary in order for parties to receive approval of non-traditional rates.[11] In that case, Central Vermont completed several transactions prior to filing an application for Commission approval, provided service at non-traditional rates, and failed to support adequately the rates embodied in the submitted agreements.[12]

We find that Central Maine's filing presents a situation comparable to that in *Central Vermont*.[13] Additionally, we note that despite the Commission's statements in *PGE–PGX* and in *Central Vermont*, Central Maine apparently continued to see no immediate need to file the 14 agreements. Accordingly, as in *Central Vermont*, we will direct Central Maine to revise its rates for the 14 transactions to a level reflecting a 100 percent contribution to the fixed costs of the facilities used to provide the service We will, accordingly, also direct Central Maine to refund all amounts it has collected in excess of the revised rates, together with interest calculated in accordance with the Commission's regulations.[14]

In addition, we shall require Central Maine to pay the appropriate filing fees, which would have been applicable to the timely filing of the 14 agreements. Central Maine paid $2,970, the appropriate amount for a single filing made after October 11, 1990, the effective date of the Commission's new filing fee structure.[15] However, since all of the transactions should have been filed prior to that date,[16] Central Maine must pay the fees applicable under the old fee structure. Thus, we shall require Central Maine to submit filing fees in the amount of $89,850 (14 agreements, times the applicable filing fee ($6,630), less $2,970), plus interest (calculated in accordance with the Commission's regulations) accrued from the dates the applicable fees should have been paid. We shall accept the rates only on the condition that this fee is paid within 45 days of the date of this order.

Furthermore, strictly based on Central Maine's agreement to the above conditions we find that good cause exists to grant a waiver of the notice requirements (for the filing of the rates as well as the notices of termination).

Policy Concerning the Timing of Electric Rate Filings

Under section 205(d) of the FPA, all jurisdictional rates must be filed with the Commission in a timely manner, in accordance with part 35 of the

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[2] Central Maine Transmittal Letter at 2–3, *citing, inter alia*, Cleveland Electric Illuminating Co., 55 FERC ¶ 61,172 (1991); Central Maine Power Co., 53 FERC ¶ 61,465 (1990); Commonwealth Atlantic Limited Partnership, 51 FERC ¶ 61,368 (1990); Public Service Company of Indiana, Inc. (*PSI*), Opinion No. 349, 51 FERC ¶ 61,367, order on rehearing, PSI Energy, Inc., Opinion No. 349–A, 52 FERC ¶ 61,260 (1990).

[3] Central Maine Filing at 7.

[4] 18 CFR 35.13.

[5] 56 FR 27005 (1991).

[6] Most recently, in Nevada Power Company, 55 FERC ¶ 61,379 at 62,153 n.14 (1991), we expressed our concern at the "increasing number of rate filings made long after the parties have undertaken new obligtions." We cautioned filing utilities "that we may not be as generous in the future in finding good cause to grant waiver if presented with, *inter alia*, unexplained filing delays."

[7] 16 U.S.C. 824d(c) (1988).

[8] 51 FERC ¶ 61,108 (1990), *order granting clarification* 51 FERC ¶ 61,379 (1990), *order accepting compliance filing*, 53 FERC ¶ 61,216 (1990).

[9] 51 FERC at 61,246 n.67.

[10] 54 FERC ¶ 61,153 (1991).

[11] *Id.* at 61,484–85.

[12] *Id.* at 61,484.

[13] *Central Vermont* was issued on February 15, 1991, more than three months before the filing in this case.

[14] *See* 18 CFR 35.19a. Refunds will be deferred until the Commission accepts Central Maine's compliance filing.

[15] *See* Revision of Rate Schedule Filings under Sections 205 and 206 of the Federal Power Act, Order No. 527, 55 Federal Register 41,996, 53 FERC ¶ 61,043 [FERC Statutes and Regulations ¶ 30,900] (1990), *clarified*, Order No. 527–A, 56 Federal Register 3,029, 54 FERC ¶ 61,034 (FERC Statutes and Regulations ¶ 30,912) (1991).

[16] T3See id.

Commission's regulations. The statute and the Commission's regulations also give the Commission the discretion to allow rates to take effect with less than sixty-days' notice for good cause shown.[17] As noted above, in several recent cases public utilities have delayed tendering rate filings to the Commission until after service has begun, and in some cases, as here, completed. Such delay has occurred in instances where utilities have sought to justify their rates on a cost basis, as well as in instances where non-traditional (market-based) rates have been requested. Delay in tendering rate filings can place the Commission in a difficult position, regardless of whether the rates are cost- or market-based. However, this problem is most acute when market-based rates are requested. Timing is critical in such cases. The Commission cannot cure a defective market or market process retroactively. Therefore, *all* rates submitted on a non-traditional basis must be filed with the Commission at least 60 days before the expected date of commencement of service, in accordance with § 35.3(a) of the Commission's regulations.[18] Furthermore, only in extreme circumstances will we consider exercising our discretion to waive the sixty-day notice requirement for non-traditional rate filings.

To the extent utilities are transacting under existing agreements embodying non-traditional rates that have not yet been filed with the Commission, we hereby announce that such utilities have 60 days after publication of this order in the **Federal Register** to file such rates.[19] We will permit the seller to recover no more than a 100 percent contribution to fixed costs as described above from the date service commenced until the date the Commission accepts the rates. We will require refunds, with interest pursuant to 18 CFR 35.19a (1991), for all amounts in excess thereof. However, with respect to all non-traditional rates that are not timely filed and are filed more than 60 days after publication of this order in the **Federal Register**, the Commission will permit the seller to recover no more than the variable operation and maintenance (O&M) costs from the date service commenced until the date the Commission accepts the rates and will require refunds, with interest pursuant to 18 CFR 35.19a, for all amounts in excess thereof.

In addition, the Commission is announcing a similar policy with respect to traditional cost-based rates. We are aware of the argument that, due to the need to respond quickly to market changes and opportunities for coordination, in some cases transactions must begin before the utility has a chance to file the rate reflecting the transaction with the Commission. While this argument has some merit, we note that many utilities have managed to avoid this problem by having tariffs on file that permit transactions to be negotiated subject to a cap of 100 percent contribution to fixed costs. The Commission has allowed market-based pricing under a similar tariff in *PSI*, note 2, *supra*. Such tariffs give the selling utility the flexibility to respond to market opportunities while satisfying its obligation to have its rate on file. While we do not want to discourage these types of short-term coordination transactions, we cannot allow utilities to ignore our regulations.

Our regulations require rates to be filed 60 days before the expected date of commencement of service, in accordance with § 35.3 of the Commission's regulations. Only upon good cause shown will we grant waiver of the sixty-day notice requirement for cost-based rate filings. Accordingly, to the extent that utilities are transacting under agreements embodying cost-based rates that have not yet been filed with the Commission, we hereby announce that such utilities have 60 days after publication of this order in the **Federal Register** to file such rates. If the rates are filed within 60 days of publication of this order, we will permit the seller to recover no more than a 100 percent contribution to fixed costs. However, with respect to all cost-based rates that are not timely filed and are filed more than 60 days after publication of this order in the **Federal Register**, the Commission will permit the seller to recover no more than the variable O&M costs from the date service commenced until the date the Commission accepts the rates. The Commission will order refunds, with interest pursuant to 18 CFR 35.19(a), for all amounts in excess thereof.

The Commission Orders

(A) Central Maine's agreements and notices of termination are hereby conditionally accepted as modified, as discussed in the body of this order.

(B) Waiver of the Commission's notice requirements is hereby granted for the filing of the rates and the notices of termination, as discussed in the body of this order.

(C) Central Maine is hereby directed to file revised rates reflecting changes discussed in the body of this order within 45 days of the date of issuance of this order. If a request for rehearing is pending at the expiration of the 45-day period, such filing shall be made within 15 days of the date the Commission disposes of the rehearing.

(D) Central Maine is hereby directed to refund all amounts received in excess of the revised rates determined in accordance with Ordering Paragraph (C) above, within 15 days of the date the Commission accepts Central Maine's compliance filing plus interest calculated in accordance with 18 CFR 35.19a.

(E) Central Maine is hereby directed to file a refund report within 15 days of making the appropriate refunds pursuant to Ordering Paragraph (D), above.

(F) Central Maine is hereby directed to submit, within 45 days of the date of issuance of this order, additional filing fees in the amount of $89,850, as discussed in the body of this order, plus interest calculated in accordance with 18 CFR 35.19a. However, if a request for rehearing is pending at the expiration of the 45-day period, the additional filing fees shall be paid within 15 days of the date the Commission disposes of the rehearing.

(G) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18877 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-12-001]

Granite State Gas Transmission, Inc.; Compliance Filing

August 2, 1991.

Take notice that on July 31, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5039 filed the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, for effectiveness on August 1, 1991:

Fourth Revised Sixth Revised Sheet No. 21
Revised First Revised Sheet No. 36

According to Granite State, the revised tariff sheets listed above are filed in compliance with a Stipulation and Agreement in Docket No. RP91-12-000 approved by the Commission in an

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[17] *See* 16 U.S.C. 824d(d) (1988); 18 CFR 35.3(a), 35.11; *see also, e.g., San Diego Gas & Electric Co.* v. *FERC*, 904 F.2d 727, 731 (D.C Cir. 1990); *City of Girard* v. *FERC*, 790 F.2d 919, 925 (D.C. Cir. 1986).

[18] 18 CFR 35.3(a).

[19] This policy applies to service under new agreements and in no way affects our current policies regarding increases in rates under existing agreements currently on file.

order issued July 25, 1991. It is stated that the Stipulation and Agreement is an uncontested settlement of Granite State's restatement rate filing. Granite State further states that, in the settlement, it agreed to reduce the non-gas components in the Commodity Rates of its Rate Schedules CD–1 and CD–2 for sales to Bay State Gas Company and Northern Utilities, Inc., respectively, effective on the first day of the month following Commission approval of the settlement. It is further stated that the reduction in the non-gas component of the Commodity rate for sales also results in an equivalent reduction of the Overrun Rates for sales. Accordingly, Granite State states that the revised tariff sheets submitted with its filing reflect the agreed upon reductions in the non-gas components of its sales rates and the Overrun Rates for sales.

According to Granite State, copies of its filing were served upon its customers, all intervenors in Docket No. RP91–12–000 and the regulatory commission of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before August 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18880 Filed 8–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT91–5–000]

Northwest Pipeline Corp.; FERC Order No. 493 Electronic Filing

August 1, 1991.

Take notice that on October 25, 1990, Northwest Pipeline Corporation (Northwest) tendered for filing Original Sheet Nos. 1 through 303 to its FERC Gas Tariff, Second Revised Volume No. 1 (which supersedes First Revised Volume No. 1); and Original Sheet Nos. 1 through 602 to its FERC Gas Tariff, First Revised Volume No. 1–A (which supersedes Original Volume No. 1–A). The purpose of this filing is to refile Northwest's tariff electronically, as required by FERC Order No. 493. Northwest states that copies of the filing were mailed to all of its jurisdictional customers and affected state commissions.

The Commission, by letter order dated November 21, 1990, accepted and suspended the above referenced tariff sheets, permitting them to become effective November 25, 1990, subject to refund and further review.

Any person desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rule 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before August 16, 1991. Protects 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–18795 Filed 8–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–3–55–000]

Questar Pipeline Co.; Rate Change

August 2, 1991.

Take notice that on July 31, 1991, Questar Pipeline Company tendered for filing and acceptance to its FERC Gas Tariff to be effective September 1, 1991, First Revised Thirteenth Revised Sheet No. 12, Original Volume No. 1.

Questar states that the purpose of this filing is to adjust the purchased gas cost under Questar's sale-for-resale Rate Schedule CD–1 effective September 1, 1991.

Questar states that the First Revised Thirteenth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.74201/Dth which is $0.22590 lower than the currently effective rate of $2.96791/Dth. The demand base cost of purchased gas as adjusted increased $0.00013/Dth from $0.00601/Dth to $0.00614/Dth.

Questar states that it has provided a copy of the filing to Mountain Fuel Supply Company and interested state public service commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211. All such protests should be filed on or before August 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 91–18881 Filed 8–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10813–000; West Virginia]

Town of Summersville, WV; Notice Declaring Application Ready for Environmental Analysis

August 1, 1991.

Take notice that the application for license for the Summersville Project No. 10813, is ready for environmental analysis and comments are sought on the merits of the application.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the date of this notice (including mandatory and recommended terms and conditions or prescriptions pursuant to sections 4(e), 18, 30(c) of the Federal Power Act (FPA), and section 405(d) of the Public Utility Regulatory Policies Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, and other applicable statutes). All reply comments must be filed with the Commission within 105 days from the date of this notice.

The Commission has received comments and recommendations from the West Virginia Division of Natural Resources dated March 14 and 15, 1991, and the U.S. Department of the Interior, Office of the Secretary, dated March 1, 1991, in response to the public notice of the application issued on January 11,

1991; these agencies need not refile their previous comments and recommendations.

All filings must: (1) Bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list and any affected resource agencies and Indian tribes.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008. Requests for additional procedures and replies to such requests may be filed in accordance with 18 CFR 4.34 (a) and (c).

You are advised to contact Michael Dees on (202) 219–2807, if you have any questions about this notice.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–18794 Filed 8–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP90–8–006 and RP90–8–007]

Transcontinental Gas Pipeline Corporation; Informal Settlement Conference

August 1, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on August 9, 1991, at 9:30 a.m., in the Commission offices, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of issues related to Transco's Mobile Bay Pipeline Facilities.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 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 Sandra J. Delude (202) 208–2161.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–18792 Filed 8–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–3–56–000]

Valero Interstate Transmission Co.; Proposed Change in FERC Gas Tariff

August 2, 1991.

Take notice that Valero Interstate Transmission Company ("Vitco"), on July 31, 1991, tendered for filing the following tariff sheet as required by Orders 483 and 483–A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 2

36th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483–A. Vitco states that the change in rates to Rate Schedule S–3 includes an increase in purchased gas cost of $0.1630 per MMBtu.

The proposed effective date of the above filing is September 1, 1991. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by September 1, 1991.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 91–18882 Filed 8–7–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed During the Week of June 21 Through June 28, 1991

During the Week of June 21 through June 28, 1991, the applications for 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 agrieved 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: August 2, 1991.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 21 through June 28, 1991]

Date	Name and location of applicant	Case No.	Type of submission
June 21, 1991	Amoto I/Washington, National Helium/Washington, Olympia, Washington.	RM21–253, RM21–254	Request for modification/rescission in the Amoco I & Nat'l Helium Second Stage Refund Proceeding. *If Granted:* The 06/08/84 & 01/13/86 Decisions and Orders (Case Nos. RQ21–56 and RQ2–236) issued to the State of Washington would be modified regarding the State's application for refund submitted in the Amoco & National Helium second stage refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 21 through June 28, 1991]

Date	Name and location of applicant	Case No.	Type of submission
May 28, 1991	Texaco/Gerstmann Texaco, Bossier, Louisiana	RR321-73	Request for modification/rescission in the Texaco Refund Proceeding. *If Granted:* The 05/10/91 Decision and Order (Case No. RF321-14983) issued to Gerstmann Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of June 21 to June 28, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
06/21/91	American Cyanamid Co	RF336-14
06/24/91	Arax Gas Station	RF329-5
06/24/91	Muladelphia Electric Co	RF336-5
06/24/91	Corey Oil Co	RF315-10149
06/26/91	Gem Oil Company	RF330-30
06/24/91	Defense Fuel Supply Center.	RF326-310
06/27/91	Fall River Housing Authority.	RF336-16
06/27/91	Mapleton School Dist	RF272-125
06/21/91 thru 06/28/91.	Texaco Refund applications received.	RF321-15780 thru RF321-16194
06/21/91 thru 06/28/91.	Crude Oil Refund applications received.	RF272-89428 thru RF272-89441
06/21/91 thru 06/28/91.	Gulf Oil Refund applications received.	RF300-17081 thru RF300-17132
06/21/91 thru 06/28/91.	Atlantic Richfield Refund applications received.	RF304-12307 thru RF304-12352

[FR Doc. 91-18896 Filed 8-7-91; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Salt Lake City Area Integrated Projects Proposed Single-Issue Power Rate Adjustment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed Salt Lake City area integrated projects single-issue power rate adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing a single-issue rate increase for firm power from the Salt Lake City Area Integrated Projects (Integrated Projects) beginning December 1, 1991, and extending through the end of FY 1992 or until a regular rate adjustment (scheduled for July 1, 1992) is put in place, whichever occurs first. The Integrated Project consist of the Colorado River Storage Project (CRSP), the Collbran Project, and the Rio Grande Project, which have been integrated for marketing and power ratesetting purposes. The rate increase is neeed on an expedited basis to cover the cost of increased purchased power that will be required as the operation of Glen Canyon Dam is modified by release constraints (interim releases). These interim releases are presently anticipated to be placed in effect by the Department of the Interior in the near future.

The interim releases are intended to improve environmental conditions downstream of Glen Canyon Dam by changing the present operation of the Glen Canyon Dam and powerplant. The interim releases are intended to stay in effect until implementation of the Secretary of the Interior's Record of Decsion associated with the Glen Canyon Dam Environmental Impact Statement currently scheduled for October 1993. Alternative proposals for interim releases are being recommended by the Bureau of Reclamation (Reclamation) and others. Under Western's proposal for interim releases, additional purchase power costs could amount to $7 million in FY 1992. Other proposals could result in additional purchase power costs of as much as $30 million in FY 1992. For purposes of this notice, additional purchase power cost of $22.7 million were used to establish the proposed rate increase.

The proposed power rate increase would amount to an additional capacity charge of $.70 per kilowatt-month (kW-month) for a total capacity charge of $3.78/kW-month. An additional energy charge of 1.65 mills per kilowatthour (mills/kWh) for a total charge of 8.9 mills/kWh, which would result in a proposed combined rate increase of 3.3 mill/kWh (17.8 mills total) calculated at a 58.2-percent load factor. The proposed rate increase would become effective December 1, 1991. This increase is 22.8 percent over the existing combined rate of 14.5 mills/kWh calculated at a load factor of 58.2 percent, which is composed of a $3.08/kW-month capacity charge and a 7.25 mills/kWh energy charge.

An explanation of the need for this single/issue rate increase due to interim releases and the methodology used in developing the proposed rate will be distributed to Integrated Projects power customers and other interested parties following publication of this notice.

Customers and interested parties are invited to comment on the proposed rates and methodology.

The proposed Integrated Projects firm power rate adjustment is a major rate adjustment because annual Integrated Projects sales are normally more than 100 million kilowatthours. Therefore, in accordance with the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions (10 CFR part 903), a public information forum and a public comment forum will be held; however, due to the need to expedite this rate process, the consultation and comment period will be shortened.

Following review of public comments, Western will recommend final proposed rates to the Deputy Secretary of Energy to be placed in effect on an interim basis prior to submission to the Federal Energy Regulatory Commission (FERC) for approval on a final basis.

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end on September 24, 1991.

A public information forum, at which Western will outline the methodology used in developing the proposed rate increase and answer questions, will be held at the Red Lion Inn, 255 South West Temple, Salt Lake City, Utah, at 9:30 a.m. on September 9, 1991. Immediately following the information forum, a public comment forum will be held at which Western will receive oral and written comments. Thse forums will be transcribed by a court reporter. Written comments should be received by the end of the consultation and comment period to be assured consideration. For comments or futher information contact: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606,

Salt Lake City, UT 84147–0606, (801) 524–5493.

SUPPLEMENTARY INFORMATION: Power rates for the Integrated Projects are established pursuant to the DOE Organization Act of August 4, 1977, 42 U.S.C. 7101, *et seq.*; the Reclamation Act of 1902, ch. 1093, 372 Stat 388 (1902), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions, the Secretary of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary of DOE; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to FERC.

The procedures for public participation in rate adjustments for power and transmission service marketed by Western at 10 CFR part 903 were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rate are available for inspection and copying at the Salt Lake City Area Office, 257 East 200 South, suite 475, Salt Lake City, Utah.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969, Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508), and DOE guidelines published at 52 FR 47662 on December 15, 1987, Western will conduct an environmental evaluation of the Integrated Projects rate adjustment and develop the appropriate level of environmental documentation prior to the implementation of any rate increase.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the proposed rate relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the Act. Because the proposed rates are of limited applicability, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291

DOE has determined that this is not a major rule because it does not meet the criteria of Section 1(b) of Executive Order 12291 (46 FR 13193, published February 19, 1981). In addition, Western has an exemption from Sections 3, 4, and 7 of Executive Order 12291, and therefore, will not prepare a regulatory impact statement.

Issued at Golden, Colorado, August 1, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91–18897 Filed 8–7–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3982–7]

Enhanced Monitoring and Compliance Certification Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and of public meeting.

SUMMARY: The EPA is planning to propose regulations on enhanced monitoring and compliance certification as required by section 702(b) of the Clean Air Act Amendments of 1990 (the Amendments). These regulations will apply to all major stationary sources as defined under the provisions of the Clean Air Act and will impose new requirements on those sources related to monitoring and submission of compliance certifications.

Because of the broad application of this regulation and the complexities of the issues it will address, EPA believes that the many parties potentially affected by the regulation should have an opportunity to discuss the issues raised by the regulation with EPA in advance of EPA's formal proposal of the regulation. This notice announces the public availability of a public information document and EPA's intent to conduct a one-day public meeting to discuss some of the issues of particular concern to the parties that will be affected by the regulation. In addition, the Agency will accept written comments on the public information document provided that comments are received by August 30, 1991. The Agency plans to use this process to obtain public comment before developing and promulgating a proposed regulation.

DATES: The public meeting will be held August 22, 1991 from 8:30 a.m. to 5 p.m.

ADDRESSES: The public meeting will be held at the J.W. Marriott Hotel at National Place in Washington, DC, 1331 Pennsylvania Avenue NW., (202) 393–2000. Participants should advise the hotel that they are attending the EPA meeting on the enhanced monitoring and compliance certification regulation.

To assist EPA in planning the public meeting, persons interested in attending should contact Ms. Julia Rottman, Public Meeting Coordinator, at (804) 979–3700, telefax (804) 296–2860, Perrin Quarles Associates, Inc., 501 Faulconer Drive, suite 2–D, Charlottesville, Virginia 22901, to give their name and affiliation. Please register by August 19, 1991.

COMMENTS: Written comments are due on or before August 30, 1991. Comments should be submitted (in duplicate, if possible) to: Air Dockets Section (A–131), Attention: Docket No. A–91–52, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

AVAILABILITY OF PUBLIC INFORMATION DOCUMENT: The public information document on enhanced monitoring and compliance certification is available for copying from the docket (address below). Please refer to "Public Information Document: Enhanced Monitoring and Compliance Certification." A reasonable fee may be charged for copying multiple copies.

DOCKET: Docket No. A–91–52 is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st floor, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Rapp at (703) 308–8697, Compliance Analysis Section, Compliance Monitoring Branch (EN–341–W), U.S. Environmental Protection

Agency, 401 M Street SW., Washington, DC 20460.

Richard Biondi,

Director, Stationary Source Compliance Division, Office of Air Quality Planning and Standards.

[FR Doc. 91-18966 Filed 8-7-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

American President Lines, Ltd., et al.; Agreement(s) Filed

The Federal maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011340.

Title: American President Lines, Ltd./ Orient Overseas Container Line Inc. Reciprocal Slot Exchange and Coordinated Sailing Agreement.

Parties: American President Lines, Ltd. Orient Overseas Container Line Inc.

Synopsis: The proposed Agreement would authorize the parties to discuss and voluntarily agree on rates, service contracts and other matters in the U.S./ Far East trade. It would also permit the parties to charter space on each other's vessels, establish sailing schedules, service frequency and port rotations.

Dated: August 2, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-18786 Filed 8-7-91; 8:45 am]

BILLING CODE 6730-01-M

Copper/T. Smith Corporation et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 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: 224-200491-002.

Title: Independent Marine Terminal Operators Discussion Agreement.

Parties: Cooper/T. Smith Corporation, Continental Stevedoring & Terminals, Inc., Eller & Company, Inc., Harrington & Company, Inc., International Terminal Operating Co., Inc., Maher Terminals, Inc., Marine Terminals Corp., Metropolitan Stevedore Company, Ryan-Walsh, Inc., Stevedoring Services of America, Ceres Terminals, Inc., Strachan Shipping Co.

Synopsis: The Agreement, filed July 31, 1991, amends the parties' basic agreement by adding Ceres Terminals, Inc. and Strachan Shipping Co. as parties to the agreement.

Dated: August 2, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-18787 Filed 8-7-91; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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 Committee, 1100 L Street, NW., room 10220. Insterested parties may submit protests or 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 and protests are found in §§ 560.602 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224-200553.

Title: Port of New Orleans/Dupuy Storage and Forwarding Corporation Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans (Board), Dupuy Storage and Forwarding Corporation (Dupuy).

Filing Party: Ms. Julia Ann Berrone, Staff Attorney, Port of New Orleans, P.O. Box 60046, New Orleans, LA 70160.

Synopsis: The Agreement, filed August 1, 1991, provides for the lease of 66,400 sq. ft. of the Florida Avenue Wharf facility located on the Inner Harbor-Navigational Canal, City of New Orleans, Louisiana on a month-to-month basis. Dupuy shall pay the Port a base rent of $86,400.00 per year and applicable tariff, dockage and wharfage charges (not demurrage and sheddage). Dupuy shall use the facility for the loading and unloading of cargo from vessels, barges, and other watercraft.

Dated: August 5, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-18906 Filed 8-7-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Club Med Sales, Inc., Services et Transports Cruise Lines, Credit Lyonnais, Societe Generale and Banque Nationale de Paris, 40 West 57th Street, New York, NY 10019.

Vessel: Club Med 1

Dated: August 5, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-18907 Filed 8-7-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Alaska Sightseeing Tours, Inc., West Marine, Inc. and West Travel, Inc., 4th and Battery Bldg., #700, Seattle, WA 98121.

Vessel: Spirit of Glacier Bay.

Dated: August 5, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18908 Filed 8–7–91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

AmFirst Financial Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 27, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. AmFirst Financial Services, Inc., McCook, Nebraska; to acquire 100 percent of the voting shares of State Bancshares, Inc., Benkleman, Nebraska.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. AmFirst Bancorporation, Everett, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of American First National Bank, Everett, Washington.

Board of Governors of the Federal Reserve System, August 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18818 Filed 8-7-91; 8:45 am]

BILLING CODE 6210-01-F

Sidney L. Knopf, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 27, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Sidney L. Knopf, Dallas, Texas; to acquire an additional 15.01 percent (totalling 25.0 percent) of the voting shares of Eastpark Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Eastpark National Bank, Dallas, Texas.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. Harry T. Goss, Phoenix, Arizona; to retain 8.85 percent (up to 14.99 percent) of the voting shares of Republic National Bancorp, Inc., Phoenix, Arizona, and thereby indirectly retain Republic National Bank of Arizona, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, August 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18819 Filed 8-7-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

[G–91–3]

Delegation of Authority to the Chairman

Pursuant to the authority vested in me by section 3726 of title 31, United States Code, I have determined that it is cost-effective or otherwise in the public interest to delegate authority to the Chairman of the U.S. Nuclear Regulatory Commission to conduct a prepayment audit of transportation bills relating to the movement of foreign and domestic household goods, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, subpart 101–41, and amendments thereto. This prepayment audit will be conducted at the U.S. Nuclear Regulatory Commission, Division of Accounting and Finance, Washington, DC.

The Chairman may redelegate this authority to any officer, official, or employee of the U.S. Nuclear Regulatory Commission.

The Chairman shall notify the General Services Administration in writing of these redelegations. This delegation is effective upon publication in the Federal Register.

Dated: July 15, 1991.

Richard G. Austin,

Adminstrator of General Services.

[FR Doc. 91–18836 Filed 8–7–91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Office for Substance Abuse Prevention Meeting

Pursuant to Public Law 92–463, notice is hereby give of the meeting of the advisory committees of the Office for Substance Abuse Prevention for September 1991.

The Advisory Committee on Substance Abuse Prevention will be

performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2, 10(d).

A summary of the meeting and roster of committee members may be obtained from: Ms. D. Herman, (Acting) OSAP Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Rockwall II Building, Suite 630, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–7390).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Advisory Committee on Substance Abuse Prevention.

Meeting Date(s): September 10–11, 1991.

Place: Executive Plaza North, 6130 Executive Boulevard, Rockville, MD 20852.

Open: September 10, 9 a.m.–12 p.m.

Closed: September 11, 9 a.m.–3 p.m. Otherwise

Contact: DeLoris L. James Hunter, Ph.D., Rockwall II Building, room 9D–10, Telephone (301) 443–0365.

Dated: August 5, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–18909 Filed 8–7–91; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

[Announcement 143]

Cooperative Agreement for Improved Surveillance Methods for Fetal Alcohol Syndrome in a Community-Based High-Risk Infant Follow Up Program; Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC), announces the availability of cooperative agreement funds in Fiscal Year 1991 for the development and testing of improved surveillance methods for fetal alcohol syndrome (FAS) in a community-based high-risk infant follow up program. The principal elements of the project are enhanced identification of high-risk newborns fitting an FAS profile, focused physical assessment of those meeting the FAS high-risk profile, developmental assessments during the follow up period, and assessment of maternal alcohol consumption during pregnancy.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health, Maternal and Infant Health, and Alcohol and Other Drugs. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301 (42 U.S.C. 241) and 311 (42 U.S.C. 243) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, state and local health departments and small, minority and or women-owned businesses are eligible for these cooperative agreements. Applicant institutions must serve discrete geographical areas such as counties or cities with a minimum of 10,000 resident births per year. Applicants must demonstrate successful operation of an established high-risk infant tracking and follow up program to serve as a basis for a pilot FAS surveillance project. The infant tracking program must demonstrate established relationships with the pertinent clinical (e.g. labor and delivery and nurseries) and medical record units at all the hospitals in the geographical area under consideration.

The hospitals in the county, or other geographical area served by the applicant, should have, at a minimum, the following data routinely reported in infant charts and preferably in a central log or computerized database: Birth weight, length, head circumference, gestational age assessed by examination of the baby (not estimated by ultrasound or fundal height by obstetrical examination of the mother), and major birth defects apparent at birth.

Availability of Funds

It is anticipated that approximately $175,000 will be available in Fiscal Year 1991 to fund one cooperative agreement for Improved Surveillance Methods of Fetal Alcohol Surveillance in a Community-based High-risk Infant Follow up Program. The award is expected to begin by September 30, 1991. The award is expected to be for a 12-month budget period within a project period not to exceed 5 years. The funding estimate may vary and is subject to change, depending upon the availability of funds. Continuation awards will be based on satisfactory progress, need to continue the pilot program, and the availability of funds.

Purpose

The purpose of the cooperative agreement is to develop and implement a pilot surveillance system in a discrete geographical area such as a city or county or group of counties served by a health department or other health-related institution with a well established system for identifying high-risk infants with a profile similar to that required for FAS surveillance screening. The objectives of the surveillance pilot are (1) to develop improved surveillance methods for FAS; (2) to test these screening methods by examining a comparison group of children and surveying mothers of both groups for alcohol consumption and other possible exposures; and (3) to add to knowledge of biological risk factors for FAS through determination of enzyme polymorphisms for alcohol dehydrogenase and aldehyde dehydrogenase.

The cooperative agreement award will enable a health department or other health-related institution to enhance their existing high-risk infant tracking in order (1) to select the infants most likely to manifest FAS, (2) to examine these infants for signs of fetal alcohol exposure, (3) to assess development for any delay possibly attributable to fetal alcohol exposure, (4) to facilitate administration of a maternal questionnaire by telephone to ascertain demographic information, alcohol consumption, and other possible exposures, and (5) to collect maternal and infant blood specimens by fingerstick/heelstick using filter paper technique for metabolic and genetic studies. The cooperative agreement award will enable the recipient to collaborate to develop epidemiological studies related to FAS surveillance.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below, and CDC will be responsible for conducting activities under B. below;

A. Recipient Activities:

1. Develop a population surveillance pilot program for FAS with the following five activities:

a. Systematic identification of all resident Small for Gestational Age

(SGA) and Intrauterine Growth Retardation (IUGR) births with and without microcephaly or major birth defects;

b. Focused physical examination to detect signs of FAS;

c. Collection of filter paper blood specimens from mothers and infants;

d. Develop a maternal telephone questionnaire to obtain demographic and alcohol consumption data; and

e. Developmental assessments at specified ages.

2. Develop detailed methods and protocol for the five activities listed in Recipient Activity No. 1.

3. Develop FAS physical examination instrument with CDC assistance.

4. Develop maternal questionnaire with CDC assistance.

5. Enhance knowledge and skills of professional and clerical staff to perform these activities.

6. Develop adequate means to assure quality of examinations and procedures and to limit intra- and inter-examiner variability.

7. Develop and maintain appropriate data management system for collection, storage, retrieval, and analysis of project data.

8. Collaborate to develop epidemiological studies relevant to FAS surveillance.

B. CDC Activities:

1. Provide consultation and technical assistance for the development and implementation of the project protocol.

2. Provide consultation and technical assistance for the development of a focused FAS screening physical examination instrument.

3. Provide assistance to develop and arrange for administration of maternal questionnaire.

4. Provide consultation and technical assistance to recipient to develop procedures for physical and developmental examinations, for maternal questionnaire administration, and for collection and transport of biological specimens.

5. Assist with the review of the conduct of the surveillance pilot, as outlined in the project protocol.

6. Provide technical assistance in developing procedures for data collection, management, and analysis.

7. Provide technical consultation in the review of the analysis of data gathered in the pilot.

8. Consult with recipient prior to recipient's release of surveillance information to third parties while the project is in progress.

9. Review reports of results being submitted for publication.

10. Provide technical assistance for the development of epidemiological studies of FAS.

Evaluation Criteria

A. Applicant's Understanding of the Problem (10%)

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of the complexities of the recognition and identification of FAS.

B. Organizational Experience (30%)

The extent to which the applicant has skills and experience with comprehensive, systematic identification, tracking and follow-up of high-risk infants, and with performance of neonatal and postnatal physical and developmental assessments.

C. Approach and Capability (30%)

The extent to which the applicant has included a description of their approach to screening and follow up activities and the ability to implement these. The applicant shall describe and indicate the availability of facilities and equipment necessary to carry out this project.

D. Program Personnel (20%)

The adequacy of the description of capability to assemble competent and trained staff to conduct on-site surveillance screening activities and to evaluate infants individually through focused physical examinations and developmental assessments, to acquire biological specimens, and to facilitate telephone administration of a questionnaire to the mothers.

The applicant shall identify all current and potential personnel who will be utilized to work on this cooperative agreement, including qualifications and specific experience as it relates to the requirements set forth in this request.

E. Collaborative Abilities (10%)

The extent to which the applicant has described ability to collaborate with hospital staff and other relevant health agencies in the different aspects of the surveillance project and the ability to collaborate to develop epidemiological studies relevant to surveillance of FAS.

Executive Order 12372

The intergovernmental review requirements of Executive Order 12372, as implemented by DHHS regulations in 45 CFR part 100, are applicable to this program. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants [other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations is 30 days after the application deadline for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations is receives after that date.

Other Requirements

A. Individual projects may include research on human subjects, including access to personal identifiers to link revelant data sets. Therefore, applicant must consider appropriate compliance with Public Law 93–148 regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

B. The project to be funded through this cooperative agreement will involve the collection of information from 10 or more individuals and will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number in 93.283.

Application Submission and Deadline

The original and two copies of the application must be submitted on PHS form 5161–1, to Henry S. Cassell, III, Grants Management Officer, Centers for Disease Control, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Road, NE., room 415, Atlanta, GA 30305 on or before September 6, 1991.

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly

dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

B. Late Applications:

Applications which do meet the criteria in A.1. or A.2. above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and application package and business management technical assistance may be obtained from Adrienne McCloud, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 415, Mail Stop E-14, Atlanta, Georgia 30305, (404) 842-6630 or FTS 236-6630.

Programmatic technical assistance may be obtained from Margarett Davis, M.D., Medical Officer, Birth Defects and Genetic Diseases Branch, Division of Birth Defects and Developmental Disabilities, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mail Stop F-45, Atlanta, Georgia 30333, Telephone: (404) 488-4380 or FTS 236-4380.

Please refer to Announcement Number 143 when requesting information or submitting the application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: August 2, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-18816 Filed 8-7-91; 8:45 am]

BILLING CODE 4160-18-M

[Program Announcement 152]

Cooperative Agreements to Coordinate Local Programs to Prevent Human Immunodeficiency Virus (HIV) Infection and Related Priority Health Problems Among Youth in High-Risk Situations

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1991 for cooperative agreements to assist cities with the highest cumulative number of reported cases of AIDS to establish, coordinate, and institutionalize coalitions among health, education, social service, and other programs to prevent behaviors that result in human immunodeficiency virus (HIV) infection and related priority health problems among youth aged 10–24 years, in high-risk situations. Funds are also available to support an optional training and demonstration component.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (To order a copy of Healthy People 2000, refer to the section entitled Where to Obtain Additional Information.)

The CDC releases this Program Announcement to complement the anticipated Program Announcement "Evaluation and Enhancement of HIV Prevention Street Outreach Programs That Serve Injecting Drug Users and Youth in High-Risk Situations." It also complements current funding by CDC to (a) "Minority and Other Community-Based HIV Prevention Projects," (b) "U.S. Conference of Mayors HIV Education Grants to Community-Based Organizations," (c) CDC HIV Prevention Cooperative Agreements with State and Local Health Departments," and (d) "National AIDS Minority Information and Education Program."

Authority

These programs are authorized under sections 301(a) and 311 (b) and (c) of the Public Health Service Act [42 U.S.C. 241(a) and 243 (b) an (c)], as amended.

Eligible Applicants

Eligible applicants for both components are the official local public health agencies in cities with a cumulative total of 4,000 or more AIDS cases reported to CDC as of January 31, 1991. Based on this criterion, the local health agency in the following eight cities is eligible: Chicago, Houston, Los Angeles, Miami, Newark, New York, San Francisco, and Washington DC. Eligible applicants for the optional training and demonstration component are limited to those applicants funded under this announcement for coalition-building and coordination.

Availability of Funds

Approximately $945,000 will be available in Fiscal Year 1991 to fund approximately three cooperative agreements for coalition-building and coordination components. It is expected that the average award will be $315,000. In addition, approximately $315,000 will be available to support one optional Training and Demonstration Center component.

Awards are expected to begin on or before September 27, 1991, for a 12-month budget period within a 1- to 5-year project period. Continuation awards within the approved project period will be made on the basis of satisfactory performance and availability of funds. Funding estimates outlined above may vary and are subject to change.

Purpose

The purpose of this program is to prevent HIV infection and related priority health problems among youth aged 10–24 years in high-risk situations by establishing or strengthening the capacity of the adolescent health unit of the local health department to coordinate with public and private agencies serving youth.

The purpose of the optional training and demonstration component is to assist teams from other cities to develop coalitions to collaboratively work to prevent HIV infection and related priority health problems among youth in high risk situations.

Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting specified activities under section A. or A. and B. below, and CDC shall be responsible for conducting activities under section C. The applications should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities for Coalition-Building Component

1. Identify local agencies, including education, social service and health service agencies, that serve youth in high-risk situations, describe their capabilities, current efforts, and needs to provide effective programs to prevent HIV infection and related priority health problems.

2. Identify existing coalitions that address youth in high-risk situations and determine ways to establish or strengthen collaboration or coordination with these coalitions to ensure effective programming and non-duplication of efforts. Special consideration should be provided to coalitions established by federally funded entities such as the Ryan White C.A.R.E. Act, the Pediatric

AIDS Demonstration Program, and the CDC projects listed in the Introduction section.

3. Establish and maintain, or strengthen and expand, a coalition composed of (a) representatives from local agencies and community groups that serve these youth; and (b) youth who represent the target populations. The coalition should participate in all phases of program planning, development, implementation, institutionalization, and evaluation.

4. Establish systematic policies and procedures to obtain baseline data that describe the following:

a. The size, characteristics, and accessibility of youth in high-risk situations and of targeted youth populations.

b. Current levels of risk behaviors (the applicant may consider the use of CDC's Youth Risk Behavior Survey available from the CDC National Center for Chronic Disease Prevention and Health Promotion).

c. The availability of prevention programs as described in the introduction.

5. Plan and implement collaborative strategies to: reduce modifiable barriers to the implementation and diffusion of effective HIV prevention programs; establish means to sustain the coalition and institutionalize these activities when federal funding is discontinued; promote coordination among local, state and national organizations.

6. Build the capacity of coalition members to provide effective programs. This assistance should include, but not be limited to, assisting agencies (a) develop policies and guidelines related to HIV; (b) implement effective educational strategies; (c) train staff and volunteers; (d) strengthen agency linkages and referral systems; and (e) increase services.

7. Identify, develop, modify, and disseminate educational strategies, materials, and resources to assist community agencies in providing effective programs.

8. Provide a copy of HIV prevention education curricula, program descriptions, progress reports, and educational materials for inclusion in CDC's AIDS Adolescent and School Health Subfile on the Combined Health Information Database and National AIDS Information Clearinghouse. Applicants should plan to share information through the Comprehensive Health Education Network electronic bulletin board.

9. Participate in an annual CDC conference with other organizations and attend at least one other workshop on preventing HIV infection and related priority health problems among these youth.

10. Develop and distribute a description of the program established and its impact. The program description should provide information that can be used by others to establish similar efforts to address these youth within their own communities.

B. Recipient Activities—Optional Training and Demonstration Component

1. Develop, implement, and conduct two to four training and demonstration sessions per year for teams from other cities in the United States. Approximately 160 participants should be trained each year.

2. Work closely with CDC, state and local health departments, education agencies, and relevant national organizations in identifying participants for training and in carrying out training and demonstration sessions. It is expected that each team will include, but not be limited to, representatives from the local health and education departments, community health centers, shelters for runaway youth, juvenile justice programs, and local organizations that serve youth in high-risk situations.

3. Plan and provide financial assistance for travel, per diem, and lodging expenses for approximately 160 participants.

C. CDC Activities

1. Disseminate updated information about AIDS and the prevention of HIV infection and related priority health problems.

2. Collaborate in the development or selection of curricula, strategies, educational materials, and assessment instruments.

3. Provide information about resources relevant to HIV education in alternative and nonschool settings; and assure the availability of such information in CDC's AIDS Adolescent and School Health Subfile on the Combined Health Information Database.

4. Plan national meetings related to improving programs.

Evaluation Criteria for Coalition-Building Component

Applications submitted under this announcement will be evaluated by a CDC-convened review committee according to the following criteria:

A. Need/Background (20 points)

Evidence of need for program support, with letters of support and background information documenting this need.

B. Capacity (25 points)

Evidence of the applicant's capacity to carry out effective adolescent health programs as demonstrated by past experience with coalition-building; ties with local agencies that serve youth in high-risk situations; qualifications and appropriateness of proposed staff; programmatic and organizational support from within the applicant's agency; and placement of the program within the agency.

C. Coordination (25 points)

1. The extent to which the applicant demonstrates the appropriate involvement of relevant local agencies in developing the application; the appropriateness and feasibility of the applicant's plan to use its coalition in providing ongoing direction and guidance to program activities; and evidence of the coalition members' support for, and future role in, proposed activities.

2. The appropriateness and feasibility of the applicant's plan to coordinate proposed activities with other units within the local health department, relevant existing coalitions, and relevant local, state, and national organizations.

D. Program Plan (30 points)

The quality and feasibility of the following:

1. The applicant's proposed objectives, including the extent to which the proposed objectives are specific, measurable, achievable, realistic, and time-phased.

2. The extent to which the plan of operation is consistent with the required recipient activities; appropriateness of activities planned to achieve the objectives, and the feasibility of the applicant's timetable for conducting the program activities.

3. The evaluation plan for monitoring progress in increasing the number of organizations and the number of targeted youth that receive such programs. The plan should provide for assessing program impact and the status of risk behaviors among participating youth.

4. The plan to share a description of the program, evidence of its effectiveness, educational materials developed with other agencies, and the applicant's plans to participate in an annual meeting sponsored by CDC.

E. Budget and Budget Justification Narrative (not scored)

The extent to which the applicant provides reasonable and appropriate justification for budget items that are

consistent with the intent of the program announcement and clearly linked to objectives and activities proposed for the budget period.

Evaluation Criteria for Optional Training and Demonstration Program

A. Capacity to Implement (15 points)

The applicant's demonstrated ability and the quality of the plan to implement the coalition-buiilding component of the program.

B. Capacity to Train (15 points)

Evidence of the applicant's capacity to organize, plan, and conduct major training activities.

C. Coordination (30 points)

The appropriateness of the plan to coordinate the training center activities with the coalition-building component, state and local health departments, education agencies, and other national, state, and local agencies.

D. Program Plan (40 points)

1. The quality of the plan to train teams from other cities in the United States.
2. The quality of the objectives in terms of specificity, measurability, achievability, realism, and feasibility.
3. The quality of the applicant's plan of operation and timetable.
4. The quality of the evaluation plan for assessing progress in meeting objectives, monitoring the effectiveness of activities, and improving program operations.
5. The number, qualifications, and time allocations of proposed staff.
6. The feasibility of the plan to provide for the travel, per diem, and lodging expenses for up to 160 training participants.

E. Budget and Budget Justification Narrative (not scored)

The extent to which the budget for the training and demonstration program is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applicants are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive 12372 establishes a system for state and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations is 30 days after the application deadline date for new and competing continuation awards (the appropriations for these financial assistance awards were received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day state recommendtion process withing fiscal year 1991). If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Centers for Disease Control, Procurement and Grants Office, Grants Management Branch, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number assigned to this program is 93.118.

Other Requirements

Recipients must comply with the document titled, "Content of AIDS-related Writen Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs," dated January 1991, a copy of which is included in the application kit.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161–1) must be submitted to Candice Nowicki-Lehnherr, Grants Management Office, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, GA 30305, on or before August 15, 1991.

A. Deadline: Applications shall be considered as meeting the deadline if they are either received on or before the deadline date, or sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

B. Late Applications: Applications that do not meet the criteria in A. are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package, and business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail stop E–14, Atlanta, GA 30305; Telephone (404) 842–6594 or FTS (404) 236–6594.

Programmatic technical assistance may be obtained from Nancy B. Watkins, Chief, Program Development Section, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Mail Stop K–31, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, GA 30333; telephone (404) 488–5356 or FTS (404) 236–5356. Please refer to Announcement Number 152 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock Number 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: August 2, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–18813 Filed 8–7–91; 8:45 am]

BILLING CODE 4160–18–M

[Announcement Number 156]

Childhood Lead Poisoning Prevention Program for Charleston County, South Carolina; Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC) announces the availability of grant funds in Fiscal Year 1991 to address the severe childhood lead poisoning problem in Charleston County, South Carolina, a problem exacerbated by the housing devastation caused by Hurricane Hugo. This program is expected to: (1) Screen high-risk infants and children for elevated blood lead levels, (2) assure referral for treatment of, and environmental intervention for, infants and children

with such blood lead levels, and (3) provide education about childhood lead poisoning.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health and Maternal and Infant Health. (For ordering a copy of Healthy People 2000, see Where to Obtain Additional Information section.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241(a)) and 317A (42 U.S.C. 247(b)(1)) of the Public Health Service Act, as amended. Program regulations are set forth in title 42, Code of Federal Regulations, part 51b.

Eligible Applicants

Assistance will be provided only to the South Carolina Department of Health and Environmental Control for expansion of childhood lead poisoning prevention efforts in Charleston County. In Charleston County, a survey of high-risk children in 1970 showed that as many as 40 percent of those between the ages of 1 and 6 who were screened for lead poisoning had blood lead levels above 40 μg/dL. Many of these children were of low-income families living in homes built in the nineteenth century and painted with lead-based paint. This housing had begun to deteriorate in the 1950's, as wealthier city dwellers migrated to the suburbs. Mass screening of children, public education, and other activities began in the 1970s and continued until 1981 when limited resources resulted in a cessation of intensive screening efforts and significantly reduced intervention efforts. Now, nearly 10 years later, with further housing deterioration, the childhood lead poisoning problem remains significant.

On September 21, 1989, Hurricane Hugo passed over South Carolina, destroying or damaging over 10,000 housing units in Charleston County alone. In its aftermath, repairs to the damaged housing have brought unprecedented lead contamination to house interiors and soil around houses. Because of the large scale and slowness of repair work, many families were unable to find alternative housing during repairs. Many children, especially from low-income families, have remained in houses where new lead hazards have been created. The result has been a significant increase in childhood lead poisoning cases.

Without intensive screening efforts, most of the children with elevated blood lead levels in Charleston County will remain undetected. This grant program is intended to respond to this acute problem. No other applications will be solicited or will be accepted.

Availability of Funds

Approximately $210,000 will be available in Fiscal Year 1991. The project award, expected to begin on or about September 16, 1991, will be made for a 12-month budget period within a project period not to exceed 5 years. The funding estimate may vary and is subject to change, depending on the availability of funds. Continuation awards will be for the recommended project period indicated in the original award and will be based on satisfactory progress and the availability of funds.

This grant is intended to expand and improve program efforts in those areas of Charleston County with demonstrated high-risk populations. This Grant award cannot supplant existing funding for childhood lead poisoning prevention programs or activities. Grant funds should increase the level of expenditures from the state, local, and other funding sources for childhood lead poisoning prevention. The award will be made with the expectation that program activities will continue when grant funds are terminated at the end of the project period.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Note: Grant funds may not be expended for medical care and treatment or for environmental remediation of lead sources. However, the applicant must provide an acceptable plan to ensure that these activities are appropriately carried out.

Background

Lead poisoning, an environmental disease of young children in the United States, can have profoundly adverse health effects. Severe lead exposure can cause coma, convulsions, and even death. Lower levels of lead, which rarely cause symptoms, can result in decreased intelligence, developmental disabilities, behavioral disturbances, and disorders of blood production. These consequences are particularly important because they result from levels of lead exposure that previously were considered safe.

Childhood lead poisoning is the most common environmental disease in South Carolina. There are an estimated 256,000 children, 1 to 6 years old, in the state who are at risk for lead poisoning. In 1990, the state screened 62,212 children (3,456 children were screened in Charleston County) through various health programs, however, the preponderance of the 218 children who were found with lead poisoning resided in Charleston County where the problem is particularly severe because of the deteriorated, older housing stock. This already severe problem was exacerbated by Hurricane Hugo. Water and other damages caused already deteriorated housing conditions to worsen and with the lack of adequate housing, many families remained in their homes during the renovation process further exposing their children to lead hazards. Many of these homes continue to remain in a state of disrepair. Repairs and renovations will increase the amount of lead dust circulating in those houses with lead based paint.

A door-to-door survey of Charleston County (supported by the state legislature) in 1990 shows that over 10 percent of the children screened had blood levels at or above 25 μg/dL. Screening data from 1978 to the present are maintained at the University of South Carolina, and the state maintains a register on all lead poisoned children and ensures their follow-up .

Purpose

The purpose of this award is to enable the South Carolina Department of Health and Environmental Control to expand childhood lead poisoning prevention program efforts in Charleston County, where damage to housing, caused by Hurricane Hugo has exacerbated an already severe childhood lead poisoning problem.

Program Requirements

The Charleston County program will: (1) Screen and identify large numbers of infants and young children for lead poisoning, (2) identify their possible sources of lead exposure, (3) monitor medical and environmental management of lead-poisoned children, (4) provide information on childhood lead poisoning, its prevention, and management to the public, specifically, parents and guardians of children with elevated blood lead levels, health professionals, and policy and decision-makers, and (5) encourage community action programs directed to the goal of eliminating childhood lead poisoning.

The award recipient is expected to:

1. Establish or expand screening services in areas of Charleston County where there is a demonstrated severe chidhood lead poisoning problem.

2. Intensify efforts to ensure medical management so that children with lead

poisoning receive appropriate and timely follow-up services.

3. Establish, expand, or improve environmental investigations so that sources of lead are rapidly identified.

4. Develop an efficient information/management system compatible with CDC data guidelines to monitor and evaluate program progress.

5. Improve the actions of other agencies and organizations to facilitate the rapid abatement of lead sources in high risk communities.

6. Enhance knowledge and skills of program staff through training and other methods.

7. Provide information on childhood lead poisoning to the public, policy-makers, the academic community, and others based upon program findings.

This grant award will address the problem of childhood lead poisoning in high-risk areas of Charleston County with a high percentage of older, damaged, and deteriorated housing through a coordinated and comprehensive screening, medical, and environmental management program. Education and outreach activities are an important aspect of the program as well as activities that create community awareness of the problem, especially among community and business leaders, the medical community, parents, educators, and property owners. Program goals and objectives should reflect national, state, and local priorities, and established guidelines (e.g., the CDC statement, Preventing Lead Poisoning in Young Children).

The following are essential requirements:

1. A full-time director/coordinator with authority and responsibility to carry out program requirements.

2. Qualified staff, other resources, and knowledge to implement program provisions.

3. Established capacity to collect and analyze data.

4. Demonstrated experience in conducting and evaluating public health programs.

5. Ability to translate program findings to state and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

6. Information that describes why areas of Charleston County were selected for screening activities, including information on housing conditions, income, other socioeconomic factors, and previous surveys or screening activities for childhood lead poisoning.

7. Effective, well-defined working relationships within and outside the public health agency at national, state, and community levels (e.g., Department of Housing and Urban Development, environmental agencies, maternal and child health programs, state and local housing rehabilitation offices schools of public health and medical schools, and environmental interest groups) to address the needs and requirements of programs (e.g., training to ensure the safety of abatement workers) in the implementation of proposed activities. This includes the establishment of networks with other state and local agencies with expertise in childhood lead poisoning prevention programming.

8. A plan to ensure continuation of the childhood lead poisoning prevention program beyond expiration of grant support.

9. For awards to state agencies there must be a demonstrated commitment to provide technical, analytical, and program assistance to local agencies interested in developing or strengthening childhood lead poisoning prevention programs.

Evaluation Criteria

The major factors to be considered in the evaluation of the application are:

1. Identification of the Childhood Lead Poisoning Problem (30%)

The applicant's ability to identify populations and communities at high risk, as defined by data from previous screening efforts, environmental data, and/or demographic data.

2. Understanding the Problem (10%)

The applicant's understanding of the requirements, objectives, and complexities of and interactions required for a successful program.

3. Program Personnel (15%)

The extent to which the proposal has described: (a) The qualifications and commitment of the applicant, (b) detailed allocations of time and effort of staff devoted to the project, (c) information on how the applicant will develop, implement and administer the program, and (d) the qualifications of the support staff.

4. Technical Approach (20%)

The overall balance of the program design and measured in terms of intensive screening, medical management, lead hazard abatement, and education and outreach activities. The adequacy of the program design includes the extent to which the evaluation plan can be used to effectively measure progress towards the stated objectives.

Collaboration (15%)

The applicant should demonstrate the ability to collaborate with political subdivisions of the state in developing childhood lead poisoning prevention programs and collaboration with other program-related entities. Letters of support are encouraged.

6. Plans to become self-sustaining (10%)

The applicant should provide an explanation of how program services will be continued after termination of Federal grant funds, including identifying other sources of support that will be utilized during the project period. By the end of the second budget year, the grantee must have concrete plans to ensure institutionalization of the program after termination of grant support.

7. Budget Justification and Adequacy of Facilities (NOT SCORED)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

Executive Order 12373 Review

Applications are subject to the Intergovernmental review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert than to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 30 days after the deadline date for new and

competing awards. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.197.

Application Submission and Deadline

South Carolina Department of Health and Environmental Control must submit the original and two copies of the application PHS Form 5161–1, and should carefully adhere to the instruction sheet and information provided. The application should be submitted on or before August 12, 1991 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

Where To Obtain Additional Information

If you are interested in obtaining addition information regarding this project, please refer to announcement 156 and contact the following: Business Management Technical Assistance, Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6630 or FTS 236–6630.

Programmatic Technical Assistance may be obtained from Jerry Hershovitz, Deputy Chief, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–28, Atlanta, Georgia 30333, (404) 488–4880 or FTS 236–4880.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1), referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 2, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers For Disease Control.

[FR Doc. 91–18814 Filed 8–7–91; 8:45 am]

BILLING CODE 4160–18–M

[Announcement Number 150]

Availability of Funds for Fiscal Year 1991 Modified System for AIDS Case Reporting and Ascertainment of HIV-Related Morbidity

Introduction

The Center for Disease Control (CDC) announces a program for competitive cooperative agreement applications to assist state and local health departments in simplifying reporting of AIDS and HIV-related morbidity. Throughout program activities, special emphasis is to be placed on developing and evaluating a simplified, yet effective surveillance system for symptomatic HIV-related disease, while maintaining quality of data collection and the integrity of the current AIDS surveillance system. The new system will be based on a modified surveillance definition which includes CD4+ cell counts.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

These cooperative agreements are authorized under sections 301(a) [42 U.S.C. 241(a)] and 311 [42 U.S.C. 243] of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are official state and local health agencies who are current recipients of HIV/AIDS surveillance cooperative agreements who have reported at least 1,000 cumulative cases of AIDS to CDC as of December 31, 1990.

Availability of Funds

Approximately $800,000 will be available in Fiscal Year 1991 to fund 2–4 cooperative agreements. Awards are expected to range from $200,000–$400,000. Awards will begin on or about September 27, 1991 and will be for a 23-month budget period within a 2-year project period. Funding estimates may vary and are subject to change, depending on the availability of funds. Continuation awards within the project period will be made on the basis of satisfactory progress and on the availability of funds.

Purpose

The purpose of this announcement for cooperative agreements is to provide assistance to state and local public health departments in the development, implementation, and evaluation of a simplified method of reporting AIDS and HIV-related morbidity, which will be based on CD4+ cell counts and clinical symptoms. The new system must not interfere with the integrity of the existing national surveillance system while under development and evaluation. It is anticipated that the simplified reporting system proposed in response to this announcement may vary with local conditions and practices. It is anticipated that successful components of this pilot project will be incorporated into a modified national surveillance system.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and CDC will be responsible for conducting activities under B. below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Participate in national planning and implementation meetings supported through travel funds awarded in this cooperative agreement.

2. Develop and implement data collection procedures and forms for core data items that can be aggregated by CDC. The minimum core data items shall include, but not necessarily be limited to, demographic and immunologic characteristics, e.g., CD4+ cell count, risk category, and selected clinical conditions.

3. Ensure confidentiality of persons with confirmed or suspected HIV infection.

4. Maintain responsibility for analysis and presentation of data collected for local purposes.

5. Develop an effective and efficient simplified case reporting system which would monitor indicator conditions and other modified elements of the current surveillance system through sampling or other mechanisms.

6. Demonstrate the ability to collect case reports on HIV disease using a surveillance definition which incorporates absolute CD4+ cell counts.

7. Maintain the integrity of the existing national HIV/AIDS reporting system during the development and evaluation of the proposed project and

demonstrate coordination with existing HIV/AIDS surveillance activities.

8. Evaluate the usefulness of the modified system in comparison to the existing AIDS surveillance system.

9. Identify and select appropriate staff.

B. CDC Activities

1. Assist in the development, implementation, and evaluation of general and site-specific methods for simplifying surveillance of HIV/AIDS-related morbidity.

2. Provide assistance to the collaborator in the design and conduct of the project, including technical guidance in the development of reporting protocols, data collection forms, training and pretesting methods, and the design of data management systems.

3. Provide coordination among participants for the project to ensure comparability of core data items.

4. Maintain responsibility for the compilation of analyses, and presentation of results of aggregate data from multiple sites.

Evaluation Criteria

Eligible applications submitted under this announcement will be evaluated according to the following criteria:

1. The quality of plans to develop and implement the surveillance system describing how potential sources of surveillance data will be identified, accessed, used, and verified, including a plan to protect the confidentiality of all surveillance data. The plan should also address the applicant's authority to collect or ability to accept, on a voluntary basis, reports of cases meeting a revised surveillance definition. (30 points)

2. The applicant's current activities in the surveillance of AIDS, other HIV disease, and asymptomatic infection. Higher priority will be given to sites that demonstrate the ability to conduct population-based surveillance for a broad spectrum of HIV-related disease including assessment of underlying immune status (i.e. CD4+ cell counts). The cumulative number of reported AIDS cases will be a consideration. (20 points)

3. The applicant's understanding of the purpose of the project and the applicant's ability, willingness and/or need to cooperate in the project with CDC and other participants. (20 points)

4. The quality of the applicant's plan to evaluate the usefulness of the proposed system in comparison to the existing AIDS reporting system. (15 points)

5. The extent to which the proposal describes how the project will be administered, including the size, qualifications, and time allocation of the proposed staff and the availability of facilities to be used during the surveillance pilot and a schedule for accomplishing the activities of the pilot, including time frames. (15 points)

6. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not Weighted)

Other Requirements

Recipients must comply with the document titled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (January 1991). In complying with the Program Review Panel requirements contained in this document, recipients are encouraged to use an existing Program Review Panel such as the one created by the health department's HIV/AIDS Prevention Program.

Projects involving the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations will be 30 days after the application deadline date for new and competing continuation awards (the appropriations for these financial assistance awards were received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day state recommendation process within fiscal year 1991). If SPOCs have any state process recommendations on applications submitted to CDC, they should submit them to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, Mailstop E–14, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 93.118.

Application Submission and Deadline

The original and two copies of the application form PHS–5161–1 (Rev. 3/89) must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, Mailstop E–14, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, on or before August 16, 1991.

1. *Deadline*: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications*: Applications that do not meet the criteria in either paragraph 1.a. or 1.b. immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia, 30305, (404) 842–6743 or FTS 236–6743.

Please refer to Announcement Number 150, when requesting information and submitting any application.

Programmatic technical assistance may be obtained from Ruth Berkelman, M.D., Chief, Surveillance Branch,

Division of HIV/AIDS, Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop E-47, Centers for Disease Control, Atlanta, GA 30333, (404) 639-2050 or FTS 236-2050.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: August 2, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-18815 Filed 8-7-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91F-0271]

Atochem North America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Atochem North America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of β,3(or 4)-bis(octadecylthio)cyclohexylethane as an antioxidant in polymeric articles intended for food contact applications.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4274) has been filed by Atochem North America, Inc., c/o 1150 17th St. NW., Washington, DC 20036, proposing that the food additive regulations in § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) be amended to provide for the safe use of β,3(or 4)-bis(octadecylthio)cyclohexylethane as an antioxidant in polymeric articles intended for food contact applications.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 26, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-18910 Filed 8-7-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91P-0166]

Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been assigned to Crowley Foods, Inc., to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 6, 1991.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0349.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Crowley Foods, Inc., Metro Center, 49 Court St., P.O. Box 549, Binghamton, NY 13902.

The permit covers limited interstate marketing tests of a nonfat cottage cheese, formulated from dry curd cottage cheese and a dressing, such that the finished product contains less than 0.5 percent milkfat. The food deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of cottage cheese is not less than 4.0 percent, and the milkfat content of lowfat cottage cheese ranges from 0.5 to 2.0 percent. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The test product meets all requirements of the standards with the exception of these deviations. The purpose of these variations is to offer the consumer a product that is nutritionally equivalent to cottage cheese products with dressing but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." The information panel of the label must bear nutritional labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 600,000 pounds (272,155 kilograms) of the test product. The product will be manufactured at Crowley Foods, Inc., Theresa Rd., LaFargeville, NY 13636, and distributed in Alabama, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced into interstate commerce, but not later than November 6, 1991.

Dated: July 30, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-18826 Filed 8-7-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91G-0253]

Procter & Gamble Co.; Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Procter & Gamble Co. has filed a petition (GRASP 1G0373), proposing to affirm that caprenin, a triglyceride derived from the esterification of glycerol with capric, caprylic, and behenic acids, is generally recognized as

safe (GRAS) for use as a confectionery fat in soft candy and confectionery coatings.

DATES: Written comment by October 7, 1991.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF–333), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sections 201(s), 4098 (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Procter & Gamble Co., 6300 Center Hill Rd., Cincinnati, OH 45224, has filed a petition (GRASP 1G0373), proposing that caprenin, a triglyceride derived from the esterification of glycerol with capric, caprylic, and behenic acids, be affirmed as GRAS for use as a confectionery fat in soft candy and confectionery coatings. The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to suppport a GRAS conclusion. Thus, the filing of this petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability of caprenin for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Interested persons may, on or before October 7, 1991, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–18911 Filed 8–7–91; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Program Announcement and Final Project Requirements, Funding Preference and Priority for Grants for Interdisciplinary Training for Health Care for Rural Areas

The Health Resources and Services Administration (HRSA) announces the final project requirements, funding preference and priority for fiscal year (FY) 1991, Grants for Interdisciplinary Training for Health Care for Rural Areas, section 799A of the Public Health Service (PHS) Act, as amended.

Purposes

Section 799A of the Public Health Service Act, as amended by Public Law 100–607, authorizes the Secretary to award grants for interdisciplinary training projects designed to provide or improve access to health care in rural areas. Specifically, projects funded under this authority shall be designed to:

(a) Use new and innovative services in rural areas; practitioners to provide services in rural areas;

(b) Demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care;

(c) Deliver health care services to individuals residing in rural areas;

(d) Enhance the amount of relevant reserach conducted concerning health care issues in rural areas; and

(e) Increase the recruitment areas and make rural practice a more attractive career choice for health care practitioners.

A recipient of funds may use various methods in carrying out the projects described above. The legislation cites the following methods as examples:

(a) The distribution of stipends to students of eligible applicants;

(b) The establishment of a postdoctoral fellowship program;

(c) The training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

(d) The purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

Healthy People 2000 Objectives

The PHS is committed to achieving the health promotion and disease prevention objections of Healthy People 2000 a PHS-led national activity for setting priority areas. This program of Grants for Interdisciplinary Training for Health Care for Rural Areas is related to the priority area of Educational and Community-Based Programs.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) of Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between its training programs and U.S. Public Health Service programs which provide comprehensive primary health care services to the underserved. Applicants are encouraged to offer clinical training in facilities serving the underserved.

Eligibility

To the eligible for a Grant for Interdisciplinary Training for Health Care for Rural Areas, each applicant must be located in a State and be:

1. A local health department, or

2. A nonprofit organization, or

3. A public or nonprofit college, university or school of, or program that specializes in nursing, psychology, social work, optometry, public health, dentistry, osteopathic medicine, physician assistants, pharmacy, podiatric medicine, allopathic medicine, chiropractic, or allied health professions.

For-profit entities are not eligible to obtain funds under section 799A either directly or through subgrants or subcontracts.

Each application must be jointly submitted by at least two eligible applicants. One of the applicants must be an academic institution. Each application must demonstrate the need and demand for health care services, knowledge of available resources and the most significant service and educational gaps within its targeted geographic area. One applicant must be designated the principal organization

responsible and accountable for the conduct of the proposed project.

Statutory Project Requirements

Interdisciplinary training projects funded under section 799A must:

1. Assist individuals in academic institutions in establishing long-term collaborative relationships with health care facilities and providers in rural areas, and

2. Designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination and Education Assistance Acts, or Native Hawaiian health centers.

Not more than 10 percent of the individuals receiving training with section 799A funds shall be trained as doctors of medicine or osteopathic medicine. A grantee may not use more than 10 percent of the grant funds for administrative costs.

The following project requirements were established in fiscal year 1990, after public comment and are being extended in FY 1991.

Established Nonstatutory Project Requirements

A project supported under this grant program must meet the following requirements:

(1) Carry out the following two project purposes at a minimum, among those authorized by section 799A:

(a) interdisciplinary training to prepare health care practitioners to provide services in rural areas; and

(b) increase the recruitment and retention of health care practitioners in rural areas.

(2) Collaborate with the resources of an Area Health Education Center (AHEC) or Geriatric Education Center (GEC) if these centers are present in a State or part of a State where the rural interdisciplinary training project is conducted.

(3) Evaluate in a systematic manner, as prescribed by the Secretary, its project activity, including determination of a baseline at the outset of the project and measurement of progress by trainees and faculty.

(4) Provide and clearly define for each level of training (undergraduate, graduate, postgraduate, continuing education and faculty training) the disciplines and numbers of students to receive training as well as the duration of the training. This is to include an outline of basic criteria for the selection of students to participate in the training. These project elements are to be tracked and linked to project outcomes.

(5) Provide specific indicators of the extent and means by which it plans to become self-sufficient.

Final Nonstatutory Project Requirements

In addition to the nonstatutory project requirements cited above, each project must provide the following:

1. Integrated recruitment and retention strategies (An example of retention strategies might include provision of continuing education to National Health Service Corps Scholar (NHSC) and loan repayors early in their periods of service);

2. Curriculum elements that address the uniqueness of health conditions and ethnic or cultural characteristics of the populations in the rural areas to be served; and

3. Enrollment of a significant proportion of individuals from rural areas, particularly rural health professions shortage areas or medically underserved areas.

4. Inclusion of one project collaborator which is an entity in a primary care health professional shortage area which employs or is eligible to employ National Health Service Corps Scholars or loan repayors. (See statutory project requirement number 1.)

These requirements are designed to better assure that trainees will practice in rural areas. Research indicates that optimal strategies for rural practice should include early promotion of careers, the provision of financial and cultural support during training, the development of technical and collegial support systems, and some limited use of economic and service incentives.

Definitions

Accredited Health Professions Institutions means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, and chiropractic, as defined in section 701(4) of the Act, schools of allied health as defined in section 701(10) of the Act, and schools of nursing as defined in section 853 of the Act, which are located in States as defined in section 701(11) of the Act and which are accredited as provided in section 701(5) of the Act. The term also includes a "graduate program in health administration", a "graduate program in clinical psychology" as defined in section 701(4) and a "program for the training of physician assistants" as defined in section 701(8)(A) of the Act.

Clinical Treatment or Training means direct, supervised participation in patient care by observation, examination and performance of procedures as are appropriate for the assigned role of the trainee on the rural health care team.

Community Health Center means an entity as defined in section 330(a) of the Act and in regulations at 42 CFR 51c.102(c).

Community Mental Health Center means for purposes of this grant program a multiservice mental health facility which provides essential elements of comprehensive mental health services:

(1) Inpatient services;

(2) Outpatient services;

(3) Partial hospitalization services—must include at least day care service;

(4) Emergency services provided 24 hours per day—must be available within at least one of the first three services listed above; and/or

(5) Consultation and education services available to community agencies and professions personnel.

Continuing Medical Education or *Continuing Education* means any education for the purpose of maintaining or enhancing the knowledge, attitudes, or abilities of a physician or health professional in his or her field which does not lead to any formal advanced standing in the given profession.

Geographic Area means a contiguous geopolitical unit, which may include counties, minor civil divisions, census county divisions, groups of census tracts, or a combination of such units.

Indian Tribe or *Tribal Organization* means an organization or entity as defined in section 4(e) and 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Interdisciplinary Training means a planned and coordinated program of education or training aimed at preparation of functioning teams of two or more health care practitioners from different health disciplines who will coordinate their activities to provide services to a client or group of clients.

Long-Term Care Facility is a facility which offers services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive and maintenance services for individuals who have chronic physical or mental impairments. This facility may have a variety of institutional and non-institutional health settings, including the home, and the goal of the service provided is to promote the optimum

level of physical, social and psychological functioning.

Migrant Health Center means an entity as defined in section 329(a) of the Act and in regulations at 42 CFR 56.102(g)(1).

Native Hawaiian Health Center means an entity as defined in the Native Hawaiian Health Care Act of 1988 (Pub. L. 100–579) (42 U.S.C. 11707(4)).

Nonprofit as applied to any entity means one, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Postdoctoral Fellowship Program means a program of advanced academic or professional work, after the attainment of a doctoral degree, that is sponsored by a school of/or program that specializes in medicine, osteopathic medicine, nursing, dentistry, psychology, social work, optometry, public health, pharmacy, podiatric medicine, or allied health.

Rural Area means a Non-Metropolitan Statistical Area or an area located outside a Metropolitan Statistical Area as defined by standards followed by the Office of Management and Budget. "Rural Area," as defined in section 799A, includes a "frontier area" in which the population density is less than 7 individuals per square mile.

Rural Health Care Agency means a hospital, community health center, migrant health center, rural health clinic, community mental health center, long-term care facility, facility operated by the Indian Health Service or an Indian tribe or tribal organization under a contract with the Indian Health Service under the Indian Self-Determination and Education Assistance Act, or Native Hawaiian health centers.

Rural Health Clinic means an entity as defined under section 1861(aa)(2) of the Social Security Act and in regulations at 42 CFR 491.2.

State means, in addition to the 50 States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

Review Criteria

The HRSA will review applications taking into consideration the following factors:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 799A of the Act;

(2) The extent to which the project explains and documents the need for the project in the rural area to be served;

(3) The degree to which the proposed project adequately provides for the interdisciplinary training of health professionals to practice in the rural area to be addressed by the project;

(4) The degree to which the applicant offers appropriate clinical training experiences in rural health care settings;

(5) The degree to which the applicant demonstrates a commitment to establishing and maintaining long-term collaborative relationships between academic institutions and health care facilities and providers in rural areas;

(6) The effectiveness of the organizational arrangements necessary to carry out the project;

(7) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(8) The capability of the proposed staff and faculty to provide the proposed instruction;

(9) The extent to which the trainee recruitment and selection process assures that qualified trainees with significant interest or background in rural health care are involved in the project;

(10) The extent to which the budget justification is reasonable and indicates that institutional and community support to the project are provided to the maximum extent possible; and

(11) The extent to which the financial information provided indicates an effective utilization of grant funds and indicates that the project will continue on a self-sustaining basis.

Established Funding Preference and Priority

The following funding preference and priority were established in FY 1990, after public comment, and the Administration is extending them in FY 1991.

In making awards in Fiscal Year 1991, a funding preference will be given to interdisciplinary training involving three or more disciplines. This funding preference will be given to applicants that propose and implement training for health care practitioners, faculty or students representing three or more disciplines.

In determining the order of funding of approved applications funding priority will be given for applicants that plan to conduct a substantial part of the proposed interdisciplinary training in a "frontier area" or in a designated health professional shortage area as part of the rural region to be served by the project. "Frontier areas" are those areas with a population density of less than 7 individuals per square mile.

Proposed project requirements, a proposed funding preference and funding priority were published for public comment in the **Federal Register** on April 24, 1991 (56 FR 18824). The Department received three comments from two respondents on these proposals during the 30-day comment period. The comments and the Department's responses are summarized below.

A comment was received from one respondent concerning an aspect of the program for which public comment was not requested.

One respondent expressed concern about the funding preference designed to increase minority health professionals, and suggested that we expand the definition of "minority" to include disadvantaged populations. As directed by the Disadvantaged Minority Health Improvement Act of 1990, Public Law 101–527, the Bureau is developing a new definition of "disadvantaged." This definition will be published in the **Federal Register** for public comment before it is applied to Bureau programs.

That same respondent expressed support for the proposed nonstatutory project requirement that places emphasis on the retention of graduates in rural areas, and for the funding preference for interdisciplinary projects that offer training for nurse-midwives.

The Department has finalized the project requirements, funding preference and funding priority as proposed. The final funding preference and priority do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect to request consideration under the preference or priority are encouraged to submit applications.

Final Funding Preference

In addition, for FY 1991, a funding preference will be given to interdisciplinary projects that offer training for nurse practitioners, nurse midwives, physician assistants, or nurse anesthetists.

Final Funding Priority

In addition, for FY 1991, a funding priority will be given to projects designed to increase the availability of minority health professionals or all types to serve rural minority populations including Blacks, Hispanics, Native Americans, Alaskan Natives and Native Hawaiians. Increasing the number of minority health professionals is an important strategy to better meet the health care needs of these populations.

Minority health professionals tend to practice in underserved or socio-economically deprived areas in greater proportion than majority health professionals.

Questions regarding programmatic information should be directed to: Dr. Robert W. Beck, Program Officer, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–15, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6837.

The Catalog of Federal Domestic Assistance number for this program is 93.192. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 2, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–18912 Filed 8–7–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Deafness and Other Communication Disorders; Meeting of the Ad Hoc Voice and Voice Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Ad Hoc Voice and Voice Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on September 17, 1991. The meeting will take place from 8:30 a.m. to adjournment in Conference Room 8, Building 31, C-Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public so that the Subcommittee may compare the research portfolio of the Institute to the National Strategic Research Plan, identify changes in the field since the plan was developed, recommend levels and areas of research activity, and suggest potential initiatives. Attendance by the public will be limited to space available.

Summaries of the Subcommittee meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: July 31, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–18807 Filed 8–7–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Deafness and Other Communication Disorders; Meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on October 16, 1991. The meeting will take place from 8:30 a.m. to adjournment in room 3C07, Building 31, C–Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public so that the Subcommittee may compare the research portfolio of the Institute to the National Strategic Research Plan, identify changes in the field since the Plan was developed, recommend levels and areas of research activity, and suggest potential initiatives. Attendance by the public will be limited to space available.

Summaries of the Subcommittee meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: July 31, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–18808 Filed 8–7–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institutes of Child Health and Human Development, September 12–13, 1991, Gaithersburg Marriott, 620 Perry Parkway, Gaithersburg, Maryland 20877.

The entire meeting will be open to the public from 9 a.m. on September 12 to adjournment on September 13. Attendance by the public will be limited to space available. The Board will review and assess Federal research priorities, activities, and findings regarding medical rehabilitation research and shall advise on the provisions of the statute-required comprehensive plan for the conduct and support of medical rehabilitation research.

Ms. Mary Plummer, Board Secretary, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide substantive program information, a summary of the meeting and a roster of members. If you have specific disability-related requirements, please call.

Dated: July 31, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 91–18809 Filed 8–7–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–01–5440–10 B021]

Proposed Plan Amendment, Land Exchange and Right-of-Way for Bolo Station Landfill, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that Bureau of Land Management and the County of San Bernardino will prepare a joint Federal-County Environmental Impact Statement/Report (EIS/EIR) for a proposed land exchange, right-of-way and plan amendment to the California Desert Conservation Area Plan for the Rail-Cycle, LP proposed Class III Bolo Station landfill disposal site.

Rail-Cycle, LP, a partnership of Waste Management of North America and Atchison, Topeka and Sante Fe Railroad Company, has filed an application to acquire through exchange two and one-half sections (1,500 acres) of public land. The parcels are located between Amboy and Cadiz, south of U.S. Route 66, about 35 miles north east of the City of Twentynine Palms and about 45 miles east of Ludlow. The proposed right-of-

way provides access from Route 66 to the landfill site. The parcels would be part of a 4,800 acre waste-by-rail landfill system. Refuse would be processed for recyclables at a Materials Recovery Facility (MRF) in Southern California. The residue would be packed in containers and carried by Sante Fe train to the Bolo Station site. Initially, Rail-Cycle expects to receive 3,000 tons of processed waste per day, transported by one train. Within five years, it is anticipated that the processed waste will increase to 21,000 tons per day, utilizing seven trains. The service life of the landfill would be 59 years at 21,000 tons per day and would have a total capacity of 364 million tons. At capacity, the site would occupy 2,100 acres and would be about 420 feet in height at its center. Presently, a MRF has been identified for the San Gabriel Valley. It is anticipated that other MRF's will be developed as demand occurs.

The site underlying the refuse would be lined and pollution control systems to be constructed include: groundwater monitoring wells, leachate collection and treatment, and gas control. Also, there will be facilities for composting of "green waste".

Since the proposed action is not consistent with the California Desert Plan guidelines for one of the three parcels, a plan amendment is necessary. A 90-day review of the draft EIS will be provided. The document will consider several issues, including air quality, minerals, water quality and wildlife.

Three public scoping meetings will be conducted to identify public concerns, issues, and viable alternative sites which should be addressed by the EIS. Date, time and location of the public meetings are:

August 27, 1991, 7 p.m.
Twentynine Palms Junior High School, Multipurpose Room, 5798 Utah Trail, Twentynine Palms, CA.
August 28, 1991, 7 p.m.
Holiday Inn, 1511 E. Main St., Barstow, CA.
August 29, 1991, 7 p.m.
Joshua Room, San Bernardino Government Center, 1st Floor, 385 N. Arrowhead Ave., San Bernardino, CA.

DATES: Written comments will be accepted, if received on or before September 9, 1991.

ADDRESSES: For further information contact Ken McMullen, Bureau of Land Management, Needles Resource Area, 101 W. Spikes Road, Needles, CA 92363.

Dated: August 2, 1991.

Alan Stein,

Acting District Manager.

[FR Doc. 91-18812 Filed 8-7-91; 8:45 am]

BILLING CODE 4310-40-M

[NV-020-4370-10]

Winnemucca District Advisory Council Meeting

SUMMARY: Notice is herey given in accordance with Public Law 92-463 that a meeting of the Winnemucca District Advisory Council will be held on Wednesday September 11, and Thursday September 12, 1991.

The meeting will begin at 8 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The Agenda for the meeting will include:

1. An update on the National Conservation Area Proposal;
2. Review of our draft "interim" management plan for the Black Rock/High Rock area;
3. Review of the Little Owyhee Allotment Evaluation and draft proposal (involving livestock, wildlife, and wild horse issues).

In order to familiarize the council with the issues involved in the Little Owyhee Area, Wednesday, September 11th will be a tour of that area.

The meeting is open to the public. Interested persons may make oral statements to the Council at 10 a.m. on Thursday, September 12th, or file written statements for the Councils consideration. Anyone wishing to make an oral statement must notify the District Manager by Monday, September 9, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council Meeting will be maintained in the District Office and will be available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: July 30, 1991.

Robert J. Neary,

Acting District Manager.

[FR Doc. 91-18831 Filed 8-7-91; 8:45 am]

BILLING CODE 4310-84-M

[AZ-020-01-5410-10]

Conveyance of Mineral Interests Applications

Notice is hereby given that pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1719(b), the following applications have been filed for the conveyance of certain Federally-owned mineral interests within each accompanying land description:

Gila and Salt River Meridian, Ariz.

AZA-11970

T. 5 N., R. 2 E.,
Sec. 13.
T. 5 N., R. 3 E.,
Sec. 27.

AZA-13979

T. 10 S., R. 7 E.,
Secs. 1, 9, 12, 13, 26, and 27.
T. 10 S., R. 8 E.,
Secs. 5 and 11.
T. 10 S., R. 9 E.,
Secs. 5 and 6.

AZA-17364

T. 4 N., R. 3 E.,
Secs. 3 and 10.
T. 5 N., R. 3 E.,
Secs. 33 and 34.

AZA-19070

T. 8 N., R 5 W.,
Secs. 7, 8, and 17 to 21, incl.

AZA-19074

T. 9 N., R. 5 W.,
Secs. 1, 11, 15, and 22.

AZA-19081

T. 22 N., R. 16 W.,
Sec. 22.

AZA-19175

T. 7 N., R. 5 W.,
Secs. 9, 17, 18, and 20.

AZA-20613

T. 7 N., R. 1 W.,
Sec. 6.
T. 7 N., R. 2 W.,
Sec. 1.

AZA-21174

T. 7 N., R. 5 W.,
Sec. 15.

AZA-21222

T. 10 N., R. 5 W.,
Secs. 3, 9, and 15.
T. 11 N., R. 5 W.,
Secs. 23, 26, 27, 33, 34, and 35.
T. 9 N., R. 6 W.,
Secs. 12, 13, 14 and 24.

AZA-21807

T. 14 N., R. 9 W.,
Secs. 10 and 11.

AZA-21966

T. 6 N., R. 4 E.,
Sec. 15.

AZA-22076

T. 11 N., R. 5 W.,
Secs. 27 and 28.

AZA-22103

T. 6 N., R. 4 E.,
Sec. 24.

AZA-22112

T. 7 N., R. 5 W.,
Sec. 3.
T. 8 N., R. 5 W.,
Sec. 34.

AZA-22303

T. 8 N., R. 5 W.,
Sec. 30

AZA–22526
T. 7 N., R. 5 W.,
Secs. 11.
AZA–22531
T. 1 N., R. 7 E.,
Sec. 3.
AZA–22543
T. 7 N., R. 5 W.,
Sec. 3.
AZA–22628
T. 7 N., R. 4 W.,
Sec. 17.
AZA–22865
T. 7 N., R. 1 W.,
Sec. 6.
T. 7 N., R. 2 W.,
Sec. 1.
AZA–22887
T. 10 S., R. 14 E.,
Secs. 23, 26, and 27.
AZA–22922
T. 10 S., R. 14 E.,
Sec. 12.
T. 10 S., R. 15 E.,
Secs. 5, 7, and 8.
T. 8 S., R. 16 E.,
Sec. 31.
AZA–23133
T. 6 N., R. 4 E.,
Sec. 10.
AZA–23150
T. 11 N., R. 3 W.,
Secs. 8, 9, 17, 19, 20, 21, 29, and 30.
AZA–23151
T. 11 N., R. 5 W.,
Secs. 20 and 21.
AZA–23180
T. 6 N., R. 4 E.,
Sec. 17.
AZA–23386
T. 9 N., S., R. 2 E.,
Sec. 13.
T. 9 N., S., R. 3 E.,
Secs. 29 and 30.
AZA–23415
T. 20 S., R. 9 E.,
Sec. 25.
T. 20 S., R. 10 E.,
Secs. 13, 14, 15, 23, 24, 25, 28, 29, 30, 32, and 36.
AZA–23506
T. 9 N., R. 4 W.,
Sec. 8.
T. 9 N., R. 5 W.,
Secs. 1, 11, 15, and 22.
T. 10 N., R. 5 W.,
Secs. 21 and 28.
T. 9 N., R. 6 W.,
Secs. 12, 13, and 14.
AZA–23553
T. 6 N., R. 3 E.,
Sec. 13.
T. 6 N., R. 4 E.,
Sec. 18.
AZA–23560
T. 7 S., R. 11 E.,
Sec. 25.
T. 6 S., R. 12 E.,
Secs. 33 and 34.
T. 7 S., R. 12 E.,
Sec. 3
T. 7 S., R. 13 E.,
Secs. 12, 13, and 27.
T. 8 S., R. 13 E.,
Secs. 8, 9, 11 to 15, incl., 22, 23, 25, 26, and 27.
T. 7 S., R. 14 E.,
Secs. 17, 21, 26 to 33, and 35.
T. 8 S., R. 14 E.,
Secs. 2, 5 to 8, incl., 11, 14, 20, 22, 23, 24, 26, 27, 29, and 30.
AZA–23806
T. 14 N., R. 1 W.,
Sec. 21.
AZA–23870
T. 11 N., R. 24 E.,
Secs. 8, 10, 12, 14, and 22.
AZA–24035
T. 6 N., R. 1 W.,
Secs. 22 and 23.
AZA–24036
T. 6 N., R. 1 W.,
Sec. 23.
AZA–24062
T. 19 S., R. 14 E.,
Secs. 27 and 28.
AZA–24090
T. 19 S., R. 14 E.,
Secs. 21 and 22.
AZA–24106
T. 10 N., R. 5 W.,
Sec. 10.
AZA–24246
T. 6 N., R. 4 E.,
Sec. 3.
AZA–24411
T. 10 N., R. 3 W.,
Secs. 5 to 8, incl., 17, and 18.
T. 11 N., R. 3 W.,
Secs. 6, 7, 18, 21, 22, 23, and 26 to 31, incl.
T. 12 N., R. 3 W.,
Secs. 5, 6, 8, 17, 18, 20, and 29.
T. 10 N., R. 4 W.,
Sec. 13.
T. 11 N., R. 4 W.,
Secs. 1, 2, and 24.
T. 12 N., R. 4 W.,
Secs. 11, 13, 14, 15, 21, 22, 23, 25, and 26.
AZA–24479
T. 10 N., R. 5 W.,
Secs. 7, 8, 9, 17, and 18.
T. 10 N., R. 6 W.,
Secs. 1, 4, 5, 13, 21, 24, 25, 27, 28, and 35.
T. 11 N., R. 6 W.,
Sec. 33.
T. 10 N., R. 7 W.,
Secs. 21, 22, 27, and 28.
T. 11 N., R. 7 W.,
Secs. 25, 26, 27, 34, and 35.
AZA–24549
T. 12 S., R. 6 W.,
Sec. 21.
AZA–24570
T. 11 N., R. 3 W.,
Sec. 4.
AZA–24574
T. 12 N., R. 24 E.,
Sec. 31.
AZA–25358
T. 8 N., R. 1 W.,
Secs. 7 and 30.
T. 8 N., R. 2 W.,
Secs. 12, 13, and 24.

The mineral interests may be conveyed in whole or in part.

The purpose of the conveyances is to allow consolidation of surface and subsurface ownership where there are no known mineral values, or in those instances where the reservation of mineral interests to the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use.

Additional information concerning the applications may be obtained from the Phoenix District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests owned by the United States in the lands under application shall be segregated to the extent that they will not be open to appropriation under the mining and mineral leasing laws. The segregative effect of the applications shall terminate upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of publication of this notice, whichever comes first.

Dated: August 2, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91–18830 Filed 8–7–91; 8:45 am]

BILLING CODE 4310–32–M

[NM–940–4214–11; NMNM 094303]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes that a 416.045 acre withdrawal of Santa Fe National Forest land for use in connection with three recreation areas, one picnic area, and two summer home areas continues for an additional 20 years. The land will remain closed to mining. The land has been and remains open to such forms of disposition as may by law be made of

National Forest System land, and mineral leasing.

DATES: Comments should be received by November 6, 1991.

ADDRESSES: Comments should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Sante Fe, New Mexico 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505–988–6071.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, Forest Service, proposes that the existing withdrawal made by Public Land Order No. 2830 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Santa Fe National Forest

Windy Bridge Picnic Area (24.80 acres)

T. 17 N., R. 12 E.,
Sec. 17, lot 11.

Winsor Creek Summer Home Area (89.10 acres)

T. 18 N., R. 12 E.
Sec. 3, N½NW¼ of lot 5, NE¼ of lot 5, NW¼ of lot 6, S½NE¼ of lot 6, and N½ SE¼ of lot 6.
T. 19 N., R. 12 E.
Sec. 33, N½SW¼SE¼, SW¼NW¼SE¼ SE¼, N½SW¼SE¼SE¼, and SE¼SE¼ SE¼;
Sec. 34, S½SW¼SW¼SW¼.

Holy Ghost Recreation Area (106.70 acres)

T. 18N., R. 12 E.,
Sec. 20, W½ of lot 1, and that portion that lies outside the Pecos Wilderness described as SE¼NW¼NW¼NW¼, E½ SE¼NW¼NW¼, W½SE¼NW¼NW¼, NE¼SW¼NW¼, E½SE¼SW¼NW¼, SW¼SE¼NW¼, NW¼NE¼SW¼, E½ SW¼NE¼SW¼, W½SE¼NE¼SW¼, NE¼SE¼SW¼, and S½SE¼SW¼.

Holy Ghost Summer Home Area (133.405 acres)

T. 18 N., R. 12 E.,
Sec. 29, E½ of lot 7;
Sec. 32, NE¼NE¼NE¼ and N½SE¼NE¼ NE¼;
Sec. 33, lot 6, SW¼NW¼NW¼NW¼, SW¼NW¼NW¼, N½SW¼NW¼, SE¼ SW¼NW¼, and SW¼SE¼NW¼,

Winsor Creek Recreation Area (10 acres)

T. 19 N., R. 12 E.,
That portion outside the Pecos Wilderness described as Sec. 33, S½N½S½SW¼ and N½S½S½SW¼.

Upper Bull Creek Recreation Area (52.04 acres)

T. 17 N., R. 13 E.,
Sec. 26, lot 2, W½SE¼NW¼.

The areas described aggregate 416.045 acres more or less in San Miguel County.

The purpose of the withdrawal is for the use and protection of substantial capital improvements in connection with three recreation areas, one picnic area, and two summer home areas. All of the land is and remains segregated from operation of the mining laws, but not to such forms of disposition as may by law be made of National Forest System land, and the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, in connection with the proposed withdrawal continuation, may present them in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: August 2, 1991.

Jon H. Idso,

Acting State Director.

[FR Doc. 91–18829 Filed 8–7–91; 8:45 am]

BILLING CODE 4310–FB–M

[NM–940–4214–11; NMNM 094303]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes that a 770-acre withdrawal of Cibola National Forest land for use in connection with five recreation areas and one administrative site continue for an additional 20 years. The land will remain closed to mining. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land, and mineral leasing.

DATES: Comments should be received by November 6, 1991.

ADDRESSES: Comments should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505–988–6071.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, Forest Service, proposes that the existing withdrawal made by Public Land Order No. 2830 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest

Cienega Recreation Area (120 acres)

T. 11 N., R. 5 E.,
Sec. 23, S½S½NE¼, SE¼SE¼NW¼, N½ SW¼SE¼NW¼, S½NE¼SE¼NW¼, NW¼SE¼NW¼, NE¼SW¼NW¼, W½ SW¼NE¼NW¼, SE¼NW¼NW¼, SW¼NW¼NW¼, NW¼NW¼NW¼ and S½NE¼NW¼NW¼.

Las Huertas Recreation Area (60 acres)

T. 12 N., R. 5 E.,
Sec. 28, SE¼SE¼ and S½NE¼SE¼

McGaffey Recreation Area (360 acres)

T. 13 N., R. 16 W.,
Sec. 10, NE¼, SE¼NW¼, E½SW¼, and W½SE¼.

McGaffey Administrative Site (80 acres)

T. 13 N., R. 16 W.,
Sec. 10, NW¼NW¼ and NE¼NW¼.

Wingate Recreation Area (90 acres)

T. 14 N., R. 16 W.,
Sec. 28, SE¼SW¼, E½SW¼SW¼, S½ NE¼SW¼, and SE¼NW¼SW¼.

Quaking Aspen Recreation Area (60 acres)

T. 14 N., R. 16 W.,
Sec. 33, NE¼NW¼ and W½NW¼NE¼.

The acres described aggregate 770 acres more or less in Bernalillo, Sandoval, and McKinley Counties.

The purpose of the withdrawal is for the use and protection of substantial capital improvements in connection with five recreation areas and one administrative site. The land is segregated from operation of the mining laws, but not the mineral leasing laws. The land will remain closed to location and entry under the mining laws, but will remain open to such forms of disposition as may by law be made of National Forest System land, and mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, in connection with the proposed withdrawal continuation, may present them in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to

determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 2, 1991.

Jon H. Idso,

Acting State Director.

[FR Doc. 91-18832 Filed 8-7-91; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service and OMB, Paperwork Reduction Project (1018-0015), Washington, DC 20503, telephone 202-395-7340.

Title: Waterfowl Harvest Surveys.

OMB Approval Number: 1018-0015.

Abstract: The Migratory Bird Treaty Act and the Fish and Wildlife Act of 1956, authorize the Secretary of the Interior to collect such information as is necessary to determine and set appropriate regulations for the hunting of migratory birds, with due regard for maintaining such populations at healthy levels. Information on the magnitude and composition of the harvest is needed for sound management and to preclude over-harvest of the species involved.

In an effort to solve serious non-response problems with the current survey procedures, the Service is requesting an expansion of the current waterfowl harvest survey to include other migratory birds that are not currently surveyed. Also, the Service will require all migratory bird hunters to obtain a Migratory Bird Harvest Information Program Card. The major problem is the Service's inability to obtain the names and addresses of migratory hunters under the current survey procedures, so that they may be sent hunting record forms to record their harvest. The National Migratory bird Harvest Information Program will be phased in, starting with four to six States in January 1992, and expand to ten States in 1993. To maintain comparability among estimates, both the current harvest survey and the new Migratory Bird Harvest Survey would be run concurrently in each state for two to three years before the Waterfowl Harvest Survey is discontinued.

Service Form Number(s): Survey Card, Form No. 3-1823D, Federal Duck Stamp Cards; Form 3-2056I, hunting record form—ducks and geese; Form 3-2056J, hunting record form doves and woodcock; Form 3-2056K, hunting record form—snipe, rail and crane.

Frequency: Annually

Description of Respondents: Individuals and Households.

Estimated Completion Time: The annual reporting burden for the new survey in ten states is estimated to be 38,932 hours, or 1.09 minutes per respondent. For both surveys combined, there is an average of 1.0132 responses per respondent and an average of 0.02389 hours or 1.4 minutes per response.

Annual Responses: 2,365,274.

Annual Burden Hours: The annual burden for the new survey in ten states is estimated to be 38,932 hours, excluding the burden of the existing survey, 17,584 hours.

Service Information Collection Clearance Officer: James E. Pinkerton, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240; telephone 703/358-1943.

Dated: June 20, 1991.

John G. Rogers, Jr.,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 91-18891 Filed 8-7-91; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18).

File no. PRT-740507

Applicant—Name: U.S. Fish and Wildlife Service, Alaska Fish & Wildlife Research Center, 1011 East Tudor Road, Anchorage, Alaska 99503.

Type of Permit: Scientific Research

Name of Animals: Alaska sea otters (*Enhydra lutris*)

Summary of Activity to be Authorized: The applicant proposes to renew their current permit to continue scientific research studies related to the Exxon Valdez oil spill and amend their permit to increase the number of takes (capture/recapture, transport, temporarily maintain, drug, flipper tag, blood sample, inject with subcutaneous transponder chip, urine sample, biopsy oral and vaginal lesions, and release) of sea otters by 312 animals. Their current permit authorizes the surgical implantation of a radio transmitter on up to 111 otters. Therefore, of the 312 animals up to 111 of these may be surgically implanted with a radio transmitter. They are not requesting any additional radio transmitter implants.

Source of Marine Mammals for Research: Prince William Sound and southeast Alaska.

Period of Activity: At least through December 1992.

Concurrent with the publication of this notice, the Office of Management Authority is forwarding copies of the application(s) to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments and/or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2204); FAX: (703/358-2281)

Dated: August 2, 1991.

Marshall P. Jones, Jr.,

Chief, Office of Management Authority.

[FR Doc. 91-18803 Filed 8-7-91; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Directed Service Order No. 1511]

Chicago Central & Pacific Railroad Co.—Directed Service—Cedar Valley Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Supplemental Order No. 1 to Directed Service Order No. 1511.

SUMMARY: Directed Service Order No. 1511 (DSO No. 1511) authorized the Chicago Central & Pacific Railroad Company (CCP), pursuant to 49 U.S.C. 11125 and without subsidy or other Federal compensation, to operate over lines of the Cedar Valley Railroad Company (CVR) as "Directed Rail Carrier" (DRC) for a period of sixty (60) days, or until August 3, 1991. Supplemental Order No. 1 to DSO No. 1511 extends the effectiveness of that order for 180 days, or until January 30, 1992, and clarifies the order's Terms and Conditions with respect to revisions to tariffs that can be made by the DRC.

EFFECTIVE DATE: This decision was effective at 11:59 p.m., on August 3, 1991.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard, (202) 275–7849

or

Melvin F. Clemens, Jr., (202) 275–1559 [TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: Due to a cessation of service by CVR over its entire system without authority, DSO No. 1511 was entered pursuant to 49 U.S.C. 11125, authorizing CCP to operate as a DRC, uncompensated and without Federal subsidy under 49 U.S.C. 11125(b)(5). The Commission has certified, in this decision, that the emergency which prompted entry of the initial order continues to exist, and that there is cause to extend the order for an additional 180 days, or until January 30, 1992. By letter dated July 3, 1991, CCP expressed its willingness to continue to provide uncompensated directed service for up to the maximum additional 180 days permitted by 49 U.S.C. 11125(b)(1).

As a result of the impending expiration of DSO No. 1511, and in an effort to resolve questions regarding the propriety of certain actions by the DRC to change tariffs by canceling joint rates, the Commission requested comments from interested parties on whether cause exists to extend DSO No. 1511 beyond the initial sixty (60) day period, and on whether we should allow the cancellation of participation in joint line rates on grain movements previously in effect between CVR and SOO over Charles City, IA.

Based on the comments received, the Commission has determined that cause exists for the extension of DSO No. 1511 for an additional 180 days, and that tariff changes requested by the DRC which result in the cancellation of joint rates between CVR and Soo Line Railroad Company (SOO) over Charles City, IA are permissible and do not substantially alter preexisting traffic patterns or impact adversely on shippers.

To purchase a copy of the decision, write to, call or pick up a copy in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: August 1, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald. Chairman Philbin and Vice Chairman Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18884 Filed 8–7–91; 8:45 am]

BILLING CODE 7035–01–M

Release of Waybill Data for Use by Intermodal Policy Division (IPD); Association of American Railroads

The Commission has received a request from the Intermodal Policy Division, Association of American Railroads (AAR) for permission to use certain data from the Commission's 1990 ICC Waybill Sample.

A copy of the request (WB573—7/30/91) may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data (Ex Parte 385 (Sub-No. 2)) are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275–6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18883 Filed 8–7–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree in United States v. Goldline Wrecking Co. Under the Claim Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on July 30, 1991, a proposed consent decree in *United States* v. *Goldline Wrecking Co.*, Civil Action No. 5:90CV0783, was lodged with the United States District Court for the Northern District of Ohio.

The proposed Consent Decree resolves the claims against Goldline Wrecking Co. for violating section 112(c) of the Clean Air Act, 42 U.S.C. 7412(c), and the National Emission Standards for Hazardous Air Pollutants for Asbestos, 40 CFR part 61, subpart M. The proposed Consent Decree requires Goldline Wrecking Co. to (a) comply with the notice and work standard provisions of the National Emission Standards for Hazardous Air Pollutants for Asbestos; (b) appropriately train personnel utilized by Goldline Wrecking Co. for asbestos removal; (c) report all bids submitted for work potentially involving the removal of suspected asbestos-containing material; and (d) pay a $3,200 civil penalty.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC, 20444. All comments should refer to *United States* v. *Goldline Wrecking Co.* DOJ Ref. No. 90–5–2–1–1451.

The proposed Consent Decree may be examined at the Office of the United States Attorney, suite 208, Federal Building, 2 South Main Street, Akron, Ohio, 44308 and at the Region V Office of the U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed Consent Decree may also be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004 ((202) 347–2072). Any request for a copy of the Decree should be accompanied by a check in the amount of $4.50 (18 pages at

25 cents per page reproduction cost) payable to "Consent Decree Library".

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-18784 Filed 8-7-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Meng Feng Corp., Ltd. and Wang Ching Hua*, No. 89-00035, was lodged with the United States District Court for the District of Guam on July 3, 1991.

The proposed consent decree concerns alleged violations of sections 301 and 404 of of the Clean Water Act, 33 U.S.C. 1131, 1344, as a result of discharges of fill material onto portions of property located in Talofofo, Guam, which are alleged to constitute "waters of the United States." The consent decree requires defendants Meng Feng Corporation, Ltd. and Wang Ching Hua, to pay at least thirty thousand dollars ($30,000), and to provide restoration and mitigation for certain wetlands located at the site. The consent decree requires defendants to apply for permits pursuant to section 404 of the Clean Water Act, 33 U.S.C. 1344, for the work that was completed prior to the issuance of a cease-and-desist order by the Army Corps of Engineers.

The Department of Justice will receive until thirty (30) days from the date of this notice written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: Peter W. Colby, Attorney, Environment and Natural Resources Division, United States Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530; and should refer to *United States* v *Meng Feng Corp., Ltd. and Wang Ching Hua*, DJ Reference No. 90-5-1-1-3112.

The consent decree may be examined at the Clerk's Office, United States District Court, District of Guam, 6th Floor, Pacific News Building, 238 O'Hara Street, Agana, Guam, during regular business hours; or, upon request to Peter W. Colby (202) 514-3376, At the United States Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-18783 Filed 8-7-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984—Dialkyl Project; Lonza Inc.

Notice is hereby given that, on July 17, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Lonza Inc. has filed written notification simultaneously with the Attorney General and the Federal Trade Commission regarding a Restated and Revised Agreement Between Members of the Dialkyl Project (the "Restated and Revised Agreement"). The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Restated and Revised Agreement and its general objectives are given below.

The parties to the Restated and Revised Agreement are the same as in the original notice: Lonza Inc.; Huntington Laboratories, Inc.; Mason Chemical Company; and Stepan Company.

The objectives of the Project are to conduct toxicological research to be submitted to the United States Environmental Protection Agency in connection with the reregistration and data call-in of pesticides containing Dialkyl quaternary ammonium compounds as active ingredients. The purposes of the Restated and Revised Agreement are to consolidate the original Dialkyl Project Agreement and the Amendment to the original Dialkyl Project Agreement and to revise certain conditions for subsequent membership in the Dialkyl Project.

On August 3, 1988, the Dialkyl Project 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 August 25, 1988, 53 FR 32480. On March 20, 1990 the Dialkyl Project filed its notice of an Amendment to the Dialkyl Project Agreement 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 April 26, 1990, 55 FR 17681.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-18839 Filed 8-7-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Controlled Substances: Proposed 1991 Aggregate Production Quota for 2,5-dimethoxyamphetamine

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of a proposed 1991 aggregate production quota.

SUMMARY: This notice proposes a 1991 aggregate production quota for 2,5-dimethoxyamphetamine, a Schedule I controlled substance.

DATES: Comments or objections must be received on or before September 9, 1991.

ADDRESSES: Send comments or objections in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires that the Attorney General establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to section 0.100 of title 28 of the Code of Federal Regulations.

An application has been made for a manufacturing quota for the Schedule I controlled substance, 2,5-dimethoxyamphetamine. Based on a review of this application and other information available to DEA, the Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by section 0.100 of title 28 of the Code of Federal Regulations, hereby proposes the 1991 aggregate production quota for 2,5-dimethoxyamphetamine, expressed in grams of anhydrous base, be established as follows:

Basic class	Proposed 1991 aggregate production quota (grams)
2,5 dimethoxyamphetamine	30,000

All interested persons are invited to submit comments or objections in writing regarding this proposal. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, and must be received by September 9, 1991. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: July 25, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-18774 Filed 8-7-91; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Proposed Aggregate Production Quotas for 1992

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed aggregate production quotas for 1992.

SUMMARY: This notice proposes initial 1992 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATES: Comments or objections should be received on or before September 9, 1991.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) The estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1992 aggregate production quotas, the Administrator considered the following factors: (1) Total actual 1990 and estimated 1991 and 1992 net disposals of each substance by all manufacturers; (2) estimates of 1991 year end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; and (3) projected demand as indicated by procurement quota applications filed pursuant to § 1303.12 of title 12 of the Code of Federal Regulations.

Pursuant to § 1303.23(c) of title 21 of the Code of Federal Regulations, the Administrator of the DEA will, in early 1992, adjust individual manufacturing quotas allocated for the year based upon 1991 year-end inventory and actual 1991 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Based upon consideration of the above factors, the Administrator of the DEA hereby proposes that aggregate production quotas for 1992 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Proposed 1992 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	13,500,000
Lysergic acid diethylamide	9
3,4-Methylenedioxyamphetamine	2
3,4-Methylenedioxymethamphetamine	2
Tetrahydrocannabinols	18,000
Psilocyn	5
Psilocybin	5
4-Methylaminorex	2
Methaqualone	2
N-Hydroxy-3,4-methylenedioxyamphetamine	2
Schedule II:	
Alfentanil	6,300
Amobarbital	358,000
Amphetamine	285,000
Cocaine	699,000
Codeine (for sale)	63,726,000
Codeine (for conversion)	6,477,000
Desoxyephedrine	1,068,000
1,043,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 25,000 grams for methamphetamine.	
Dextropropoxyphene	89,065,000
Dihydrocodeine	589,000
Diphenoxylate	695,000
Ecgonine (for conversion)	650,000
Fentanyl	48,500
Glutethimide	0
Hydrocodone	3,891,000
Hydromorphone	222,000
Levorphanol	10,000
Meperidine	8,533,000
Methadone	2,181,000
Methadone Intermediate(4-Cyano-2-dimethylamino-4,4-diphenylbutane)	2,726,000
Methamphetamine (for conversion)	724,000
Methylphenidate	2,147,000
Mixed Alkaloids of Opium	0
Morphine (for sale)	4,937,000
Morphine (for conversion)	74,753,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium	1,034,000
Oxycodone (for sale)	2,757,000
Oxycodone (for conversion)	6,300
Oxymorphone	2,500
Pentobarbital	15,178,000
Phencyclidine	5
Phenylacetone (for conversion)	956,000
Secobarbital	650,000
Sufentanil	450
Thebaine	8,450,000

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing,

the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to section (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparations of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C., 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: July 22, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–18775 Filed 8–7–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements under Review: As necessary, the Department of Labor will publish a list of the Agency recorkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recorkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills, telephone (202) 523–5095. Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Infomration and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Employment and Training Administration.
Fiscal Year 1992 Employment Service Automation Funds Field Memorandum and Employment Service Program Letter.
As needed.
State or local governments.
40 respondents; 4,800 total hours; 120 hrs. per respondent; no forms.
Issues procedures for State Employment Service agencies to use when applying for ES automation funds and provide for appropriate review by ETA Regional Offices.

Reinstatement

Assistant Secretary for Occupational Safety and Health.
The Supplementary Record of Occupational Injuries and Illnesses, OSHA No. 101, The Log and Summary of Occupational Injuries and Illnesses, OSHA No. 200 Brief Guide to Recordkeeping.
Requirements for Occupational Injuries and Illnesses, Recordkeeping Guidelines for Occupational Injuries and Illnesses.
1220–0029.
Recordkeeping.
State or local governments; farms; businesses or other forprofit; non-profit institutions; small businesses or organizations.
6,100 respondents; 534,828 total burden hours; 33.3 average hours per response.

The OSHA Act and 29 CFR, 1904 prescribe that certain employers maintain, and report when requested, records of job-related injuries and illnesses. The data are needed by BLS and OSHA to report on, and carry out enforcement of standards to guarantee workers' safety and health on the job. Currently 1,500,000 employers maintain records, but only 65% have recordable cases.

Signed at Washington, DC this 2nd day of August, 1991.

Patrick M. Skees,

Acting Departmental Clearance Office.

[FR Doc. 91–18768 Filed 8–7–91; 8:45 am]

BILLING CODE 4510–22–M

Employment and Training Administration

TA–W–25, 586 Air Baby, Inc., Blauvelt, NY, TA–W–25, 586A Williams Products Corp., Luquillo, PR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 24, 1991, applicable to all workers of Air Baby, Inc., Blauvelt, New York. The notice was published in the **Federal Register** on June 11, 1991 (56 FR 26841).

The Department inadvertently left off from the subject certification the manufacturing arm for Air Baby, Inc.—Williams Products Corporation of Luquillo, Puerto Rico. Both companies are owned by the same person. Employment and production information

collected in the Department's investigation included data from both companies. All production of women's, children and men's slippers at Luquillo ceased in November, 1990. All workers at Luquillo were laid off in February 1991.

U.S. imports of nonrubber footwear increased in the first half of 1990 compared to the same period in 1989. Major customers increased their imports of women's, men's and children slippers and casual footwear in the relevant period.

Therefore, the certification is amended to show the correct worker group. The amended notice applicable to TA-W-25, 586 is hereby issued as follows:

All workers of Air Baby, Inc., Blauvelt, New York and Williams Products Corporation, Luquillo, Puerto Rico who became totally or partially separated from employment on or after March 11, 1990 and before March 31, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-18764 Filed 8-7-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,606; Pratt & Whitney Co, Inc., Precision Grinding, Worcester, MA

TA-W-25,834; Cherry Electrical Products, Printed Circuit Div., Waukegan, IL

TA-W-25,771; Bell Plastic, Inc., Royal Oak, MI

TA-W-25,853; W.A. Schaerr, Inc, Delhi, NY

TA-W-25,639; Boris Kroll Fabrics, Inc., Boris Kroll Jacquard Looms, Inc., Paterson, NJ

TA-W-25,834; Cherry Electrical Products, Printed Circuit Div., Waukegan, IL

TA-W-25,801; First Phillips Manufacturing Corp., Sunbury, PA

TA-W-25,806; Hughes H. Wilson Corp., Sunbury, PA

TA-W-25,755; Shelgo, Inc., New York, NY

TA-W-25,855; Witco Corp., Richardson Battery Parts Div., Indianapolis, Plant, Indianapolis, IN

TA-W-25,738; Camp Hosiery, Inc., Lenori City, TN

TA-W-25,779; Laribee Wire Mfg Co., Camden, NY

TA-W-25,780; Laribee Wire Mfg Co., Jordan, NY

TA-W-25,880; Mallon Resources Corp/ Mallon Minerals Corp., Denver, CO

TA-W-810; North American Biologicals, Inc., El Paso Plasma Center, El Paso, TX

TA-W-25,798; Delta Faucet Co., Plumbing Fixtures Div., Decatur, MI

TA-W-25,797; Columbia Chemicals Co., Mapico Div., Monmouth Junction, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,828; ADT Security Systems, Jonesboro, AR

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,903; Pori International, Morrisville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,850; Sol Duc Shakes & Shingles, Forks, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,882; The Proctor & Gamble Manufacturing Co., Avenel, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,877; JMS, Inc., Parachute, CO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,977; Plant & Field Services Corp., Parachute, CO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,892; C.J., Langenfelder, Morrisville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,844; Johnson Controls, Inc., Automotive Systems Group, Hoover Universal Shop, Adrian, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,897; Golden Capital Distributors, Inc., East Hanover, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 713; Lowrance Electronics, Inc., Tulsa, OK

Investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required certification.

TA-W-25, 718; N.R.M. Steelastic, Inc., Akron, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 758; U.S., Electric Motors, Cedarburg, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 790; Waco Lehigh Portland Cement Co., Waco, TX

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. The investigation also revealed that criterion (2) was not met. Sales or production did not decline during the relevant period as required for certification.

TA–W–25, 874; Herman Geist Apparel Corp., Norwood, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25, 837; Endicott Johnson Corp., Riverside Warehouse, Johnson City, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25, 838 & 25, 838A; Endicott Johnson Corp., Victory Warehouse, & Crown Warehouse, Johnson City, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25, 839 & 25, 839A; Endicott Johnson Corp., Apex Warehouse & Retail Warehouse, Oak Hill Ave., Endicott, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–W–25, 881; North American Royalties, Inc., Gulf Coast District, Lafayette, LA

A certification was issued covering all workers separated on or after December 12, 1990 and before June 1, 1991.

TA–W–25, 890; American Olean Tile Co., Lansdale, PA

A certification was issued covering all workers separated on or after May 23, 1990.

TA–W–25, 883; The Proctor & Gamble Manufacturing Co., Staten Island, NY

A certification was issued covering all workers engaged in the production of Coast Soap separated on or after May 1, 1991.

TA–W–25, 811; Olde New England Leather, Rockland, MA

A certification was issued covering all workers separated on or after May 6, 1990.

TA–W–25, 895; Evenflo Juvenile Furniture Co., Lullabye Plant, Stevens Point, WI

A certification was issued covering all workers separated on or after May 9, 1990.

TA–W–25, 876; Jerell, Inc., San Antonio, TX

A certification was issued covering all workers separated on or after May 17, 1991.

TA–W–25, 836; Dana Corp., Spicer Axle Div., Syracuse, IN

A certification was issued covering all workers separated on or after May 9, 1990.

TA–W–25, 796; The Coe Manufacturing Co., Painesville, OH

A certification was issued covering all workers separated on or after April 29, 1990.

TA–W–25, 860; Carlon/Thyrocon, Telford, PA

A certification was issued covering all workers separated on or after May 16, 1990.

TA–W–25, 832; B & W Shake Co., Inc., Forks, WA

A certification was issued covering all workers separated on or after May 6, 1990.

TA–W–25, 781; Masonite Corp., Watsontown, PA

A certification was issued covering all workers separated on or after April 25, 1990.

TA–W–25, 829; Ali-Court Sportswear, Inc., Alburtis, PA

A certification was issued covering all workers separated on or after May 13, 1990.

TA–W–25, 858; Bestform Foundation, Inc., Johnstown, PA

A certification was issued covering all workers separated on or after May 11, 1990.

TA–W–25, 816; Sandy Dee Fashions, Scranton, PA

A certification was issued covering all workers separated on or after April 30, 1990.

TA–W–25, 861; Comfab Technologies, Addison, IL

A certification was issued covering all workers separated on or after May 17, 1990.

TA–W–25, 878; Keptel, Inc., Tinton Falls, NJ

A certification was issued covering all workers separated on or after May 17, 1990.

I hereby certify that the aforementioned determinations were issued during the months of July 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: July 29, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–18765 Filed 8–7–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,826]

Vending Services, Inc., Eau Claire, WI; Negative Determination Regarding Application for Reconsideration

By an application dated July 9, 1991, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice for petition TA–W–25,826 was signed on June 28, 1991 and published in the **Federal Register** on July 24, 1991 (56 FR 33943).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Vending Services, Inc., provide cafeteria and vending services for workers of the Eau Claire plant of Uniroyal-Goodrich Tire Company whose workers are certified for adjustment assistance under petition TA–W–24,109. However, investigation findings show that there is no corporate-affiliation between Vending Services, Inc., and the Uniroyal-Goodrich Tire Company.

The petitioners claim that their jobs are totally dependent on the Eau Claire plant of Uniroyal-Goodrich continuing in operation. Although the services provided by Vending Services are dependent on the Uniroyal-Goodrich plant, this would not form a basis for a worker group certification.

The Department's denial is based on the facts that the workers do not produce an article within the meaning of the Trade Act of 1974 nor are they corporately related to Uniroyal-Goodrich in Eau Claire. These points were addressed in the Department's notice of negative determination issued on June 28, 1991.

In order for workers providing services to the Uniroyal-Goodrich plant in Eau Claire to become certified eligible to apply for adjustment assistance, their separations must be caused importantly

by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control. Investigation findings show that Uniroyal-Goodrich does not own nor does it control Vending Services, Inc.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the facts or of the law which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of July 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-18766 Filed 8-7-91; 8:45 am]

BILLING CODE 4510-30-M

Advisory Panel for the Dictionary of Occupational Titles (APDOT); Open Meeting

AGENCY: Employment and Training Administration, Labor.

ACTION: The Advisory Panel for the Dictionary of Occupational Titles (APDOT) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) on August 28, 1990.

The APDOT was established as part of the Secretary of Labor's Workforce Quality Agenda to improve the quality of the work force. The APDOT will assist the Department of Labor in meeting the goals of the Secretary's Agenda by providing a diversified range of user perspectives on the Dictionary of Occupational Titles (DOT). The DOT is a document which is used extensively in business, education and government. It defines, classifies and describes occupations in the labor market. The fourth edition of the DOT was published in 1977. A revised fourth edition is scheduled for publication in September 1991. The APDOT will provide advice on a new, fifth edition.

The APDOT will report to and advise the Assistant Secretary for Employment and Training on the development, publication and dissemination of the DOT.

TIME: The meeting will begin at 1 p.m. on September 26, 1991, and continue until 5 p.m. that day; and will reconvene at 8:30 a.m. on September 27, 1991, and adjourn at 3 p.m. that day.

PLACE: The Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

AGENDA: Matters to be considered as part of the agenda for the APDOT meeting include:

- Update on Canadian Occupational System.
- Panel Discussion on Uses of DOT.
- Panel Discussion on Federal Statistical Users of the DOT.
- Status Report on DOT Review Activities.

PUBLIC PARTICIPATION: The meeting will be open to the public. A half hour (8:30 a.m.-9 a.m.) on September 27 will be set aside for public comments. Individuals wishing to speak to the panel should call Dr. Marilyn Silver at 202-535-0161. Seating will be available for the public on a first-come first-serve basis.

Individuals or organizations wishing to submit written statements should send 14 copies to Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, room N4470, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, room N4470, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 535-0161.

Signed at Washington, DC this 30th day of July 1991.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 91-18767 Filed 8-7-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a dimunition of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decision are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: July 30, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M-89-105-C.
FR Notice: 54 FR 32145.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 77.213.
Summary of Findings: Petitioner's proposal to install safety equipment and inspect the tunnel for fire or smoke prior to entry in lieu of installing an escapeway in the tunnel considered acceptable alternative method. Granted with conditions.

Docket No.: M-89-148-C.
FR Notice: 54 FR 43150.
Petitioner: Cyprus Empire Corporation.
Reg Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to use three non-permissible submersible pumps in boreholes drilled into sump areas of the mine, and install additional pumps in the future considered acceptable alternative method. Granted with conditions.

Docket No.: M-89-182-C.
FR Notice: 54 FR 53396.
Petitioner: Soldier Creek Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use a two-entry system for longwall panel gateroad development with the belt conveyor in the return aircourse considered acceptable alternate method. Granted with conditions.

Docket No.: M-90-04-C.

FR Notice: 55 CFR 4032.
Petitioner: Cyprus Empire Corporation.
Reg Affected: 30 CFR 75.321.
Summary of Findings: Petitioner's proposal to utilize a common ground field for each submersible pump with the casing as the primary grounding medium for the installation considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–16–C.
FR Notice: 55 FR 5705.
Petitioner: Tunnelton Mining Company.
Reg Affected: 30 CFR 75.802(a).
Summary of Findings: Petitioner's proposal that the grounding conductor which extends along the power conductors for surface stationary high-voltage equipment be connected to the substation ground grid rather than to the isolated mine field grounding resistor considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–24–C.
FR Notice: 55 FR 8619.
Petitioner: Old Ben Coal Company.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 2400-volt electricity to power the longwall mining equipment throughout the mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–25–C.
FR Notice: 55 FR 8619.
Petitioner: Old Ben Coal Company.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 2400-volt electricity to power the longwall mining equipment throughout the mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–14–C.
FR Notice: 55 FR 5087.
Petitioner: Island Creek Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate the working face and to remove restrictions on the velocity of air in the belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–31–C.
FR Notice: 55 FR 9377.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to enclose rectifiers in a fireproof structure and install a fire suppression device over the rectifiers considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–35–C.
FR Notice: 55 FR 10525.
Petitioner: Island Creek Coal Company.
Reg Affected: 30 FR 75.1103–4.
Summary of Findings: Petitioner's proposal to use belt air to ventilate the working faces and to remove restrictions on the velocity of air in the belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–38–C.
FR Notice: 55 FR 11273.
Petitioner: Cypress Emerald Resources Corporation.
Reg Affected: 30 CFR 75.902.
Summary of Findings: Petitioner's proposal to use contactors for undervoltage protection which will open when either the ground or pilot check wire is broken considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–51–C.
FR Notice: 55 FR 15037.
Petitioner: Arch of West Virginia, Inc.
Reg Affected: 30 CFR 77.811.
Summary of Findings: Petitioner's proposal to use a rubber-tired, trailer-mounted, portable generator to move large electric mining shovels and draglines considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–52–C.
FR Notice: 55 FR 15037.
Petitioner: Enlow Fork Mining Company.
Reg Affected: 30 CFR 75.1103–4.
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide system to identify each belt flight considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–53–C.
FR Notice: 55 FR 15058.
Petitioner: Enlow Fork Mining Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use air in the belt entry to ventilate active working places and planned longwall panels considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–61–C.
FR Notice: 55 FR 21125.
Petitioner: West Elk Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–67–C.
FR Notice: 55 FR 20670.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to monitor the air from checkpoints established at specific locations in the return entries in lieu of traveling in their entirety considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–77–C.
FR Notice: 55 FR 26795.
Petitioner: Kerr-McGee Coal Corporation.
Reg Affected: 30 CFR 75.901.
Summary of Findings: Petitioner's proposal to use a diesel-powered generator without an earth referenced ground considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–79–C.
FR Notice: 55 FR 20685.
Petitioner: Twentymile Coal Company.
Reg Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to operate two non-permissible pumps in boreholes that are drilled into a sump area of the mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–80–C.
FR Notice: 55 FR 28110.
Petitioner: Twentymile Coal Company.
Reg Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to monitor the high-voltage circuits of the two high voltage submersible pumps considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–81–C.
FR Notice: 55 FR 28110.
Petitioner: Kerr-McGee Coal Corporation.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to continue using high-voltage cables to supply power to permissible longwall face considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–82–C.
FR Notice: 55 FR 26796.
Petitioner: Tanoma Mining Company, Inc.
Reg Affected: 30 CFR 75.1103–4.
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–94–C.
FR Notice: 55 FR 29684.
Petitioner: Grace Coal Corporation.

Reg Affected: 30 CFR 75.1710.
Summary of Findings: Due to the undulation of the roof and floor petitioner states that installation of canopies on the mine's electric face equipment would result in a dimunition of safety to miners. Granted with conditions for specific equipment.

Docket No.: M–90–99–C.
FR Notice: 55 FR 29120.
Petitioner: Rough Hill Coal Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on permissible three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–100–C.
FR Notice: 55 FR 29685
Petitioner: Rickett Branch Mining.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–101–C.
FR Notice: 55 FR 31664.
Petitioner: Shamrock Coal Company.
Reg Affected: 30 CFR 75.1103–4.
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing low-level carbon monoxide system in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–102–C.
FR Notice: 55 FR 32709.
Petitioner: Shamrock Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use air in the belt entry to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–103–C.
FR Notice: 55 FR 31461.
Petitioner: Freeman United Coal Company.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage cables to power longwall mining equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–108–C.
FR Notice: 55 FR 31461.
Petitioner: Four G Coal Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on permissible three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–109–C.
FR Notice: 55 FR 31461.
Petitioner: Steel Hollow Mining, Inc.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen methane monitors instead of methane monitors on permissible three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–117–C.
FR Notice: 55 FR 34094.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish evaluation points to measure the air quantity and quality in areas that cannot be traveled in their entirety considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–126–C.
FR Notice: 55 FR 35195.
Petitioner: Enlow Fork Mining Company.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to high-voltage cables inby the last open crosscut and within 150 feet of pillar workings considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–130–C.
FR Notice: 55 FR 38596.
Petitioner: Cyprus Empire Corporation.
Reg Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to a nonpemissible pump in a borehole considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–134–C.
FR Notice: 55 FR 38872.
Petitioner: West Elk Coal Company, Inc.
Reg Affected: 30 CFR 75.300–4.
Summary of Findings: Petitioner's proposal to install a monitoring system to monitor four conditions of the fan and automatically telephone designated persons when conditions warrant considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–139–C.
FR Notice: 55 FR 41396.
Petitioner: Eastern Associated Coal Corporation.
Reg Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal to use a modified drill pattern with a long rib hole considered acceptable alternate method. Granted with conditions, where mining projections are directed parallel to the adjacent workings.

Docket No.: M–90–141–C.
FR Notice: 55 FR 41278.
Petitioner: Shamrock Coal Company.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to continue using high-voltage cables to supply power to longwall mining equipment considered acceptable alternate method. Granted with conditions, for Longwall No. 1 located in the No. 18 Serices mine.

Docket No.: M–90–145–C.
FR Notice: 55 FR 41904.
Petitioner: Rawl Sales and Processing Company.
Reg Affected: 30 CFR 75.700.
Summary of Findings: Petitioner's proposal to use shunt-trip circuit breakers and relays to obtain undervoltage protection using specific equipment and procedures outlined in the petition considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–149–C.
FR Notice: 55 FR 42520.
Petitioner: Minton Hickory Coal Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on permissible three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–150–C.
FR Notice: 55 FR 35875.
Petitioner: Peabody Coal Company, Inc.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish six evaluation points to monitor the ventilation in lieu of traveling the aircourse in its entirety considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–152–C.
FR Notice: 55 FR 46264.
Petitioner: Rawl Sales and Processing Company.
Reg Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal to use a shunt-trip circuit breaker and relays to obtain undervoltage protection using specific equipment and procedures outlined in the petition considered acceptable alternate method. Granted with conditions

Docket No.: M–90–154–C.
FR Notice: 55 FR 46264.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–156–C.
FR Notice: 55 FR 46264.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's request to amend petition for modification (Docket No. M–90–59–C) granted August 8, 1979, which allows pluging and mining through oil and gas wells. Granted with conditions.

Docket No.: M–90–157–C.
FR Notice: 55 FR 49721.
Petitioner: West End Coal Company.
Reg Affected: 30 CFR 75.301.
Summary of Findings: Petitioner's proposal allowing reduced air quantities at the face in the anthracite mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–159–C.
FR Notice: 55 FR 47953.
Petitioner: Mason and Dixon Coal Company.
Reg Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–162–C.
FR Notice: 55 FR 47953.
Petitioner: Dominion Coal Company.
Reg Affected: 30 CFR 75.1701.
Summary of Findings: Petitioner's proposal to drill five holes in the face, spaced at 5-foot intervals, in a pattern that would provide a 10-foot barrier in all directions considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–166–C.
FR Notice: 55 FR 48305.
Petitioner: Serendipity Mining, Inc.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on permissible three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–168–C.
FR Notice: 55 FR 49350.
Petitioner: Beech Nut Mining, Inc.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxgen and methane monitors instead of methane monitors on permissible three-wheel battery/powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–170–C.
FR Notice: 55 FR 49721.
Petitioner: Deerpath Corporation.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxgen and methane monitors instead of methane monitors on permissible three-wheel battery/powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–179–C.
FR Notice: 55 FR 52391.
Petitioner: C & H Mining Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxgen and methane monitors instead of methane monitors on permissible three-wheel battery/powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–187–C.
FR Notice: 55 FR 52898.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–188–C.
FR Notice: 55 FR 52897.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–200–C.
FR Notice: 55 FR 2047.
Petitioner: Kinney Branch Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish evaluation points and monitor the quality and quantity of air entering and exiting an area that cannot be traveled considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–206–C.
FR Notice: 55 FR 2047.
Petitioner: McElroy Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish evaluation points and monitor the quality and quantity of air entering and exiting an area that cannot be traveled considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–208–C.
FR Notice: 55 FR 2537.
Petitioner: Western-Fuels Utah, Inc.
Reg Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to course air over two electrical installations and a pump and into a belt entry using specific equipment and procedures outlined in the petition establish evaluation considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–07–C.
FR Notice: 55 FR 8800.
Petitioner: Arch of Kentucky, Inc.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–11–C.
FR Notice: 56 FR 8800.
Petitioner: Island Creek Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Due to hazardous roof conditions, petitioner's proposal to monitor for hazardous conditions outby the seals considered acceptable alternate method. Granted with conditions.

Docket No.: M–89–24–M.
FR Notice: 55 FR 53198.
Petitioner: Becker Minerals, Inc.
Reg Affected: 30 CFR 56.14102.
Summary of Findings: Petitioner's proposal to provide warnings and flagman at crossings in lieu of installing a braking system on railroad cars used to cross secondary roads considered acceptable alternate method. Granted with conditions.

Docket No.: M–89–28–M.
FR Notice: 55 FR 2714.
Petitioner: Manville Sales Corporation.
Reg Affected: 30 CFR 56.13020.
Summary of Findings: Petitioner's proposal that employees be allowed to use a blow-off nozzle regulated at no more than 3 psi to blow dust from their clothing considerd acceptable alternate method. Granted with conditions.

Docket No.: M–90–01–M.
FR Notice: 55 FR 4918.
Petitioner: Sunshine Mining Company.
Reg Affected: 30 CFR 57.19011.

Summary of Findings: Petitioner's proposal to use new drum face liners in lieu of adequate flanges considered acceptable alternate method. Granted with conditions.

[FR Doc. 91-18769 Filed 8-7-91; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a joint statement between the President and the Nation's Governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and to report to the nation on the progress toward the goals. Members of the National Education Goals Panel are six governors appointed by the Chairman of the National Governor's Association, four senior Administration officials, and four Congressional leaders. Governor Roy Romer of Colorado is the initial chairman.

TENTATIVE AGENDA ITEMS: The tentative agenda for the meeting includes a discussion relating to the first report of the National Education Goals.

DATE: The eighth meeting is scheduled for Monday, August 20, 1991, 3:30-4:30 p.m.

ADDRESS: Washington State Convention and Trade Center, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Pat Forgione at the National Education Goals Panel office to indicate attendance or for further information on specific time and location. The phone number is (202) 632-0952.

Dated: August 5, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91-19001 Filed 8-7-91; 8:45 am]

BILLING CODE 3127-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Polar Programs.

Dates & Times: August 27-29, 1991 8 a.m.-5:30 p.m. daily.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 1242.

Type of Meeting: Closed.

Agenda: Review and evaluate research proposals on polar biology and medicine research.

Contact Person: Dr. Polly A. Penhale, Program Manager, Polar Biology and Medicine Program, National Science Foundation, Washington, DC 20550. Telephone (202) 357-7894.

Dated: August 5, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-18843 Filed 8-7-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Science and Technology Centers Development; Meetings

Name: Site Visits for Substantive Review of Eleven Science and Technology Centers to Determine Future Funding.

Date	Place	Time
8/26-27/91	University of California, Santa Barbara, CA.	8:30-5
9/11-12/91	University of Illinois, Urbana, IL.	8:30-5
9/11-12/91	Northwestern University, Evanston, IL.	8:30-5
9/11-13/91	University of Oklahoma, Norman, OK.	8:30-5
9/12-13/91	Michigan State University, East Lansing, MI.	8:30-5
9/18-19/91	University of Rochester, Rochester, NY.	8:30-5
9/18-19/91	Virginia Polytechnic Institute, Blacksburg, VA.	8:30-5
9/19-20/91	Rutgers University, Piscataway, NJ.	8:30-5
9/23-25/91	University of California, Berkeley, CA.	8:30-5
9/24-25/91	Rice University, Houston, TX.	8:30-5
9/30-10/91	California Institute of Technology, Pasadena, CA.	8:30-5

Type of Meeting: Closed.

Contact: Dr. Sonja Sperlich, Senior Manager, Science & Technology Centers, Office of Science & Technology Infrastructure, National Science Foundation, Washington, DC 20550, Telephone: 202/357-9808.

Purpose of Meeting: To provide advice and recommendations concerning future funding of these Centers.

Agenda: Review and evaluation of these Centers to determine further funding.

Reason for Closing: These Centers being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the Centers. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: August 5, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-18842 Filed 8-7-91; 8:45 am]

BILLING CODE 7555-01-M

Division of Atmospheric Sciences; Committee of Visitors—Atmospheric Chemistry Program; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposal actions and provide NSf with an assessment of program-level technical and managerial matters pertaining to proposal decisions and program operations. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C., 552b(c), Government in the Sunshine Act.

Name: Committee of Visitors, Subcommittee of the Advisory Committee for Atmospheric Sciences.

Date: August 26 and 27, 1991.

Time: 9 a.m. to 5 p.m. each day.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluation of proposal actions of the Atmospheric Chemistry Program.

Contact: Dr. Jarvis L. Moyers, Program Director, Atmospheric Chemistry Program, Lower Atmosphere Research Section, Division of Atmospheric Sciences, National

Science Foundation, Washington, DC (202) 357–9657.

Dated: August 5, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–18844 Filed 8–7–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee; Request for Nominations

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of request for nominations for the Nuclear Safety Research Review Committee.

SUMMARY: The Nuclear Regulatory Commission is seeking nominations of individuals qualified to fill a vacancy on its Nuclear Safety Research Review Committee. The Committee advises the NRC's Director of Nuclear Regulatory Research on matters of overall management importance and meets about three times a year in the Washington, DC, area or at a research institution.

SUPPLEMENTARY INFORMATION: The Nuclear Safety Research Review Committee was established by NRC in 1988. The 12-member committee is composed of senior experts in nuclear engineering or science who are qualified to provide technical advice on the broad range of topics that are the subject of nuclear regulatory safety research applicable to NRC-licensed nuclear power plants and other licensed facilities and activities. An important consideration in selecting members for the committee is to maintain a balance and diversity of skills and judgment.

The composition of the committee currently is well balanced with experts in the areas of human factors, instrumentation and control, waste management, nuclear plant operations, severe accidents and other areas of nuclear engineering. Nominees for the vacancy should have broad, management-oriented experience. They also should have a nuclear engineering background with scientific research experience at a major laboratory or university, have progressed to a position of research management at a high level, and have a good understanding of nuclear power plant regulation. Membership on the National Academy of Sciences, the National Academy of Engineering or one of their committees also would be desirable.

Nominations should include a resume describing the educational and professional qualifications of the nominee, and a current address and daytime telephone number. Nominations should be submitted to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, DC 20555, Attention: Advisory Committee Management Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Meyer, Office of Nuclear Regulatory Research, Washington, DC 20555, Telephone: (301) 492–3700.

Dated: August 2, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–18872 Filed 8–7–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corporation; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operting License No. DPR–16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would revise Technical Specification section 5.2.A to change the current containment drywell design pressure of 62 psig to the new design pressure of 44 psig. Related changes to Technical Specification Bases are also required. Unrelated editorial changes to the Bases of Technical Specifications 3.4 and 3.5 are also proposed.

Prior to 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.

By September 9, 1991, 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 and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to 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 Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. 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 satisfy 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 satisifes 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.

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 Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, 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 John F. Stolz: 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 Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, 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 presiding 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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 22, 1991, 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 local public document room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 2nd day of August 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–18873 Filed 8–7–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–72]

The University of Utah (The Utah AGN–201M Research Reactor); Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated July 17, 1990, as supplemented on July 18, 1990 and June 12, 1991, the University of Utah (the licensee) requested authorization to dismantle the AGN–201M research reactor facility, License No. R–25, located on the licensee's campus in Salt Lake City, Utah and to dispose of the component parts, in accordance with the decommissioning plan submitted as part of the application. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Components Parts and Terminating Facility License" was published in the **Federal Register** on May 9, 1991 (56 FR 21508). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed the application with respect to the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts as stated in the licensee's decommissioning plan will be consistent with the regulations in 10 CFR chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared. (56 FR 36850 August 1, 1991)

Accordingly, the licensee is hereby ordered to dismantle the AGN–201M research facility covered by License No. R–25, as amended, and dispose of the component parts in accordance with its decommissioning plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it has performed to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the decommissioning plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility Operating License No. R–25.

For further details with respect to this action, see (1) the licensee's application for authorization to dismantle the facility, dispose of component parts, and terminate Facility Operating License No. R–25, dated July 17, 1990, as supplemented; (2) the Commission's Safety Evaluation; and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of items (2) and (3) may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Advanced Reactors and Special Projects.

Dated at Rockville, Maryland, this 1st day of August 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–18874 Filed 8–7–91; 8:45 am]

BILLING CODE 7590–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

[RFP 01-92-ProPAC]

Request for Proposal on Measurement of Road-Mile and Air-Mile Distances Between U.S. Hospitals

The Prospective Payment Assessment Commission (ProPAC) is seeking a contractor to measure road and air mile distances between U.S. hospitals. The data will be organized into a computer file to be usable by ProPAC. The data will be used by ProPAC to develop and analyze alternative hospital labor market definitions. A single contractor is being sought to complete this project under a fixed-price contract within a two- to three-month period. The contractor selected should have extensive experience in mapping and distance measure. The contractor will have the capability to create logical and efficient computer files of the data base for all the collected data. Some familiarity with the hospital industry would be helpful but is not required.—RFP 01-92 ProPAC will be issued on or about August 19, 1991. Interested sources must submit a written request for a copy of this RFP.

Donald A. Young,

Executive Director.

[FR Doc. 91-18762 Filed 8-7-91; 8:45 am]

BILLING CODE 6820-BW-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Requests for Consultative Medical Examinations.
(2) Form(s) submitted: RL-12/ID-31a.
(3) OMB Number: 3220-0124.
(4) Expiration date of current OMB clearance: Three years from date of OMB approval.
(5) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) Frequency of response: On occasion.
(7) Respondents: Businesses or other for profit, Small businesses or organizations.
(8) Estimated annual number of respondents: 10,050.
(9) Total annual responses: 10,050.
(10) Average time per response: 1 hour.
(11) Total annual reporting hours: 10,050.
(12) Collection description: Under section 2 of the RRA and section 2 of the RUIA, disability and sickness benefits are respectively provided for qualified railroad employees. The collection obtains consultative evidence of inability to work when needed to supplement evidence obtained from other sources.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 91-18838 Filed 8-7-91; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 20a-1 File No. 270-132
Rule 20a-2 File No. 270-133
Rule 20a-3 File No. 270-134

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 20a-1 (17 CFR 270.20a-1), rule 20a-2 (17 CFR 270.20a-2), and rule 20a-3 (17 CFR 270.20a-3) under the Investment Company Act of 1940 ("1940 Act").

Rules 20a-1 through 20a-3 set forth various requirements with respect to solicitation of proxies, consents, and authorizations on behalf of registered investment companies. About 970 investment companies spend a total of approximately 94,284 hours annually complying with these rules.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Act Projects 3235-0158), room 3208, NEOB, Washington, DC 20503.

Dated: July 9, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18852 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 17f-5, File No. 270-529

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 17f-5 under the Investment Company Act of 1940 (17 CFR 270.17f-5).

Rule 17f-5 regulates the custody of investment company assets located outside the United States. Approximately 40 respondents spend about 4 hours each, annually, keeping records relating to requirements of the rule.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a

representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Project 3235–0269), room 3208 NEOB, Washington, DC 20503.

Dated: July 9, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18853 Filed 8–7–91; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission Office of Filings, Information and Consumer Services 450 Fifth Street NW, Washington, DC 20549.

Extension

Rule 11a–3, File No. 270–321

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval rule 11a–3 (17 CFR 270.11a–3) under the Investment Company Act of 1940 ("1940 Act").

Rule 11a–3 allows certain open-end investment companies and their principal underwriters to make certain exchange offers to their own shareholders or to shareholders of another fund in the same group of funds.

Any of the 2,800 open-end investment companies may rely on rule 11a–3. The annual burden for each company is estimated to be two hours annually. The estimated average burden hours are made solely for the purpose of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Projects 3235–0358 (rule 11a–3)), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 8, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–8854 Filed 8–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29511; File No. SR–Amex–91–19]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Additional Delivery Periods

July 31, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] Notice is hereby given that on July 30, 1991, the American Stock Exchange, Inc. ("Amex" 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 Amex. The Commission is granting accelerated approval of the proposed rule change on a temporary basis through January 31, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional six months the pilot program under which Amex Rule 124 is amended to provide for any additional settlement periods as the Exchange may from time to time determine. These additional periods for the delivery of Amex securities currently include the second, third, and fourth days after the trade date ("T").

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 Amex 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 Amex 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

(1) Purpose

Under proposed Amex Rule 124(e), bids and offers may specify that an order be subject to any additional settlement periods as the Exchange may from time to time determine. Previously, the Commission approved on a temporary basis a rule permitting the delivery of Amex securities on the second, third, and fourth days following the trade date ("T"). The temporary approval is for an eighteen month period and expires on August 1, 1991.[2] The Commission also has approved next day ("T+1") delivery under rule 124(b).[3] The Amex proposes that procedures to accommodate the additional settlement periods of T+2 through T+4 be approved by the Commission on a temporary basis for an additional six month period.

The Amex has reviewed operation of the T+1 through T+4 delivery periods during the period of the eighteen month pilot program and has concluded that member firm clearance and settlement procedures have adequately accommodated such non-regular way delivery. The Amex is aware of no difficulties occurring as a result of such transactions settling directly between the parties involved and outside of the facilities of a registered clearing agency. In addition, such additional delivery periods have afforded greater flexibility to members and their customers in structuring investment strategies and advancing their investment objectives.

(2) Basis

The proposed rule change is consistent and furthers the objectives and section 6(b)[4] of the Act in general and furthers the objectives of section 6(b)(5)[5] in particular that it fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 27665 (February 1, 1990), 55 FR 4503. (File No. SR–Amex–88–20).

[3] Securities Exchange Act Release No. 26127 (September 29, 1988), 53 FR 39388. (File No. SR–Amex–88–20).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

The Amex requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. Such accelerated approval would permit the Amex to offer continuity of service to clearing members while providing the Exchange with additional time to analyze its procedures relating to additional settlement periods.

The Commission finds that the Amex's proposal to extend the pilot program procedures for an additional six months 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) of the Act. The proposed rule change will permit Amex member firms to accommodate the needs of their customers with respect to transactions on the Amex by providing market facilities for investors who wish to execute transactions for settlement on time frames shorter than the traditional five day settlement period. Moreover, because this proposal provides for an extension of the pilot program for an additional six months, the Exchange will be in a position to continue to monitor and to assess any effects the alternate delivery periods may have on member firm settlement procedures.[6]

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of filing. Accelerated approval will permit the Amex's program relating to T+2 through T+4 settlement to continue without interruption. The proposed additional settlement periods have imposed no significant burdens on member firm clearance and settlement procedures and are similar to non-regular way settlement time frames currently permitted by other national securities exchanges. An extension of the pilot program for an additional six month period will permit the Exchange to further assess operation of the procedures and to collect and provide to the Commission additional data relating to T+2 through T+4 trades.

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 Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-91-19 and should be submitted by August 29, 1991.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR-Amex-91-19) be, and hereby is, approved on a temporary basis through January 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18855 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

[6] As set forth in Securities Exchange Act Release 27665, the Exchange will continue to provide the Commission with quarterly reports of trades subject to T+1 through T+4 settlement.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 U.S.C. 200.30-3(a)(12).

[Release No. 34-29515; File No. SR-Amex-91-15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Temporary Accelerated Approval of Proposed Rule Change Relating to the American Stock Exchange's After-Hours Trading Facility

August 2, 1991.

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 July 5, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to commence a pilot program extending its trading hours to establish an after-hours trading facility that would permit the execution of (1) single-sided closing-price orders; and (2) crosses of closing-price buy and sell orders.[1] The Exchange requests that the proposed rule change be approved on an accelerated basis. This order grants temporary approval to a portion of the filing.

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

For some time, the Exchange has been considering the introduction of after-hours trading in its equities. As an initial effort in this area, the Amex proposes that a facility be established to permit the execution of (1) single-sided closing-price orders and (2) crosses of closing-price buy and sell orders after the close of the ordinary 9:30 a.m. to 4 p.m. auction market session ("after-hours trading facility"). Although, as will be discussed herein, there are some operational differences, the Amex's proposed facility will be substantially

[1] The exact text of the proposed rule change was attached to the rule filing as exhibit A and is available at the Amex and the Commission at the address noted in Item III below.

similar to the New York Stock Exchange's ("NYSE") "Crossing Session I," which was approved recently by the Commission and began operation on June 13, 1991.[2]

Under the Amex proposal, the after-hours trading facility would enable members and member organizations ("members"), including specialits,[3] to enter both proprietary and agency orders in any Exchange-traded equity security (e.g., stocks, rights, warrants, primes and scores, American Depository Receipts ("ADRs"), and equity derivative products[4] for execution at the Exchange's last closing regular way price.[5] Specifically, commencing at 4:15 p.m.,[6] single-sided round lot orders can be entered through the PER system [7] or left with the specialist or his or her authorized representative for matching and execution at 5 p.m. at the Exchange's last closing regular way price, *i.e.*, the last price at which the equity traded on the Exchange during the normal 9:30 a.m. to 4 p.m. trading session.[8] In addition, coupled buy and sell round lot, odd lot, and partial round lot orders can be entered through PER or left with the specialist or his or her representative for execution at 5 p.m. against each other at the Exchange's last regular way price.[9]

Members also will be able to designate good 'til cancelled ("GTC") [10] limit orders entered during the 9:30 a.m. to 4 p.m. trading session as eligible for execution during the after-hours session. Such orders will be identified as "GTX," indicating that after the close of the normal trading session, those that are executable at the Exchange's last closing regular way price will migrate to the after-hours facility for possible execution. Only unconditioned round lot and partial round lot limit orders will be allowed to be designated as GTX; any market, stop, stop limit, or odd lot orders so designated will be rejected. For purposes of execution during the after-hours session, GTX orders will have priority over all other single-sided closing-price orders, and, among themselves, will retain the same priority as they had on the specialist's book. Members will be permitted to designate both GTC orders transmitted through PER and manually delivered to the specialist during the regular trading session as eligible for after-hours execution.

The after-hours facility will allow for the entry of closing-price single-sided and coupled orders and the cancellation of closing-price and GTX orders until 5 p.m. However, the session will not be available for any issue that remained halted as of the close of the regular trading session. Similarly, trading in the after-hours session will not take place if a market-wide "circuit breaker" trading halt remained in effect at the close of the regular trading session. In addition, if at any time between 4 and 5 p.m. the Exchange determines, based on news or other events, that the after-hours facility should not be available for a particular issue, a notice of such determination will be disseminated through a Common Message Switch ("CMS") broadcast and over the Consolidated Tape System ("CTS") high-speed line and low speed ticker, and all single-sided and coupled closing-price orders in that issue will be considered cancelled. GTX orders which had migrated to the after-hours session will be returned to the specialist's book, where they will retain the same priority among themselves as they had originally.

After commencement of the after-hours trading session, employees of the specialist unit will "strip their racks," or remove from their limit order books, all GTX orders executable at the Exchange's last closing regular way price. Single-sided and coupled closing-price orders transmitted through PER will print out at the specialist post continuously until 5 p.m., during which time members will also be able to manually deliver such orders to the post. Specialists or their employees will match GTX and single-sided closing-price buy and sell orders on a first-in, first-out ("FIFO") basis and set them aside for execution at 5 p.m. (As noted above, GTX orders will have priority over single-sided closing-price orders entered after commencement of the after-hours session.) In the event of cancellations, the specialists or their employees will re-match the remaining orders to ensure that they retain their FIFO priority.

At 5 p.m., all matched GTX and single-sided closing-price orders will be executed by the specialists, with reports of execution being delivered to the entering members (either though PER or manually, depending on how the order was entered). Any unmatched, and therefore unexecuted, single-sided closing-price order will be reported back as such to the entering firm. Any unexecuted portion of a GTX order will be returned to the specialist's book, maintaining its priority, and may therefore participate in the next day's normal trading session, unless cancelled beforehand. Coupled closing-price orders, if not cancelled, will also be executed at 5 p.m.

In order to facilitate use of the after-hours facility, the Exchange proposes to modify the current PER parameters. With respect to single-sided orders entered during the after-hours session, PER would be modified to accommodate round lot market orders of up to 30,000

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[2] The NYSE's Off-Hours Trading ("OHT") facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I, which permits the execution of single-stock single-sided closing-price orders, and crosses of single-stock closing-price buy and sell orders; and Crossing Session II, which allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) ("NYSE OHT Release") (approving Files No. SR-NYSE-90-52 and NYSE-90-53). The NYSE's OHT facility was approved by the Commission on May 20, 1991, and began operation on June 13, 1991.

[3] The Commission is approving today on an accelerated basis only that portion of the proposed rule change which establishes the after-hours trading facility and which allows members, not including specialists, to enter proprietary and agency orders in Exchange-traded equities. The Commission is not granting accelerated approval to the portion of the proposed rule change which allows specialists to participate in the after-hours trading facility by entering proprietary or customer orders; this portion of the proposal, which may raise new regulatory issues that have to be considered by the Commission, will be published for public notice and comment. See discussion, *infra*, and letter from Scott I. Noah, Assistant Vice President and Associate General Counsel, legal & Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated July 24, 1991.

[4] The Commission notes that the term "equity derivative products" in the context of this rule filing is limited only to products that may be derivative of another equity security and eligible for routing through the PER system. It does not include standardized options, such as options on individual stocks or on indexes of securities, such as Amex's Major Market Index ("XMI").

[5] The Amex's proposed rule change consists of changes to existing Amex rules and the adoption of a new "1300 series" of rules that would apply solely to the after-hours facility ("Rules for After-Hours Trading Facility").

[6] The 15-minute interval between the close of the normal trading session and the commencement of the after-hours facility will allow Exchange systems sufficient time for switch-over to the operations necessary for the after-hours facility.

[7] The Amex's Post Execution Reporting Service ("PER") electronically routes market and limit orders in equity securities to the applicable specialist post.

[8] The Amex states that it will use its existing systems to implement the proposed rule change and execute single-sided, coupled, and GTX orders. The Amex represents that it has no systems capacity concerns regarding the execution of single-sided, coupled, and GTX orders, and that modifications to its systems to permit the execution of those orders were tested successfully prior to this order.

[9] A member will not be permitted to enter coupled buy and sell orders if both are for accounts in which any member, or an associated person, has a direct or indirect interest.

[10] A GTC order is an order to buy or sell which remains in effect until it is either executed or cancelled. Amex Rule 131(j).

shares.[11] For coupled orders entered during the after-hours session, PER would be modified to accommodate market orders of up to 30,099 shares (i.e., round lots with associated odd lots).[12] Finally, with respect to GTC orders entered during the regular trading session and designated as eligible for execution during the after-hours session ("GTX" orders), where such orders are entered directly by the upstairs firm into the PER system, they will be limited to the 5,099 share parameter currently applicable to limit orders.[13] The PER system would be modified, however, to accept a GTX order of up to 30,099 shares if it is first transmitted to a broker on the trading floor, who in turn would bring it to the PER Service Desk for entry into the system.[14] (Except as discussed above, and except as may be determined in accordance with a previously-approved unrelated Exchange proposal,[15] the current PER parameters of 3,099 shares for market orders and 5,099 shares for limit orders will remain unchanged during the 9:30 a.m. to 4 p.m. trading session).

After 5 p.m., there will be separate prints for each issue that participated in the after-hours session: the first representing the aggregate number of shares of the issue that was traded through single-sided (including GTX) orders, and the second representing the aggregate number of shares traded through coupled orders. The latter will be printed as a "sold" sale to ensure that the price of coupled orders is not selected as the day's consolidated closing price or used as the basis for the next day's Intermarket Trading System ("ITS") pre-opening application.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

[11] See, letter from Scott I. Noah, Assistant Vice President and Associate General Counsel, Legal & Regulatory Policy Division, Amex, to Elizabeth A. Pucciarelli, Attorney, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated July 30, 1991 ("July 30 letter").

[12] *Id.*

[13] See *infra*.

[14] See July 30 letter, *supra*, note 10. If a GTX order becomes executable during the 9:30 a.m. to 4 p.m. trading session, it would, to the extent possible, be eligible for execution in its entire amount.

[15] See Securities Exchange Act Release No. 28891 (February 15, 1991), 56 FR 7438 (File No. SR-Amex-90-37), which gives the Exchange discretion, as early as August 1991, to increase the size eligibility of PER market orders to 5,099.

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

Comments were neither solicited nor 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-91-15 and should be submitted by August 29, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission believes that the portion of the Amex proposal establishing an after-hours session which would enable members, not including specialists, to enter both proprietary and agency orders in any Exchange-traded equity security, including stocks, rights, warrants, primes and scores, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price, is reasonably designed to promote just and equitable principles of trade, perfect the mechansim of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitiate the linking of qualified markets through appropriate communication systems and the practicability of brokers executing investors' orders in the best market. For these reasons and for the additional reasons set forth below, the Commission finds that approval, for a temporary period ending on May 24, 1993, of the portion of the Exchange's proposed rule change establishing an after-hours facility which enables members, not including specialists, to enter both proprietary and agency orders in any Exchange-traded equity security 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 and 11A of the Act.[16]

In the recent Commission release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through development of an after-hours trading session. The Commission stated that the NYSE OHT sessions should enhance competition by providing a service to customers that other exchanges currently are not providing, and also noted that innovation that provides marketplace benefit to attract order flow to one marketplace does not result in unfair competition if the other markets are free to compete in the same manner.[17] In this regard, the Commission noted that, if other U.S. securities marketplaces desire to compete with the NYSE's OHT facility, they could provide a similar service.[18]

The Commission believes that the portion of the Amex proposal which establishes an after-hours session that enables members, not including specialists, to enter proprietary and agency orders in any Exchange-traded equity security for execution at the Exchange's last closing regular way price is substantially similar, and a reasonable competitive response, to the NYSE's Crossing Session I. By allowing

[16] 15 U.S.C. 78f and 78k-1 (1988).

[17] See NYSE OHT Release, *supra*, note 2.

[18] *Id.* Subsequently, the Boston, Midwest, Pacific, and Philadelphia Stock Exchanges, as a competitive response to the NYSE's OHT facility, adopted rules that require their specialists to provide primary market protection for limit orders, designated as executable after the close of the regional exchange market trading session, based on volume that prints in the primary market's after-hours session. See Securities Exchange Act Release Nos. 29301 (June 13, 1991), 56 FR 28182 (granting temporary accelerated approval to File No. BSE-91-4); 29297 (June 13, 1991), 56 FR 28191 (granting temporary accelerated approval to File No. MSE-91-11); 29305 (June 13, 1991), 56 FR 28208 (granting partial temporary accelerated approval to File No. PSE-91-21); and 29300 (June 13, 1991), 56 FR 28212 (granting temporary accelerated approval to File No. Phlx-91-26).

members to enter single-sided and coupled orders into an after-hours facility, as well as permitting the migration of certain limit orders (GTX orders) from the regular 9:30 a.m. to 4 p.m. trading session for possible execution in the after-hours facility, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the NYSE and the regional exchanges. Accordingly, the Commission believes that the portion of the proposed rule change establishing an after-hours facility which would enable members to enter both proprietary and agency orders in Exchange-traded equity securities, including stocks, rights, warrants, primes and scores, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price should be approved for many of the same reasons that the Commission approved the NYSE OHT facility.[19]

The Commission believes that both the instant Amex proposal and the NYSE's OHT facility, as well as the rules which have recently been put in place at the regional exchanges, demonstrate the competitiveness of the U.S. securities markets. As a result of these marketplace initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed on both the NYSE and the Amex after the close of the regular 9:30 a.m. to 4. p.m. trading session at the closing price of the respective marketplace. Moreover, the Commission believes that the increased competition that would result from allowing the Amex to establish an after-hours facility would benefit the entire marketplace.

In addition, the Commission believes that, although Amex specialists will know which limit orders are designated "GTX" and will manually execute matched GTX and one-sided orders, they should not be able to use this information to their own advantage because specialists will be prohibited from entering orders into the after-hours facility. The Commission expects, however, that the Amex will monitor carefully the execution of GTX, single-sided, and coupled orders to ensure that Amex specialists are not taking unfair advantage of this information. In this regard, the Commission expects the Amex to report within 16 months of the date of the approval of this order, on this issue.

The Commission notes that the NYSE's OHT facility was approved for a two year temporary period, commencing on May 24, 1993. In approving the NYSE proposal for a temporary period, the Commission noted that the NYSE OHT facility raised several "intermarket" issues, such as: (1) Whether ITS should be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (2) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order books; (3) if so, with what priority, if any; and (4) who should bear the cost of developing a working mechanism for such transmittal. In the release approving the NYSE OHT facility, the Commission also noted that, because at least one other exchange had proposed a trading session similar or identical to the NYSE's OHT facility, significant national market system issues would have to be resolved by the NYSE and the competing market, in conjuction with the SEC. Because the Amex proposal would establish an after-hours trading system that will compete directly with NYSE Crossing Session I, the Commission believes that a temporary approval period ending on May 24, 1993 is also appropriate for the Amex proposal.[20]

The Commission believes that this time period will provide an opportunity for the Commission and market participants to observe the actual operation of the Amex's after-hours facility. Based on these observations the Commission and market participants will be in a better position to evaluate whether further steps to link the Amex's after-hours facility with comparable systems operating at the same time are necessary or appropriate to protect investors or promote fair competition and whether any other linkage issues arise. In this regard, 16 months from the date of approval of the instant proposal, the Amex should submit a new filing pursuant to rule 19b–4 under the Act requesting permanent approval of its proposed rule change, as well as a report describing the Amex's experience with the new rule during that 16-month period. The report should include, but not be limited to, the following information (broken down by month) for the 16-month period:

- Trading volume (trades and number of shares) in after-hours session
- The number, if any, of (1) single-sided orders; (2) coupled buy and sell orders; and (3) GTX orders executed in the after-hours session
- The number, if any, of single-sided and coupled orders comprised of primes and scores or comprised of equity derivative products that are executed in the after-hours session
- The number, if any, of (1) single-sided orders; and (2) single-sided GTX orders that remained unexecuted at the end of the after-hours session
- The number and percentage of GTC orders on the book that were designated "GTX"
- The number of member firms participating in the after-hour session
- Whether the Amex marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the after-hours session
- Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the after-hours session
- Whether there was a diminution in the number of block transactions during the last hour after the initiation of the after-hours session
- The degree to which transactions were entered in the after-hours session to avoid the restrictions of the short sale rule in the 9:30 a.m. to 4 p.m. trading session

The Commission notes that, because the Amex after-hours facility is comparable to Crossing Session I of the NYSE's OHT facility, the Amex's report should also indicate: (1) How its after-hours facility could link with the NYSE's OHT facility and any other systems approved during the 16-month period; (2) how orders entered on other marketplaces could interact with orders in the Amex's after-hours facility; and (3) how the intermarket issues discussed in this order would be addressed. In this connection, however, the Commission underscores its strong belief that resolution of intermarket issues would not be solely a responsibility of the Amex, but would fall equally upon all self-regulatory organizations proposing after-hours sessions.

In addition to the above information, the Commission expects that the Amex, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity in the after-hours facility. Specifically, the Commission expects the Amex to monitor closely the trading of primes

[19] See NYSE OHT Release, *supra*, note 2. The Commission incorporates by reference any discussion in its order approving the NYSE's OHT facility (*supra*, note 2) which may relate to the instant proposed rule change.

[20] To achieve uniformity, the temporary approval period would run until May 24, 1993, the sunset of the NYSE's OHT facility.

and scores and equity derivative products in the after-hours facility to ensure that trading in these issues is not subject to any patterns of manipulation or trading abuses or unusual trading activity. Moreover, the Commission expects the Amex to keep the Commission apprised of any technical problems which may arise regarding the operation of the after-hours facility, such as difficulties in order execution or order cancellation.

Finally, the Commission finds good cause for approving the portion of the proposed rule change establishing an after-hours facility which enables members, no including specialists, to enter proprietary and agency orders in Exchange-traded equity securities, including stocks, rights, warrants, primes and scores, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price prior to the thirtieth day after the date of publication of notice of filing thereof. This portion of the Amex proposal raises no new regulatory issues that have not already been addressed in the order approving the NYSE's OHT system. In addition, the Commission believes that good cause exists for accelerated approval of the portion of the proposed rule change which would modify the current PER parameters to accommodate trading in the after-hours facility. The Amex has represented to the Commission that it has no system capacity concerns regarding order execution in connection with single-sided and coupled orders entered into the after-hours session or with GTX orders entered during the regular 9:30 a.m. to 4 p.m. trading session and that modification to its systems to permit the execution of these orders were tested successfully. Accordingly, the Commission believes it is appropriate to approve these portions of the proposed rule change on an accelerated basis in order to permit the Amex to compute with the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[21] that the portion of the proposed rule change establishing an after-hours trading facility in which members, not including specialists, may enter both proprietary and agency orders in Exchange-traded equity securities for execution at the Exchange's closing price, and in which GTX orders will be eligible for execution, is approved for a temporary period ending on May 24, 1993.

[21] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18856 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29520; International Series Release No. 302; File No. SR-Amex-91-04]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Listing Standards for Non-U.S. Issuers

August 2, 1991.

I. Introduction

On March 13, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change to amend section 110 of the Amex Company Guide in order to eliminate its alternate financial guidelines for non-U.S. issuers and reduce its alternate distribution criteria for such companies.

The proposed rule change was noticed in Securities Exchange Act Release No. 29031 and International Series Release No. 249 (April 1, 1991), 56 FR 14279 (April 8, 1991). No comments were received on the proposal.

II. Background

According to the Exchange, the Amex's alternate listing standards applicable to foreign issuers were adopted in 1977 to accommodate non-U.S. issuers which were unable to satisfy the Exchange's domestic public share distribution standards. The alternate listing standards, therefore, focus on worldwide distribution as opposed to U.S. distribution of the foreign company's shares, while imposing size and earnings criteria which, by comparison, greatly surpass the comparable standards applicable to U.S. or Canadian issuers.

According to the Exchange, the alternate standards initially were devised to lure financial "giants" to the Amex because the Exchange assumed that only these issuers could attract the necessary research coverage to stimulate investments by prospective U.S. shareholders. In addition, the Amex believed that smaller issuers were less likely to satisfy the Exchange's corporate government requirements.

The current interest in overseas markets has prompted the Amex to change its viewpoint, however, and the Exchange now believes that smaller foreign issuers can attract sufficient investor interest as to warrant listing on a U.S. exchange. In addition, the Amex is aware that foreign issuers are eligible for exceptions to the corporate governance rules of all major marketplaces. For these two reasons, the Exchange believes that there no longer is any justification for requiring higher financial or market capitalization standards to list non-U.S. companies.

II. Proposal

The Exchange proposes to eliminate its alternate size and earnings listing criteria for non-U.S. issuers and, alternatively, apply its domestic size and earnings guidelines to all issuers, domestic and foreign. The current alternate listing guidelines for non-U.S. issuers, which the Amex proposes to eliminate, require a minimum of $25,000,000 in stockholders' equity; $30,000,000 of cumulative total pre-tax income for the latest three fiscal years with a minimum of $7,500,000 in each year; and a $20,000,000 aggregate market value for publicly held shares. The current domestic size and earnings guidelines, which would be the only standards that would apply to non-U.S. issuers, would require a company to maintain stockholders' equity of $4,000,000; pre-tax income of $750,000 in the last fiscal year or in two of the last three fiscal years; and market capitalization of $3,000,000.[3] The proposal, therefore, would substantially decrease the size and earnings criteria required for listing non-U.S. issuers on the Exchange.

In addition, the Exchange proposes to decrease its alternate distribution criterion for non-U.S. issuers, which requires 2,000 holders currently. According to the Amex, its experience in trading foreign securities has made clear that specialists and other investors can easily convert foreign shares into American Depository Receipts ("ADRs") and vice versa. The Amex has stated that since liquidity is not solely a function of U.S. or foreign shareholders, but of total trading in an issue on a worldwide basis, it should not be difficult to maintain a market in a foreign issue during the nascent period of the U.S. market. Nevertheless, the Amex believes that in order to increase

[22] 17 CFR 200.30-3(a)(12) (1990).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] See sections 101-102 of the Amex Company Guide.

the likelihood that a liquid U.S. market will develop, the proposal would require non-U.S. issuers to have a minimum of 800 public holders worldwide and a minimum public float of one million shares.[4] This guideline remains significantly different from the current domestic guideline of 400 U.S. holders for an issuer with one million or more shares held publicly.

III. Discussion and Conclusion

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with section 6 of the Act [5] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Because of the ever increasing globalization of the securities markets, there has been heightened interest by U.S. investors in trading the securities of foreign companies. The Amex's proposal is designed to address this interest by allowing additional foreign companies to list on the Amex. This, in turn, will provide U.S. investors desiring to trade the shares of these companies with the benefits of a U.S. trading market.

Foreign issuers choosing to list on the Amex do so in anticipation of deriving certain benefits from listing for both themselves and the investors in their securities. The potential benefits from trading a security listed on the Amex may include greater public exposure through publicity afforded by the various information services, a greater opportunity for investors to obtain agency-type limit order protection, and the possibility of increased ease of access to new capital. In addition, the Commission believes that the listing of additional foreign issuers on the Amex may work to increase competition between the exchanges.

The foreign issuers that list on the Amex pursuant to the proposed criteria will be subject to the Exchange's reporting requirements and surveillance procedures. Thus, the proposal provides the added benefit of Exchange oversight of the trading of these foreign securities, thereby providing better protection to the U.S. shareholders investing in the securities of these foreign companies.

As set forth above, the proposal would require foreign companies to meet domestic size and earnings criteria, while the distribution criteria will continue to be based on a minimum worldwide distribution, with the shareholder requirement remaining higher than the level provided for by the domestic company listing standards. While the proposal substantially reduces the size and earnings criteria for foreign companies, it does not lower such criteria below the level currently applicable to domestic companies. It is not inconsistent with the Act for the Amex to apply its domestic size and earnings requirements to foreign issuers. As with domestic companies, these requirements work to ensure that only genuine companies capable of meeting their financial obligations will be eligible for listing and that there will be broad public ownership of the issuer's securities. Moreover, the Commission agrees with the Amex that U.S. investors are interested in trading the securities of smaller foreign issues, not merely the top echelon foreign companies which the alternate listing criteria were intended to attract. The proposal, therefore, will provide U.S. investors with the ability to invest in a wider range of foreign companies, while ensuring the protection of investors by requiring that a foreign company accepted to listing on the Exchange is sufficiently capitalized and, as discussed below, has a broad enough shareholder base to support a national market in the U.S.[6]

The Amex's proposal reduces the distribution criteria applicable to foreign issuers, but keeps the criteria higher than the domestic requirements.[7] This should assure that those foreign companies meeting the size and earnings criteria also have a sufficient public distribution to maintain a market in the U.S. The Commission believes that the proposed distribution criteria are reasonable in this regard. Because these companies' primary shareholder base remains outside of the U.S., it is important for the Amex to ensure that there exists sufficient shareholder interest in the product so that a liquid market can be maintained on the Amex. As a result, it is logical for the Amex to require a higher shareholder number for foreign issuers. The Commission believes that the standard selected by the Amex—800 shareholders worldwide—while lessening the current requirement for foreign issuers, should be sufficiently high to provide for an adequate pool of potential shareholder interest for trading on the Amex.

Finally, the proposal is consistent with section 6(b)(5) of the Act by not permitting unfair discrimination between issuers on the Exchange. Indeed, pursuant to the proposal, foreign and domestic companies must meet identical size and earnings standards to be listed on the Exchange, as well as meet a minimum public float of one million shares. For this reason, therefore, and the additional reasons set forth above, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18857 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 2, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12(f)-1 thereunder for unlisted trading privileges in the following securities:

Enquirer/Star Group, Inc.
Class A Common Stock, $0.01 Par Value (File No. 7-7123).

Exel Ltd.
Ordinary Shares $0.01 Par Value (File No. 7-7124).

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[4] The Exchange's proposal does not alter the minimum public float currently required by the alternate criteria.

[5] 15 U.S.C. 78f (1988).

[6] It is important to note that the Amex's proposal does not alter the disclosure requirements for foreign issuers. All foreign companies listed on the Amex pursuant to the reduced listing standards will have to fulfill the same registration and periodic reporting requirements under the federal securities laws as do currently listed foreign issuers.

[7] The share distribution standards for domestic companies require either a minimum public distribution of 500,000 shares and a minimum of 800 public holders or 1,000,000 shares and 400 holders. The proposed share distribution criteria for foreign companies, which will require both 1,000,000 publicly held shares and 800 holders, remain significantly higher than the standards currently applicable to domestic issuers.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1990).

Manpower, Inc.
Common Stock, $0.01 Par Value (File No. 7–7125).
Marvel Entertainment Group, Inc.
Common Stock, $0.01 Par Value (File No. 7–7126).
Potomac Electric Power Co.
Serial Pfd. $3.89 of 1991, $50.00 Par Value (File No. 7–7127).
Sea Containers Ltd.
$4.00 Conv. Cum. Pfd., $0.01 Par Value (File No. 7–7128).
Singer Co. NV
Common Stock, $0.01 Par Value (File No. 7–7129).
Swift Energy Co.
Common Stock, $0.01 Par Value (File No. 7–7130).
Telecom Corp. of New Zealand Ltd.
American Depositary Shares (20 Ordinary Shares NZ $1.00 Par Value (File No. 7–7131).
International Corona Corp.
Class A Common Stock, No Par Value (File No. 7–7132).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system. Interested persons are invited to submit on or before August 23, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18788 Filed 8–7–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 2, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following security:

Smart & Final, Inc.
Common Stock, $.01 Par Value (File No. 7–7133)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 23, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18789 Filed 8–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29512; File No. SR–NASD–91–20]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Forwarding of Material on the Issuer's Behalf of Beneficial Owners of NASDAQ Securities

July 31, 1991.

I. Introduction

The National Association of Securities Dealers, Inc. ("NASD") submitted on April 29, 1991, a proposed rule change pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and rule 19b–4 [2] to amend the Interpretation of the Board of Governors—Forwarding of Proxy and Other Materials, article III, section 1 of the NASD Rules of Fair Practice. Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29344 (June 19, 1991) and by publication in the **Federal Register**, 56 FR 12573, (June 26, 1991). In response to our solicitation of comments, the Commission received no comments on the proposed rule change. This order approves SR–NASD–91–20 as originally proposed.

II. Proposed Amendments

1. Forwarding of Proxy and Other Materials

The NASD proposed in the aforementioned rule filing amendments which if implemented will create a uniform standard of duty among NASD members to forward material to beneficial owners furnished by the NASDAQ company that is the issuer of the securities. The standard proposed for adoption is presently embodied in New York Stock Exchange ("NYSE") Rule 465.

The NASD believes the proposed amendments are necessary, because it has come to their attention that a disparity exists among different NASD members regarding their duty to forward to beneficial owners the proxy and other material furnished by the NASDAQ company that is the issuer of the securities.[3] The current Interpretation of the NASD Board of Governors—Forwarding of Proxy and Other Materials to article III, section 1 of the Rules of Fair Practice ("Interpretation") limits the duty of a member to forward material furnished to it by the issuer of the securities to "all proxy material, annual reports, information statements and other material required by law to be sent to stockholders periodically." Currently, NASD members who are members of the NYSE are held to a broader standard under NYSE Rule 465 that requires a member organization to forward "copies of interim reports of earnings and other material being sent to stockholders." NYSE Rule 465 does not reference underlying requirements of law as a prerequisite of the NYSE member's duty to forward material.

This disparity in the duty of NASD members to forward information has created a situation such that a NASDAQ

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1989).

[3] While this rule change would create a uniform standard for forwarding information furnished by NASDAQ companies, the standard for forwarding information furnished by persons other than the issuer of the securities will not be uniform for NASD members that are NYSE-affiliated and NASD members that are not affiliated with the NYSE. NYSE Rule 451 contains a broader standard for forwarding proxy information to the beneficial owners of stock than what is currently required by the NASD's Rules of Fair Practice. NYSE rules require that members forward proxy material when requested by a person. The NASD's rules, however, limit the duty of its members to forward proxy materials to those materials which are furnished by the issuer of the securities. The NASD is presently reviewing the feasibility of changing their rules to reflect the standard for forwarding proxy information embodied in NYSE Rule 451.

company requesting that material be forwarded to its beneficial owners may receive different levels of service from certain NASD members resulting from the application of the NYSE Rule 465 to NASD members that are NYSE-affiliated and the NASD members that are not affiliated with the NYSE.

To eliminate the existing disparity of service to NASDAQ companies, the NASD proposal amends the Introduction to the Interpretation to reflect the standard currently embodied in NYSE Rule 465. Accordingly, in addition to proxy material, annual reports and information statements that were previously required to be forwarded pursuant to NASD rules, upon implementation of the rule change, NASD members will also be required to forward copies of all other material being sent to stockholders.

2. Charges for Mailings

The proposed rule change also contains amendments to section 4 of the Interpretation to reflect the additional mailing requirements imposed on NASD members. Currently, NASD members are reimbursed for expenses incurred in forwarding material furnished by the issuer of securities pursuant to section 4 of the Interpretation. The rates for such reimbursement are set forth under the appendix to the Interpretation. The proposed rule change amends section 4 and the appendix to the Interpretation to clarify the application of the reimbursement rate to the additional material required to be forwarded.

III. Conclusion

Having reviewed the proposed rule change, the Commission believes the proposed amendments are consistent with and further the goals of the Act for the reasons which follow. First, we believe that by requiring NASD members to forward additional material as proposed, investors will be aided in evaluating the character of the securities they hold and in their ability to act upon the rights and responsibilities that accompany ownership of such stock. Furthermore, we are of the opinion that the broadened standard imposed on NASD members for fowarding corporate correspondence will be of mutual benefit of NASDAQ companies and their respective shareholders. The rule change will enable NASDAQ companies to apprise stockholders of such options as dividend reinvestment programs by furnishing such mailings to NASD members for forwarding to stockholders. These amendments, we believe, are vital safeguards for assuring that the beneficial owners of stock receive all essential communications and disclosures requested by NASDAQ companies to be forwarded. Finally, because these amendments will prevent the unwarranted discrimination in information provided to investors by creating a uniform level of service to NASD members forwarding information to the beneficial owners of stock, the Commission finds that the proposed rule change is consistent with the requirements of the Act, specifically section 15A(b)(6), which requires that the rules of a registered securities association be designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved. This rule change shall become effective within 45 days of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18858 Filed 8-7-91; 8:45am]

BILLING CODE 8010-01-M

[Rel. No. IC-18259; 812-7682]

CoreFunds, Inc.; Application

August 2, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: CoreFunds, Inc. ("CoreFunds"), all other registered investment companies distributed or advised now or in the future by Fairfield Group, Inc. ("Fairfield"), CoreStates Investment Advisers, Inc. ("CoreStates Advisers"), or one of Fairfield's or CoreStates Advisers' affiliates as defined in section 2(a)(3) of the Act (Corefunds and such other registered investment companies are sometimes referred to herein collectively as the "Funds"), Fairfield, and CoreStates Advisers. The Funds, Fairfield, and CoreStates Advisers are sometimes collectively referred to herein as the "Applicants."

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order pursuant to section 6(c) of the Act to permit the issuance and sale of multiple classes of securities representing interests in some or all of the Funds' existing and future investment portfolios. The classes would be identical in all respects except for differences relating to distribution expenses, shareholder service plan expenses, dividend payments, and net asset value as a result of differing rule 12b-1 or shareholder service plan fees and transfer agency expenses allocated to specific classes of shares, voting rights, certain exchange privileges and the designation of each class of shares of a portfolio.

FILING DATE: The application was filed on February 13, 1991 and was amended on March 18, 1991, April 1, 1991, July 8, 1991, and July 12, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 27, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons 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: CoreFunds or Fairfield, 200 Gibraltar Road, Horsham, Pennsylvania 19044; CoreStates Advisers, PNB Building, Broad and Chestnut Streets, Philadelphia, Pennsylvania 19101.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504-2524, or Jeremy N. Rubenstein, Assistant Director, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. CoreFunds is an open-end management investment company, registered under the Act, that is authorized to issue multiple classes of shares representing interests in separate investment portfolios ("Portfolios").

2. Fairfield, a registered broker-dealer, serves as CoreFunds' distributor and administrator. CoreStates Advisers, a wholly-owned subsidiary of CoreStates

Bank, N.A., which is in turn a wholly-owned subsidiary of CoreStates Financial Corp ("CoreStates Corp"), acts as investment adviser to CoreFunds.

3. CoreFunds' shares currently are sold to banks affiliated with CoreStates Corp., other financial institutions such as banks and broker-dealers, and institutional investors acting on behalf of certain customers. Financial institutions to which shares are sold typically act in a fiduciary, agency or custodial capacity.[1] In addition, shares may be sold to retail investors.

4. Shares of each Portfolio currently are offered at net asset value without a sales load or redemption charge, although financial institutions holding shares for customer accounts may charge customers for services provided in connection with the purchase or redemption of shares. Applicants seek an exemptive order from the SEC permitting the Funds to offer multiple classes of shares representing differing interests in some or all of the Funds' existing and future Portfolios. Under the proposed arrangement, each share in a particular Portfolio, regardless of class, would represent an equal pro rata interest in such Portfolio and would have identical voting, dividend, liquidation, and other rights, except for: (a) The amount and type of fees permitted by different distribution plans adopted pursuant to rule 12b–1 under the Act ("12b–1 Plans") and related distribution agreements or the amount and type of fees permitted by non-rule 12b–1 shareholder service plans (the "Shareholder Service Plans") and related agreements, (b) voting rights with respect to 12b–1 Plans, (c) the impact of any incremental transfer agency fees directly attributable to a particular class of shares and any other incremental expenses allocated on a class basis which are specifically approved by the SEC pursuant to an amended exemptive order ("Class Expenses"), (d) any differences in dividends and net asset value resulting from different fees under a 12b–1 Plan or Shareholder Service Plan and Class Expenses, (e) exchange privileges, and (f) the designation of classes. The investment objectives, policies and limits, and all other rights and fees (including advisory fees) will be identical for all classes of a particular Portfolio.

5. CoreFunds expects to offer four different classes of shares, as described herein. In addition, other classes of the Funds' existing and future Portfolios may be offered from time to time in connection with 12b–1 Plans or Shareholder Service Plans which may differ from the plans described herein, or with no distribution plan or payments at all. Any such classes would, however, comply with all representations and conditions contained herein.

6. Class A Shares [2] will be identical to the shares currently offered by CoreFunds. Class A will not adopt a 12b–1 Plan or pay any rule 12b–1 distribution expenses. Class A Shares will be sold and redeemed without any sales load or redemption charge imposed by a Fund, although financial institutions holding Class A Shares for customer accounts may charge customers for services provided in connection with the purchase or redemption of Class A Shares. Class A Shares will be offered primarily to institutions affiliated with, and subsidiary banks of, CoreStates Corp. Shares also may be offered in the future to other institutions satisfying certain substantial minimum investment requirements and institutions which act as an investment adviser to the Portfolio in which they are investing.

7. Class B Shares will be identical to Class A Shares, except that Class B will be subject to a 12b–1 Plan and related distribution agreement which will provide that the Fund will reimburse the distributor for certain expenses as provided in a budget approved annually and reviewed quarterly by the board of directors. The expenses subject to reimbursement are limited to: (a) The cost of preparing, producing and delivering prospectuses, shareholder reports, sales literature and other materials for distribution to potential shareholders; (b) advertising; and (c) expenses incurred in connection with the promotion and sale of the Fund's shares, including the distributor's expenses for travel, communication and compensation and benefits of sales personnel (collectively, "Distribution Expenses"). The 12b–1 Plan will limit the annual distribution budget and expenditures under the budget to a maximum of .25% of the average daily net assets of the class or such other limit as may be approved by the shareholders. Class B Shares will be offered for purchase only by or through financial institutions.

8. Class C Shares will be identical to Class A Shares and Class B Shares, except that Class C will be subject to a modified 12b–1 Plan and related distribution agreement. The modified 12b–1 Plan and related distribution agreement will be identical to the Class B 12b–1 Plan, except that Class C Shares will be required to pay the distributor an additional distribution fee equal to .25% of the average daily net assets of the class. The distributor is authorized to pay all or any part of the fees derived from these payments as distribution-related service payments to financial institutions which enter into shareholder servicing agreements (the "Distribution Service Agreements") with the distributor. Such financial institutions will provide Account Administration Services, as defined below, to Class C customer accounts under the Distribution Service Agreements. No service payments will be made to financial institutions with respect to any amounts that are invested for the institution's own account. Class C Shares will be offered for purchase only by or through financial institutions.

9. Class D Shares will be identical to Class A, Class B and Class C Shares, except that Class D Shares will be offered to retail investors for purchase at net asset value plus a front-end sales load, which will not exceed 5% of the offering price. Class D will be subject to a 12b–1 Plan and related distribution agreement on terms similar to those of the 12b–1 Plan and related distribution agreement to which Class B is subject. As permitted by section 22(d) of the Act and rule 22c–1 thereunder, the sales load will be waived in connection with investments by certain persons and in respect of certain transactions and also will be subject to reduction for large purchases and purchases under rights of accumulation and letters of intent.

10. The distributor will provide distribution-related administrative services to Class A, Class B, and Class D Shares. Such services shall include: (a) Establishing and maintaining customer accounts and records; (b) aggregating and processing purchase and redemption requests from customers and placing net purchase and redemption orders with the distributor; (c) automatically investing customer account cash balances; (d) providing periodic statements to customers; (e) arranging for bank wires; (f) answering routine customer inquiries concerning investments in the shares offered in connection with the 12b–1 Plans and agreements, if applicable; (g) assisting

[1] A fiduciary account generally is one in which a financial institution has discretionary investment authority. An agency account generally is one in which the financial institution is investing upon the instruction of another party because the institution does not possess investment discretion. A custodial account generally is one in which the primary role of the financial institution is to act as custodian of assets.

[2] Each class described herein may not be offered by each Portfolio. Accordingly, the alphabetical designations used herein are not necessarily those that will be used by a specific Portfolio.

customers in changing dividend options, account designations and addresses; (h) performing sub-accounting functions; (i) processing dividend payments from a Fund on behalf of customers; and (j) forwarding certain shareholder communications from a Fund (such as proxies, shareholder reports and dividend, distribution and tax notices) to customers (collectively, "Account Administration Services"). The distributor will not provide Account Administration Services to the beneficial owners of class C Shares directly. Instead, those services will be provided to such beneficial owners by the applicable financial institution pursuant to a Distribution Service Agreement.

11. Currently, Portfolio shares may be exchanged without charge or commission for shares in another Portfolio. Under the proposed arrangement, if a Fund issues multiple classes of shares in one Portfolio, shares of a class of a Portfolio will be exchanged only for shares of the same class of another Portfolio.

12. The adoption and implementation of a 12b–1 Plan or Shareholder Service Plan by a Fund in relation to any of its Portfolios and classes is independent of, and not conditioned upon, the adoption or implementation of such a plan by that or any other Fund in relation to any other Portfolio and class. The level of payments made pursuant to a 12b–1 Plan or Shareholder Service Plan may vary based upon an independent determination by the board of directors of a Fund. Each 12b–1 Plan is subject to approval by the shareholders of the affected class. No Fund will use rule 12b–1 fees charged to one class within a Portfolio to support the marketing of any other class of shares within that Portfolio or any other Portfolio. With the exception of voting rights, the protections provided pursuant to rule 12b–1 to shareholders adopting a 12b–1 Plan will be provided to shareholders of a class adopting a Shareholder Service Plan also. Under a Shareholder Service Plan, the distributor may enter into agreements with financial institutions to provide administrative services to customer accounts. Such services would be substantially similar to the Account Administration Services described above.

13. Each class of shares of a Portfolio will bear, *pro rata* with every other class of shares of such Portfolio, all Portfolio expenses (except Class Expenses) not covered by the 12b–1 Plans and Shareholder Service Plans. Such Portfolio expenses will be allocated to each class of shares of a Portfolio based upon the net assets of each individual class of shares. Investment income, including amortization of discount and premium, where applicable, also will be allocated to each class of shares of a Portfolio based on its percentage of the total net assets.

14. The expenses incurred pursuant to the 12b–1 Plan or Shareholder Service Plan of a particular class will be borne solely by that class. Dividends payable to the holders of shares of each such class will reflect differences resulting from the different fees under a 12b–1 Plan or Shareholder Service Plan and incremental transfer agency and other Class Expenses borne by that class. Accordingly, dividends distributed to shareholders of one class may differ from the dividends distributed to shareholders of any other class within the same Portfolio. Classes of Portfolios which are not money market funds may have different net asset values per share between dividend declaration dates because expenses will be accrued at different rates for those respective classes and because of the different fees charged to each such class under a 12b–1 Plan or Shareholder Service Plan. The methodology and procedures used to calculate the net asset value of each class of a Portfolio will be identical.

Applicants' Legal Arguments

1. Applicants assert that the proposed multiple class structure will enable each Portfolio to reflect more precisely the different costs and related administrative expense incurred in connection with making sales to, and servicing the accounts of, different categories of investors.

2. Applicants request an exemptive order under section 6(c) to permit the proposed creation, issuance and sale of multiple classes of shares representing interests in each of a Fund's Portfolios to the extent that such issuance and sale might (a) be deemed to result in a "senior security" within the meaning of section 18(g) of the Act, (b) be prohibited by section 18(f)(1), and (c) violate the equal voting provisions of section 18(i).

3. Applicants assert that the requested relief does not present the concerns that section 18 was designed to address. The proposed arrangement does not involve borrowings, affect any Fund's existing assets or reserves, or increase the speculative character of any Portfolio's shares. The proposed capital structure will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders because the investment risks will be borne equally by all shareholders.

4. Applicants state that mutuality of risk will be preserved with respect to all shares in a portfolio because (a) all shares will be redeemable at any time, and (b) no class of shares will have any distribution or liquidation preferences with respect to particular assets and no class will be protected by any special reserve or other account.

5. Applicants also state that insiders will not be able to manipulate expenses and profits among the classes of shares because no Fund or Portfolio is organized in a pyramid fashion, all classes will have equal voting rights with other classes within the same portfolio, except that Class B Shares, Class C Shares and Class D Shares will have exclusive voting rights regarding their 12b–1 Plans and all expenses and profits of a Portfolio, except expenses incurred pursuant to a 12b–1 Plan or Shareholder Service Plan and Class Expenses, will be allocated pro rata to each class of the Portfolio based on the net assets of such individual class of shares. The danger that a complex capital structure may shift control to those without equity or other investment is not present.

6. Applicants argue that the proposed arrangement raises no valuation concerns because all classes of shares have pro rata interests in the same pool of assets. Moreover, applicants will implement steps to ensure that the respective performance data of a Portfolio's classes are fairly disclosed in the relevant prospectus and shareholder reports.

7. Applicants assert that the proposed arrangement would permit a Fund to facilitate the distribution of its securities and expands the scope and depth of administrative services without assuming excessive organizational, legal, administrative, accounting and bookkeeping costs or unnecessary investment risks. It also would permit each Fund to save organizational and other continuing costs associated with establishing a separate portfolio for each class of shares. Moreover, all shareholders, regardless of class, may benefit to the extent that (a) the pro rata operating expenses per share are lower due to economies of scale and spreading fixed costs over a larger asset base, and (b) a larger pool of assets better enables the investment adviser to achieve investment objectives, including portfolio diversification.

8. Applicants submit that allocation of expenses relating to 12b–1 Plans and Shareholder Service Plans, as described herein, and allocation of voting rights relating to rule 12b–1, as described herein, is equitable and would not

discriminate against any group of shareholders. Investors purchasing shares in a particular class and receiving the services provided under a 12b–1 Plan or Shareholder Service Plan would bear the costs associated with those services. Investors receiving services provided under a 12b–1 Plan would enjoy exclusive shareholder voting rights with respect to matters affecting such plan.

Conditions to Relief

If the requested relief is granted, applicants agree to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Portfolio and will be identical in all respects, except as set forth below. The only differences between classes of shares of the same Portfolio will relate solely to: (a) The impact of the disproportionate payments under the respective 12b–1 Plans and Distribution Service Agreements, and under any Shareholder Service Plans and shareholder services agreements, any incremental transfer agency fees directly attributable to a particular class of shares, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order, (b) voting rights on matters which pertain to the 12b–1 Plans, (c) certain exchange privileges, and (d) the designation of each class of shares of a Portfolio.

2. The board of directors of a Fund, including a majority of the independent directors, will approve the offering of different classes of shares (the "Multi-Class System"). The minutes of the meetings of the dirctors of the Fund regarding the deliberations of the directors with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the directors' determination that the proposed Multi-Class System is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the directors of a Fund, pursuant to fiduciary responsibilities under the Act and otherwise, will monitor each Portfolio for the existence of any material conflicts among the interests of the various classes of shares. The directors of a Fund, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The adviser and the distributor of a Fund shall be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the adviser and the distributor of a Fund, at their own cost, will remedy such conflicts, up to and including establishing a new registered management investment company.

4. Any 12b–1 Plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its 12b–1 Plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such shares first becomes effective.

5. Any Shareholder Service Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating the Shareholder Service Plan and related agreements, the directors will specifically consider whether (a) the Shareholder Service Plan and related agreements are in the best interests of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the Shareholder Service Plans are required for the operation of the applicable classes, (c) the service organizations can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. Each Distribution Service Agreement entered into, and each shareholder services agreement entered into pursuant to a Shareholder Service Plan, will contain a representation by the service provider that any compensation payable to the service provider in connection with the investment of its customers' assets in a class (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the service provider.

7. Each Distribution Service Agreement will provide that, in the event an issue pertaining to the 12b–1 Plan is submitted for shareholder approval, the service provider will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts. Any shareholder services agreement entered into pursuant to a Shareholder Service Plan will provide that, in the event an issue pertaining to the Shareholder Service Plan is submitted for shareholder approval, the service provider will vote any shares held for its own account in the same proportion as the vote of these shares held for its customers' accounts.

8. The directors will receive quarterly and annual statements concerning the amounts expended under the 12b–1 Plans and the Distribution Service Agreements and under any Shareholder Service Plans and agreements thereunder complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class of shares will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

9. Dividends paid by the Fund with respect to a class of shares of a Portfolio, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Fund with respect to each other class of shares in the same Portfolio, except that distribution fee payments made by a class under its 12b-1 Plan, payments under any Shareholder Service Plans, any incremental transfer agency fees directly attributable to a particular class and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order will be borne exclusively by that class.

10. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an

appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Experts shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide) will be available for inspection by the SEC staff upon the written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 10 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 10 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

12. The prospectuses of a Fund or of each class of a Portfolio will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Portfolio.

13. The distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Funds with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the directors.

15. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads and exchange privileges applicable to each class of shares of a Portfolio in every prospectus, regardless of whether all classes of shares of a Portfolio are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares of a Portfolio in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such Portfolio. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares of a Portfolio separately.

16. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to any 12b-1 Plan, any Shareholder Service Plan, or any agreements under any of such plans in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18859 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18258; File No. 812-7713]

The Equitable Life Assurance Society of the United States, et al.

August 2, 1991.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Approval and Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Equitable Life Assurance Society of the United States ("Equitable"), Integrity Life Insurance Company ("Integrity"), National Integrity Life Insurance Company ("National Integrity") (collectively, the "Insurance Companies"), Separate Account No. 301 of Equitable ("SA 301"), Separate Account A of Equitable ("SA A"), Separate Account INA of Integrity ("SA INA"), Separate Account NIA of National Integrity ("SA NIA") (collectively, the "Separate Accounts"), Prism Investment Trust ("Prism"), The Equitable Trust ("Equitable Trust"), The Hudson River Trust ("Hudson River"), (collectively, the "Trusts") and Equitable Capital Management Corporation ("Equitable Capital").

RELEVANT 1940 ACT SECTIONS: Order requested under section 26(b) approving proposed substitutions; order requested under section 6(c) and/or section 17(d) and rule 17d-1 thereunder approving certain joint transactions; and exemption requested under sections 6(c) and/or 17(b) from section 17(a) for certain purchase and sale transactions.

SUMMARY OF APPLICATIONS: Applicants seek orders pursuant to section 26(b) of the 1940 Act, respectively approving the substitution of shares of Hudson River for shares of Prism and of Equitable Trust held by SA 301 and SA A (the "Hudson River Substitution") and the substitution of shares of Variable Insurance Products Fund ("VIP Fund I") and Variable Insurance Products Fund II ("VIP Fund II") (together, the "VIP Funds") for shares of Prism held by SA INA and SA NIA (the "VIP Funds Substitution") (collectively, the "Substitutions"); (2) Applicants that are parties to the Hudson River Substitution seek an order pursuant to sections 6(c) and/or 17(b) of the 1940 Act, granting an exemption from section 17(a) of the 1940 Act to permit the purchase and sale of securities and property between affiliates in connection with the Hudson River Substitution; and (3) Applicants that are parties to the Hudson River Substitution seek an order pursuant to sections 6(c) and/or 17(d) and rule 17d-1 thereunder, approving the joint arrangement associated with the Hudson River Substitution.

FILING DATES: The application was filed on April 18, 1991 and amended on July 23, 1991.

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 SEC by 5:30 p.m., on August 27, 1991. 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 Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Naomi Friedland-Wechsler, Esq., The Equitable Life Assurance Society of the United States, 787 Seventh Avenue, New York, New York 10019 and Robert M. Hersh, Esq., Integrity Life Insurance Company, 1325 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Attorney, at (202) 272–3045, or Barry D. Miller, Senior Attorney, at (202) 272–3012, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations [1]

1. Equitable is a mutual life insurance company organized under New York Law. Integrity is a stock life insurance company organized under Arizona law. National Integrity, a wholly-owned subsidiary of Integrity, is a stock life insurance company organized under New York Law.

2. The Separate Accounts are segregated investment accounts registered under the 1940 Act as unit investment trusts. SA 301 is used to fund benefits under certain annuity contracts issued by Equitable in connection with retirement programs that qualify for favorable tax treatment under the Internal Revenue Code of 1986, as amended (the "IRC"). These group annuity contracts and certificates ("SA 301 Contracts") are no longer actively marketed by Equitable. SA 301 currently has seven investment divisions ("SA 301 Investment Divisions"), each of which invests exclusively in shares of a corresponding investment portfolio ("Fund") of Prism. Transfers among the SA 301 Investment Divisions may be made without charge or limitation on the number of transfers that may be made.

3. SA A is used to fund benefits under group annuity contracts and certificates, as well as individual annuity contracts issued by Equitable ("SA A Contracts"). The SA A Contracts are vehicles for the funding of various retirement benefits, most of which qualify for favorable tax treatment under the IRC. The individual annuity contracts funded through SA A are no longer offered for sale, although new contributions are accepted from existing holders of these contracts. SA A currently has five investment divisions ("SA A Investment Divisions"), each of which invests exclusively in shares of a corresponding investment portfolio of Equitable Trust. Transfers among the SA A Investment Divisions available under each SA A Contract are permitted at any time without charge or limitation on the number of transfers that may be made. However, under the SA A Contracts currently marketed, transfers into the Money Market Division from any of the other SA A Investment Divisions are not permitted.

4. SA INA is used to fund benefits under certain flexible payment variable annuity group contracts and certificates and individual contracts ("SA INA Contracts"). SA INA Contracts are vehicles for the funding of various retirement benefits, most of which qualify for favorable tax treatment under the IRC. SA INA currently has seven investment divisions ("SA INA Investment Divisions"), each of which invests in shares of a corresponding Fund of Prism. Transfers among the SA INA Investment Divisions may be made without charge or limitation on the number of transfers that may be made.

5. SA INA is used to fund benefits under certain flexible payment variable annuity group contracts and certificates and individual contracts ("SA NIA Contracts"). SA NIA Contracts are vehicles for the funding of various retirement benefits, most of which qualify for favorable tax treatment under the IRC. SA NIA participants, together with SA 301, SA A and SA INA participants, are referred to collectively as the "Participants." SA NIA currently has seven investment divisions ("SA NIA Investment Divisions"), each of which invests in shares of a corresponding Fund of Prism. Transfers among the SA NIA Investment Divisions may be made without charge or limitation on the number of transfers that may be made.

6. Prism and Equitable Trust are registered as open-end, diversified management investment companies. Prism currently offers its shares exclusively to SA 301, SA INA and SA NIA in order to fund variable annuities. Shares of Equitable Trust are currently being offered exclusively to SA A in order to fund variable annuities. Equitable serves as the investment adviser and Equitable Capital serves as subadviser to Prism and Equitable Trust.

7. Hudson River is an open-end, management investment company, which currently offers shares of its ten investment portfolios to separate accounts of Equitable Variable Life Insurance Company ("Equitable Variable"), a wholly-owned subsidiary of Equitable, and to separate accounts of six other insurance companies, including Integrity and National Integrity, which are not affiliated with Equitable.

8. The VIP Funds are open-end, diversified management investment companies. VIP Fund I has five investment portfolios and VIP Fund II has two investment portfolios. Shares of the VIP Funds are currently available to separate accounts of a number of insurance companies, both affiliated and unaffiliated with Fidelity Management and Research Company ("FMR"). FMR serves as the investment adviser to the VIP Funds.

9. Equitable, on its own behalf as depositor, and on behalf of SA 301 and SA A, proposes to effect the Hudson River Substitution. Integrity, on its own behalf as depositor, and on behalf of SA INA, and National Integrity, on its own behalf as depositor, and on behalf of SA NIA, each propose to effect the VIP Funds Substitution.

10. The Substitutions are intended to consolidate the assets of the Prism Funds and Equitable Trust, eliminate duplicative administrative functions, and create the potential for greater economies of scale, more efficient management and improved investment performance.

11. Under the terms of the Hudson River Substitution, all of the shares of Prism's Money Market, Common Stock, Bond, Balanced, Aggressive Stock, Global and High Yield Funds held by SA 301 will be replaced, respectively, by shares of Hudson River's Money Market, Common Stock, Intermediate Government Securities, Balanced, Aggressive Stock, Global and High Yield Portfolios. In addition, the shares of Equitable Trust's Money Market, Stock, Bond, Balanced and Aggressive Stock Portfolios, all of which are held by SA A, will be replaced, respectively, by shares of Hudson River's Money Market, Common Stock, Intermediate

[1] Representations made by the Applicants throughout the application are made by each Insurance Company with regard to its own Substitution and not the Substitution of the other Insurance Companies and by each Trust and each other Applicant with regard only to its own participation in the transactions described in the application.

Government Securities, Balanced and Aggressive Stock Portfolios.

12. Under the terms of the VIP Funds Substitution, shares of the Equity-Income, Money Market, Growth and Overseas Portfolios of VIP Fund I will be substituted, respectively, for shares of the Common Stock, Money Market, Aggressive Stock and Global Funds of Prism held by SA INA and SA NIA. Shares of the Asset Manager Portfolio of VIP Fund II will be substituted for shares of the Balanced Fund of Prism held by SA INA and SA NIA. Shares of the Investment Grade Bond Portfolio of VIP Fund II will be substituted for shares of the Bond and High Yield Funds of Prism held by SA INA and SA NIA.

13. Shortly after the filing of this application with the Commission, the Insurance Companies will supplement or amend the respective prospectuses of their Separate Accounts to reflect the respective Substitutions. Within five days after the Substitutions, the Insurance Companies will send Participants in each of the Separate Accounts a written notice, which will identify the portfolios that have been eliminated and the portfolios that have been substituted, together with a current prospectus for Hudson River or the VIP Funds, as appropriate, and a revised prospectus or supplement for the respective Separate Accounts. The notices to SA INA Participants and SA NIA Participants will indicate that higher costs may be incurred by the Participants following the VIP Funds Substitutions in one or more of the Divisions in which they are invested, but that Participants will be free to transfer to any other Division that does not have higher costs.[2] Equitable will pay all expenses and/or transaction costs of the Substitutions incurred by Prism and by Equitable Trust, including any applicable brokerage commissions.

14. On the date of the Hudson River Substitution, Equitable will cause SA 301 to request that Prism transfer to Hudson River the assets attributable to the shares held by the SA 301 Investment Divisions. Similarly, Equitable will cause SA A to request that Equitable Trust transfer to Hudson River the assets attributable to the shares held by the SA A Investment Divisions. Simultaneously, Hudson River will issue shares of its portfolios to SA 301 and SA A in amounts which correspond to the transferred assets. The transactions implementing the Hudson River Substitution will be effected in conformity with section 22(c) of the 1940 Act and rule 22c–1 thereunder. Equitable believes that the decision to effect the transfers in-kind will minimize transaction costs and maximize the full investment of the corresponding portfolios of Hudson River.

15. On the date of the VIP Funds Substitutions, Integrity will cause SA INA to request the redemption of all Prism shares which SA INA holds, and National Integrity will cause SA NIA to request the redemption of all Prism shares which SA NIA holds. On that date, Integrity and National Integrity will also cause SA INA and SA NIA, respectively, to place purchase orders with the VIP Funds in amounts equal to the redemption proceeds attributable to SA INA and SA NIA Participants. These redemption requests and purchase orders will be made before the time at which Prism prices its shares for redemption and the VIP Funds price their shares for purchase. Consequently, SA INA and SA NIA will redeem their shares at the same moment that the VIP Funds record the purchase of their shares by the two separate accounts. Prism proposes to effect redemptions by SA INA and SA NIA in cash because of the relatively small holdings of SA INA and SA NIA in Prism, and, consequently, the relatively small dollar amount of their respective redemption requests.

16. Applicants represent that the purposes, terms and conditions of the Substitutions are consistent with the principles and purposes of section 26(b) and do not entail any of the abuses it is designed to prevent. Moreover, the Substitutions will result in certain benefits to Participants. The variable annuities and variable life insurance policies issued by Equitable and Equitable Variable are currently funded by separate accounts which invest in three different underlying mutual funds, Prism, Equitable Trust and Hudson River, all having similar characteristics. Previous business and legal concerns which favored separateness have been eliminated. The unification of all Equitable and Equitable Variable underlying life and annuity funds in a single vehicle with sizable portfolios is expected to result in cost savings, through economies of scale and reduced administrative expenses, as well as more effective management. The Substitutions will also cure certain problems peculiar to Prism. Currently none of the annuity products funded through Prism is actively marketed. The Substitutions are an appropriate solution to the problem of Prism's modest growth since its establishment and its limited possibilities for future growth.

17. Applicants represent that the Substitutions will not result in the type of costly forced redemption that section 26(b) was intended to guard against and that the Substitutions are consistent with the protection of all investors and the purposes fairly intended by the 1940 Act for the following reasons: (1) The Substitutions are for shares of the respective portfolios of either Hudson River or the VIP Funds, whose objectives, policies and restrictions are either identical or sufficiently similar to those of the substituted Prism and Equitable Trust portfolios so as to continue fulfilling the Participants' objectives and expectations; (2) Participants will have prior knowledge regarding the Substitutions in the form of prospectus disclosure; (3) the Substitutions will be at net asset value of the respective shares, without the imposition of any transfer or similar charge and with no change in the dollar amount of a Participant's investment in the Separate Account; (4) the Substitutions do not involve any contractual provisions that limit allowable transfers; (5) the Substitutions will in no way alter the annuity benefits to any of the Participants or the contractual obligations of the Insurance Companies; (6) none of the Participants will incur any fees or charges as a result of the Substitutions; (7) all expenses incurred in connection with the Substitutions, including legal and accounting fees and expenses, and the cost of prospectus disclosure, this application, and notices, will be paid by the Insurance Companies; (8) the Substitutions will have no adverse tax consequences for Participants; (9) for reasons stated in greater detail at paragraphs 18 and 19; Applicants represent that the Substitutions are not expected to cause the fees and charges currently being paid by Participants to be greater after the Substitutions than before the Substitutions; (10) the Participants may choose to withdraw amounts credited to them following the Substitutions under the conditions that currently exist; and (11) the Substitutions are expected to confer benefits on Participants.

18. Equitable has determined that the Hudson River Substitution is in the best interests of the SA 301 and SA A Participants based on the following facts and circumstances. Hudson River portfolios are identical or similar to both the Prism Funds and Equitable Trust portfolios. While no portfolio of Hudson

[2] Applicants involved in the VIP Funds Substitution represent that, during the Notice Period, the application will be amended to reflect this representation.

River is identical to the bond portfolios of Prism and Equitable Trust, Hudson River's Government Portfolio does provide a reasonable, closely comparable alternative. Like the Prism and Equitable Trust bond options, the Government Portfolio seeks to achieve current income as part of its investment objective. Though not specifically dictated by their investment objective, both bond portfolios have been invested primarily in long-term debt securities issued by the U.S. Government and its agencies. The investment management responsibilities for the Trusts are shared by Equitable and Equitable Capital. The custodian and independent accountants are the same for all three. A comparison of the Trusts' overall investment returns reveals that the performance of the Hudson River portfolios is either closely competitive or superior to the performance of the corresponding portfolios of Prism and Equitable Trust. The consolidation of 19 separate portfolios into seven portfolios is expected to result in greater economies of scale and reduced administration costs. The expense ratios of Hudson River have been lower than those of Prism. Equitable therefore believes it is reasonable to anticipate that the SA 301 Participants will benefit from the significantly lower expense ratios of Hudson River. As more fully demonstrated in the application, differences between the expense ratios of Hudson River and those of Equitable Trust are not expected to have any impact on SA A Participants. The SA A Contracts insulate SA A Participants from the consequences of any potential expense increase by fixing an expense limitation that applies to all SA A investment divisions. This contractual limitation cannot be exceeded without the consent of each affected SA A Participant.

19. Integrity and National Integrity have determined that the substitution of shares of the VIP Funds for shares of Prism will serve the best interests of SA INA and SA NIA Participants based on the following facts and circumstances. All of the Funds of Prism have counterparts in the portfolios of the VIP Funds. The shares of the Investment Grade Bond Portfolio of VIP Fund II will be substituted for shares of the High Yield Fund of Prism, rather than the High Income Portfolio of VIP Fund I, because the High Yield Fund has assets with significantly higher credit ratings than the assets of the High Income Portfolio. Otherwise, the investment objectives of the VIP Funds portfolios are substantially similar to the investment objectives of the Prism Funds to be substituted. Following the VIP Funds Substitution, SA INA Participants and SA NIA Participants will be afforded the same transfer rights, with regard to amounts invested under the SA INA Contracts and SA NIA Contracts, respectively, as they currently have. In the exercise of these rights, Participants will be able to effect transfer from a portfolio of VIP Fund I to a portfolio of VIP Fund II and vice versa. The investment performance for the VIP Funds is generally comparable to that of Prism, and in some cases is superior. Because of the greater net asset size of the VIP Funds, the economies of scale that will be available are expected to benefit SA INA and SA NIA Participants. For 1990, the expense ratios of the Equity-Income, Money Market, Growth and Overseas Portfolios, which are the oldest Portfolios in the VIP Funds, were equal to or less than the ratios of the Common Stock, Money Market, Aggressive Stock and Global Funds of Prism. The Investment Grade Bond Portfolio, after the reimbursement of expenses by FMR, for 1990 had an expense ratio that was only slightly higher than that of the Bond Fund in Prism and was substantially lower than the expense ratio of Prism's High Yield Fund. FMR has advised Integrity and National Integrity that it has no present intention to remove or modify the current expense reimbursements. The Asset Manager Portfolio, the newest portfolio, was the only VIP Funds Portfolio that had an expense ratio for 1990 that was significantly higher than the ratio of its Prism counterpart, the Balanced Fund. As its assets increase, the expense ratios of the Asset Manager Portfolio are also expected to decrease. In contrast, the expense ratios of the Prism Funds are expected to increase in the future because the contracts utilizing SA INA, SA NIA and SA 301 no longer are being actively marketed, are not expected to be actively marketed in the future, and since the fourth quarter of 1990, Prism has been experiencing net redemptions of its shares. Thus, Applicants assume that Prism's asset base will decrease and, accordingly, that its total weighted expense ratio and the respective expense ratios of its Funds will increase.

20. Equitable, Integrity, and National Integrity reserved the right of substitution and elimination of investment divisions in their Separate Account prospectuses, subject to the Commission's approval, if necessary to adapt to changing circumstances.

21. Sections 17(a)(1) and 17(a)(2) of the 1940 Act prohibit any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling to or purchasing from a registered investment company any security or other property. The Applicants involved in the Hudson River Substitution may be deemed to be affiliated persons of each other or affiliated persons of an affiliated person under section 2(a)(3) of the 1940 Act; and the Hudson River Substitution may be deemed to entail one or more purchases or sales of securities or property between certain of those Applicants. Assets of Prism and Equitable Trust will be transferred to Hudson River.

22. Applicants involved in the Hudson River Substitution also request an order of the Commission, pursuant to sections 6(c) and/or 17(b), exempting them from the provisions of section 17(a) in connection with the transfer of assets and unit values that may be deemed to be prohibited by section 17(a). Applicants represent that the Hudson River Substitution meets all of the requirements of sections 6(c) and 17(b) of the 1940 Act and that an order should be granted exempting the Hudson River Substitution from the provisions of section 17(a). Applicants involved in the Hudson River Substitution represent that the terms of the proposed transactions, as described in this notice and more fully in the application, are reasonable and fair, including the consideration to be paid and received; do not involve overreaching on the part of any person concerned; are consistent with the investment policy of each registered investment company concerned; and are consistent with the general purposes of the 1940 Act.

23. Although the Trusts have adopted no procedures pursuant to rule 17a–7 under the 1940 Act, the proposed transactions involved in the Hudson River Substitution may fall within the intent of rule 17a–7. The Trusts represent that they will comply with the conditions set forth in subparagraphs (b), (c) and (d) of rule 17a–7. Although the Trusts cannot meet the conditions of subparagraphs (a), (e) and (f) of rule 17a–7, each Trust represents that the Hudson River Substitution will be effected pursuant to the Trust's procedures for valuing portfolio securities. Hudson River further represents that it will maintain all records relating to the Hudson River Substitution in a manner consistent with rule 17a–7(f). Applicants further represent that the transactions that may be deemed to be within the scope of section 17(a) have been the subject of Commission review in the context of reorganizations of separate accounts to

unit investment trust accounts and the transfer of assets to an underlying mutual fund. The terms and conditions of the transfers of assets entailed in the Hudson River Substitution are consistent with such precedent and the precedent under section 26(b).

24. Section 17(d) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, from effecting any transaction in which such registered investment company is a joint participant with such person, in contravention of Commission rules designed to limit or prevent participation by the registered investment company "on a basis different from or less advantageous than" that of the affiliated person. Rule 17d–1(a) prohibits any of the persons described above, acting as principal, from participating in, or effecting "any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered investment company, or a company controlled by such registered company, is a Participant" unless the Commission, upon application, has entered an order approving the joint enterprise, arrangement or plan.

25. The Hudson River Substitution will involve transactions that may be deemed to be of the type for which an application is required under section 17(d) of the 1940 Act and rule 17d–1 thereunder. The Hudson River Substitution anticipates simultaneous purchase and sale transactions involving a number of registered investment companies, and each such purchase and sale transaction is dependent on the other. Each purchase and sale transaction is, thus, an essential aspect of a more comprehensive plan. In this sense, each transaction may be deemed to be in connection with a joint arrangement within the contemplation of section 17(d) of the 1940 Act and rule 17d–1 thereunder.

26. Applicants involved in the Hudson River Substitution also request an order pursuant to section 6(c) and/or rule 17d–1 to eliminate any question of compliance with section 17(d) and rule 7d–1. They further represent that the Hudson River Substitution and related transactions meet all of the requirements of sections 6(c) and 17(d) of the 1940 Act, and rule 17d–1 thereunder. For all the reasons summarized in this notice and discussed fully in the application, Applicants involved in the Hudson River Substitution submit that the participation of each of the parties to the Hudson River Substitution will be on an equal basis and consistent with their respective participation in the transactions, and is consistent with the provisions, policies and purposes of the 1940 Act. These Applicants further represent that the terms of the Hudson River Substitution are consistent with precedent.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18860 Filed 8–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel No. IC–18254; 812–7603]

Mortgage Securities Trust (CMO Series 1 and Subsequent Series), et al.; Application

August 1, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Mortgage Securities Trust (CMO Series 1 and Subsequent Series ("MST"); Municipal Securities Trust (Series 1 and Subsequent Series); New York Municipal Trust (Series 1 and Subsequent Series); A Corporate Trust (Series 1 and Subsequent Series) (the foregoing trusts, other than MST, are referred to collectively as the "Existing Trusts"); Bear, Stearns & Co. Inc.; and Gruntal & Co. Incorporated.

RELEVANT 1940 ACT SECTIONS: Applicants seek an amendment to an SEC order that approved certain offers to exchange units of the Existing Trusts for units of other unit investment trusts. The amended order, which would be issued under sections 11(a) and 11(c), would include a newly-formed unit investment trust in the previously approved exchange program.

SUMMARY OF APPLICATION: In 1980 and 1981, the SEC issued orders permitting the Existing Trusts to conduct an "exchange privilege" and a "conversion offer." The exchange privilege allows unitholders of any Existing Trust to exchange their units for units of any other Existing Trust upon payment of a sales charge reduced from that which a purchaser of the units normally would pay. The conversion offer permits unitholders of registered unit investment trusts that lack an active secondary market to redeem their units and apply the proceeds to the purchase of units of any Existing Trust upon payment of a reduced sales charge. Applicants seek an amendment to their orders extending them to include MST within the existing exchange privilege and conversion offer. In addition, the requested order would amend the existing exchange privilege and conversion offer to conform to the features of the exchange privilege and conversion offer involving MST.

FILING DATES: The application was filed on October 2, 1990, and amended on May 7, 1991 and May 23, 1991. An additional amendment will be filed during the notice period, the substance of which is reflected herein.

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 August 27, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Bear, Stearns & Co. Inc., MST and the Existing Trusts, 245 Park Avenue, New York, New York 10167; Gruntal & Co. Incorporated, 14 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 272–3035, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Existing Trusts and MST are registered under the 1940 Act as unit investment trusts, and their units of interest are registered under the Securities Act of 1933. Bear, Stearns & Co. Inc. ("Bear Stearns"), one of the co-sponsors of MST, sponsors the Existing Trusts and numerous other unit investment trusts. Gruntal & Co. Incorporated ("Gruntal") co-sponsors MST and various other unit investment trusts with Bear Stearns (Bear Stearns

and Gruntal are referred to hereafter as the "Sponsors".

2. In Investment Company Act Release No. 11184 (May 23, 1980), the SEC issued an order under section 11(a) of the 1940 Act approving offers of exchange by Bear Stearns and the Existing Trusts pursuant to which an Existing Trust unitholder may exchange his or her units for units in another Existing Trust upon payment of a fixed, reduced sales charge (the "Exchange Privilege"). The SEC's order also permitted Bear Stearns and the Existing Trusts to offer to exchange units of an Existing Trust for units of any registered unit investment trust without an active secondary market upon payment of a fixed, reduced sales charge (the "Conversion Offer"). In Investment Company Act Release No. 11754 (Apr. 29, 1981), the SEC issued an order modifying the manner in which the price of units is determined under the Exchange Privilege and the Conversion Offer. (The order issued in Release No. 11184, as amended in Release No. 11754, is hereafter referred to as the "Prior Order".)

3. MST is a newly-formed unit investment trust consisting of a portfolio of collateralized mortgage obligations ("CMOs"). MST may include either a "short-intermediate portfolio" of securities with an average maturity of 3–10 years, or a "long-intermediate portfolio" of securities with an average maturity of 10–15 years. During the initial public offering period, MST units will be sold subject to a sales charge of (a) 3.5% for the short-intermediate portfolio, and (b) 4.0% for the long-intermediate protfolio. However, there are specified volume discounts for purchases of more than 100,000 units.

4. Applicants seek an amendment to the Prior Order to include units of MST in the Exchange Privilege and the Conversion Offer. If the requested relief is granted, unitholders of MST or any of the Existing Trusts could exchange any or all of their units for units in none of more available series of MST, Municipal Securities Trust, New York Municipal Trust, or A Corporate Trust (the foregoing trusts are referred to hereafter as the "Exchange Trusts"), upon payment of the reduced sales charge described below. In addition, the Conversion Offer would be expanded so that unitholders of any registered unit investment trust for which there is no active secondary market (a "Redemption Trust") could redeem their units with their respective trustees and apply the proceeds to the purchase of units of one or more series of MST, as well as any Existing Trust, upon payment of the same reduced sales charge. (With respect to the Conversion Offer, MST and the Existing Trusts are referred to collectively as the "Conversion Trusts".)

5. To exercise the Exchange Privilege, a unitholder would first tender his or her units to one of the Sponsors. The Sponsor would repurchase the units and sell to the investor Existing Trust or MST units at prices determined as set forth in the Prior Order.[1] The investor would also pay any accrued interest on the acquired units and a reduced sales charge as set forth in paragraph 10 below.

6. The Exchange Privilege will be available provided that (a) the Sponsors are maintaining a secondary market in the units to be exchanged as well as in the Existing Trust or MST units that the investor wishes to acquire, and (b) the units to be acquired are available for sale, either through the initial primary distribution or in the Sponsor's secondary market. Exchanges would be affected only in whole units or, in the case of MST, in blocks of 1,000 units.

7. The Sponsors intend to maintain a secondary market in MST and Existing Trust units after the initial public offering of such units has concluded. The Sponsors may redeem units that they have repurchased in the secondary market if they deem such redemption to be in their best interest. As is the case for unit investment trusts generally, unitholders also have the right to redeem their units.

8. The Sponsors reserve the right to suspend, modify or terminate the Exchange Privilege. However, as discussed below, the Sponsors will provide unitholders with 60 days' prior written notice of any termination or material amendment of the Exchange Privilege. During that 60 day period, the sponsors would continue to maintain a secondary market in units of all Exchange Trusts that could be acquired by affected unitholders. Thus, unitholders could exercise the Exchange Privilege in accordance with its original terms during that period.

9. The amendment order sought by applicants also would expand the Conversion Offer to include units of MST. To exercise the Conversion Offer, there must be units of the desired series of the Conversion Trust available either in primary distribution or in the secondary market. The purchase price for units of the Conversion Trust will be determined according to the Prior Order, and will include accrued interest and the reduced sales charge set out below. Exchanges would be effected only in whole units or, in the case of MST, in blocks of 1,000 units.

10. The sales charge applicable to a unitholder's purchase of units in either the Exchange Privilege or the Conversion Offer would be $15 per unit (or per 1,000 units for MST) unless the unitholder exchanges units within five months of their purchase. In that event, the applicable sales charge for units with a higher sales charge than that paid on the units being exchanged would be the greater of (a) $15 per unit (or per 1,000 units for MST), or (b) an amount which, when added to the sales charge the investor would pay if he or she purchased directly the units being acquired, determined as of the date of the exchange.

11. The Sponsors reserve the right to modify, suspend or terminate the Conversion Offer at any time without prior notice to Redemption Trust unitholders. The Sponsors also reserve the right to raise the sales charge applicable to acquisitions of MST units, based on actual increases in their costs of administering the Conversion Offer, up to a maximum sales charge of $20 per 1,000 MST units.

12. Consistent with the Prior Order, except for the applicable sales charge as described herein, the pricing of units purchased or sold under the Conversion Offer and the Exchange Privilege would be the same as the pricing of Existing Trust and MST units purchased from and sold to public investors in regular primary and secondary market transactions.

Applicants' Legal Analysis

1. Section 11(a) and 11(c) of the 1940 Act prohibit applicants from making an offer to unitholders of a unit investment trust to exchange those units for the securities of any investment company unless the terms of the offer have first been submitted to and approved by the Commission. The proposed Exchange

[1] Under the Prior Order, purchases and sales of units of an Existing Trust during the initial offering period are made at prices based on the offering prices of the Existing Trust's portfolio securities, whereas purchases and sales of Existing Trust units in the secondary market are at prices based on the bid prices of the Existing Trust's portfolio securities. Applicants represent that the offer side evaluation generally is 1½ to 2% higher than the bid side evaluation.

Privilege and Conversion Offer therefore require SEC approval.

2. Applicants seek an order under sections 11(a) and 11(c) amending the Prior Order to include MST units in the Exchange Privilege and Conversion Offer previously approved, and to modify such programs as described in the application. For example, the existing Exchange Privilege would be amended to require 60 days' prior written notice of the termination or material amendment of the privilege.[2] Such modifications would make unitholders exercising the existing Exchange Privilege and Conversion Offer subject to the same terms as would apply to the Exchange Privilege and Conversion Offer as proposed to be amended.

3. Applicants state that the Exchange Privilege and Conversion Offer provide investors whose investment goals have changed with a convenient means of transferring their interests at a reduced sales charge. If Applicants do not offer these exchanges, investors seeking to change the nature of their investment would be required to dispose of their units, either in the secondary market or through redemption, and then reinvest the proceeds after paying the full sales charge.

4. Applicants maintain that the full sales charge is necessary to fully compensate and reimburse the Sponsors and underwriters for the costs of registering Existing Trust and MST units, and for their sales and soliciation efforts on regular transactions. A reduced sales charge, however, is fair to investors who have purchased Existing Trust or MST units in regular transactions subject to the full sales charge, because participants in the Conversion Offer and Exchange Privilege paid a full sales charge on their original purchase of units. Applicants further state that the proposed reduced sales charge applicable to the Exchange Privilege and Conversion Offer would fairly and adequately compensate the Sponors and the participating underwriters and brokers for their services and expenses associated with administering those programs.

5. Applicants also state that imposing the alternative sales charges discussed above on unitholders exercising the Exchange Privilege or Conversion Offer within five months of their purchase of the units being exchanged is consistent with prior SEC orders concerning exchange offers among unit investment trusts, and is intended to maintain the equitable treatment of various investors in series of the Existing Trusts and MST. See, e.g., Shearson Lehman Brothers Inc., Investment Company Act Release Nos. 18145 (May 14, 1991) (notice) and 18141 (June 11, 1991) (order).

6. Applicants submit that the Conversion Offer would have little, if any, competitive effect on the unit trust market, because it would be available only to holders of units for which there is no active secondary market. Furthermore, the Sponsors do not intend to conduct an active advertising or sales campaign. Rather, the Sponsors anticipate that eligible investors would learn of the program only after making inquiry with their retail brokers.

[2] Redemption Trust unitholders would not ordinarily acquire their units with the expectation of participating in the Conversion Offer and, accordingly, the Conversion offer could be terminated or amended materially without any notice to such unitholders.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order granting the requested relief:

1. Participants in the Exchange Privilege and the Conversion Offer will, in the purchase and sale of units of the Existing Trusts and MST, be subject to the same portfolio pricing terms as are set forth in the Prior Order, and will purchase and sell units of the Existing Trusts and MST based on the same portfolio pricing terms as apply to all other investors who purchase and sell Existing Trust and MST units from the Sponsors or the underwriters in regular transactions.

2. The prospectus of each Exchange Trust and any sales literature or advertising that mentions the existence of the Exchange Privilege will disclose that the Exchange Privilege is subject to termination and that its terms are subject to change.

3. Whenever the Exchange Privilege is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent written notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, *Provided that:*

(i) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new series eligible for the Exchange Privilege, or to delete a series which has terminated, and

(ii) No notice need be given if, under expraordinary circumstances, either—

(A) There is a suspension of the redemption of units of an Exchange Trust under section 22(e) of the 1940 Act and the rules and regulations thereunder, or

(B) An Exchange Trust temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

4. During the 60 day period described in condition 4 above, the Sponsors will maintain a secondary market in units that could be acquired by affected unitholders.

5. The applicable sales charge for unitholders who wish to exchange their units prior to the expiration of five months from the date of purchase for units of an Exchange Trust, the applicable public offering price for which includes higher sales charges than the sales charges applicable to the units being exchanged, will be the greater of the $15 per unit (or per 1,000 units for MST) reduced sales charge, or an amount which, together with the sales charge actually paid on acquisition of the units being exchanged, equals the sales charge applicable to direct purchases of the quantity of Exchange Trust units being acquired, determined as of the date of the exchange.

6. The applicable sales charge for Redemption Trust unitholders who wish to exchange their units prior to the expiration of five months from the date of purchase for units of a Conversion Trust, the applicable public offering price for which includes higher sales charges than the sales charges applicable to the units being exchanged, will be the greater of the $15 per unit (or per 1,000 units for MST) reduced sales charge, or an amount which, together with the sales charge actually paid on acquisition of the units being exchanged, equals the sales charge applicable to direct purchases of the quantity of Conversion Trust units being acquired, determined as of the date of the exchange.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18861 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25357]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 2, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested

persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 26, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Arkansas Power & Light Company (70–7813)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a declaration under section 12(d) of the Act and rule 44 thereunder. The Commission first issued a notice on January 25, 1991 (HCAR No. 25349). AP&L has significantly amended its proposal requiring a new notice to be issued.

AP&L proposes to sell substantially all its retail distribution and related transmission facilities in Missouri ("Missouri Property") to Union Electric Company ("Union Electric"), an exempt electric utility operating in Missouri for $63,134,586, subject to certain adjustments. As part of the transaction with Union Electric, AP&L also proposes to transfer certain transmission and distribution assets in Missouri, including certain franchise agreements, relating to AP&L's provision of electric service to approximately 1,400 retail customers in and around Alton and Thayer to Sho-Me Power Corporation ("Sho-Me") for $4,035,000, subject to certain adjustments. In order to facilitate the transaction with Union Electric, AP&L proposes to sell a 161 KV switching station and a 161 KV line located in Missouri to Associated Electric Cooperative, Inc. ("AECI"), an electrical cooperative operating in Missouri, for $1,031,000, subject to certain adjustments. Finally, AP&L has agreed in conjunction with the settlement of regulatory proceedings relating to these proposed transactions to sell seven substations located in Missouri to a group of three mining customers of AP&L ("Mining Customers") for an aggregate of $887,000, subject to certain adjustments. AP&L and Union Electric have executed a Contract for Purchase and Sale of Certain Assets and Real Estate, Assignment of Easements, Leases and Licenses, as amended ("Agreement of Sale") reflecting the terms and conditions of sale of the Missouri Property.

The proposed sale to Union Electric also includes other assets relating to the Missouri Property such as customer accounts receivable and unbilled revenue, computer equipment, materials and supplies, the purchase price of which will be calculated prior to closing and added to the base purchase price.

Several agreements are required to be executed as part of the Agreement of Sale. Among these is a power purchase agreement, as amended ("Power Agreement") by which Union Electric has agreed to purchase 120 megawatts ("MW") of capacity and associated energy from AP&L under a wholesale fixed rate for an initial period of ten years which capacity will be increased by 40 MW on January 1, 1995 until the end of the initial term. In addition, AP&L and Union Electric will enter into a service boundary agreement whereby AP&L and Union Electric will agree, upon request, to construct any extensions necessary to connect borderline customers in their respective service territories of Arkansas and Missouri to the distribution facilities of the other party. The requesting party shall reimburse the constructing party for costs incurred in the construction, and AP&L and Union Electric will agree to supply power to the other at specific boundary line connections. Furthermore, AP&L and Union Electric have entered into an interchange agreement pursuant to which each party has agreed to provide, maintain, and operate connections, interconnection points, delivery points, and facilities for the sale, purchase, delivery and receipt of power and energy under the Power Agreement and operate such equipment and facilities at its own cost and expense.

In addition, AP&L, Union Electric, and AECI will enter into an interconnection agreement ("Interconnection Agreement"), whereby AECI will reserve capacity, and subject to availability of adequate capacity in the AECI transmission system, AECI will provide a secondary transmission path for capacity under the Power Agreement through its transmission sysem in the event that capacity under the Interconnection Agreement is unavailable. AECI also has agreed to enter into an interconnection agreement with AP&L and to cancel AECI's existing transmission coordination agreement with AP&L.

All the assets to be sold by AP&L are currently subject to, and will be released from, the lien of AP&L's Mortgage and Deed of Trust dated October 1, 1944, as supplemented ("Mortgage").

AP&L plans to use the proceeds received from Union Electric, Sho-Me, AECI, and the Mining Customers for general corporate purposes such as operations and maintenance expenses, construction expenditures, payroll, taxes, interest payments, payment of common stock and preferred stock dividends and any such other cash requirements of AP&L.

Eastern Edison Company, et al. (70–7865)

Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02403, an electric public-utility subsidiary company of Eastern Utilities Associates, a registered holding company, and Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, an electric public-utility subsidiary company of Eastern Edison, have filed a declaration under sections 12(c) and 12(d) of the Act and rules 42 and 43 thereunder.

Eastern Edison proposes to acquire and retire, in one or more transactions, up to an aggregate amount of $50,000,000 of any combination of classes or series of its outstanding long-term debt or preferred stock, from time to time through December 21, 1993. The proposed transactions in which such securities are to be acquired may include: (i) Purchases on the open market; (ii) purchases in privately negotiated transactions; and (iii) acquisitions pursuant to cash tender offers to the then current holders of certain of Eastern Edison's securities. Depending upon the timing of such transactions, Eastern Edison could pay a premium over par value or pay less than par value to acquire such securities. Any premiums paid for such open market purchases will be equal to the difference between the par value of the security purchased and the market price of the security at the time of purchase. However, if the securities are acquired by means of tender offers or privately

negotiated transactions, Eastern Edison may offer to acquire specified amounts of a particular class or series or an entire class or series of such securities at a premium necessary to entice the holders to tender such securities.

Eastern Edison has proposed to finance such acquisitions through one or any combination of the following methods: (i) Available cash; (ii) existing bank lines of credit for short-term borrowings; (iii) the proceeds from new issuances of long-term securities, including but not limited to, the issuance of secured and unsecured medium-term notes previously authorized by the Commission in an order dated December 10, 1990 (HCAR No. 25204); and/or (iv) the proceeds from the sale of Montaup common stock to Montaup or the redemption of Montaup debentures held by Eastern Edison. Eastern Edison expects that funds for the repayment of its short-term borrowings will be provided by internally generated cash or by sales of long-term securities.

Montaup proposes to acquire and retire up to an aggregate amount of $50,000,000 of its outstanding common stock from Eastern Edison from time to time through December 31, 1993, for the purchase price of $100 (par value) per share. Montaup currently has outstanding 836,000 shares of common stock, par value $100 per share, for an aggregate par value of $83,600,000. All of Montaup's outstanding common stock is owned by Eastern Edison. Montaup proposes to finance such acquisition through the use of available cash and existing bank lines of credit for short-term borrowings. Montaup expects that funds for the repayment of its short-term borrowings will be provided by internally generated cash.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18862 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18253; Int'l Series Release No. 301; 812-7742]

Quest for Value Global Equity Fund, Inc., et al.; Application

August 1, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Quest for Value Global Equity Fund, Inc., Quest for Value Fund, Inc., Quest for Value Family of Funds, Quest for Value Accumulation Trust, and any other open-end investment company which is or may become a member of the Quest for Value Advisor's "group of investment companies" as that phrase is defined by paragraph (c)(4) of rule 11a-3 under the 1940 Act.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act that would grant an exemption from section 12(d)(3) of the 1940 Act and rule 12d-3.

SUMMARY OF APPLICATION: Applications seek a conditional order under section 6(c) of the 1940 Act to permit them to invest in equity and/or convertible securities of foreign issuers that, in their most recent fiscal year, derived more than 15 percent of their gross annual revenues from securities related activities ("foreign securities companies") in accordance with the conditions of the proposed amendments to rule 12d3-1 under the 1940 Act.

FILING DATE: The application was filed on June 21, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 27, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, One World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272-7324, or Jeremy N. Rubenstein, Assistant Director (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.

Applicants' Representations

1. Applicants are open-end management investment companies registered under the 1940 Act. Quest for Value Global Equity Fund, Inc. and Quest for Value Fund, Inc. are Maryland corporations. Quest for Value Family of Funds and Quest for Value Accumulation Trust are Massachusetts business trusts. Quest for Value Advisors is the investment advisor for all of the Applicants and also serves as administrator to the Quest for Value Global Equity Fund, Inc. Globe Finlay Inc. acts as subadviser to Quest for Value Global Equity Fund, Inc. Oppenheimer & Co., Inc. acts as sub-adviser to one of the portfolios of the Quest for Value Family of Funds.

2. Applicants seek to invest equity and/or convertible securities issued by foreign issuers that, in their msot recent fiscal year, derived more than 15 percent of their gross revenues from their activities as broker, dealer, underwirter or investment adviser ("Foreign Securities Companies").

3. Applicants seek relief from section 12(d)(3) of the 1940 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). Applicants' proposed acquisition of securities issued by Foreign Securities Companies will satisfy each of the requirements of proposed amended rule 12d3-1.

Applicants' Legal Conclusions

1. Section 12(d)(3) of the 1940 Act generally 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 1940 Act provides an exemption from section 12d(3) for investment companies acquiring securities of an issuer that derived more than 15 percent of its gross revenues in its most 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 "at the time of acquisition, 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 msut be one which is traded in United States markets, securities issued by many Foreign Securities Companies would not meet this test. Accordingly, applicants

seek an exemption from the margin security requirements of rule 12d3–1.[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 Foregin 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).

Applicants' Condition

Applicants agree that any relief will be subject to the following condition:

1. Applicants will comply with the proposed amendments to rule 12d3–1 under the 1940 Act as they are currently proposed (Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989)), or as they may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18863 Filed 8–7–91; 8:45 am]

BILLING CODE 8010–01–M

[1] The staff of the Division of Investment Management notes that the Board of Governors of the Federal Reserve System has amended Regulation T to include "foreign margin stock." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are genreally more restrictive than the requirements for a "margin security" traded in United States markets, securities issued by many foreign securities firms are not included in the definition of "foreign margin stock" under Regulation T. See 12 CFR § 220.2(i) and (g) (6).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Areas #7365 and #7366]

California (With Contiguous Counties in Oregon); Declaration of Disaster Loan Area

Shasta and Siskiyou Counties and the contiguous counties of Del Norte, Humboldt, Lassen, Modoc, Plumas, Tehama, and Trinity in the State of California, and Jackson, Josephine and Klamath Counties in the State of Oregon constitute an Economic Injury Disaster Loan Area due to damages caused by a toxic herbicide spill into the Sacramento River as the result of a train derailment north of Dunsmuir, California, on July 14, 1991. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 1, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, California 95853–4795, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to the State of California is 736500 and for the State of Oregon the number is 736600.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: August 1, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–18798 Filed 8–7–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 91–7–51]

Fitness Determination of Sky One Express Airlines, Inc. D/B/A Sky One Express

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Sky One Express Airlines, Inc. d/b/a Sky One Express fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: August 1, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–18799 Filed 8–7–91; 8:45 am]

BILLING CODE 4910–62–M

[Order 91–7–50]

Fitness Determination of Charles J. Colgan & Associates, Inc.; d/b/a National Capital Airways

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to Charles J. Colgan & Associates, Inc. d/b/a National Capital Airways fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: August 1, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–18801 Filed 8–7–91; 8:45 am]

BILLING CODE 4910–62–M

[Order 91–7–52]

Fitness Determination of Sierra Nevada Airways, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Sierra Nevada Airways, Inc., is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: August 1, 1991.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–18800 Filed 8–7–91; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 26, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47210.

Date filed: July 22, 1991.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 19, 1991.

Description: Amendment Number One to the Application of Eva Airways Corporation pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property and mail as follows: Between the coterminal points, Taipai and, Republic of China, via intermediate points in the Pacific, and the coterminal points Guam, Honolulu, Hawaii, Seattle, Washington, San Francisco and Los Angeles, California, Dallas, Texas and New York, New York, United States of America, and beyond to Amsterdam, The Netherlands.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–18802 Filed 8–7–91; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–36; OTS No. 0555]

Albemarle Savings and Loan Association, Elizabeth City, NC; Final Action; Approval of Conversion Application

Notice is hereby given that on June 18, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Albemarle Savings and Loan Association, Elizabeth City, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552 and at the Southwest Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

By the Office of Thrift Supervision.

Dated: August 1, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18885 Filed 8–7–91; 8:45 am]

BILLING CODE 6720–01–M

[AC–39; OTS No. 0922]

First Federal Savings and Loan Association of Idaho Falls, Idaho Falls, ID; Final Action; Approval of Conversion Application

Notice is hereby given that on June 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Idaho Falls, Idaho Falls, Idaho for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Deputy Regional Office, Office of Thrift Supervision of Seattle, 12201 Sixth Avenue, suite 1500, Seattle, Washington 98121–1889.

By the Office of Thrift Supervision.

Dated: August 1, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18886 Filed 8–7–91; 8:45 am]

BILLING CODE 6720–01–M

[AC–37; OTS No. 0283]

Gate City Federal Savings and Loan Association, Greensboro, NC; Final Action; Approval of Conversion Application

Notice is hereby given that on June 18, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Gate City Federal Savings and Loan Association, Greensboro, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

By the Office of Thrift Supervision.

Dated: August 1, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18887 Filed 8–7–91; 8:45 am]

BILLING CODE 6720–01–M

[AC–38; OTS No. 5949]

Grandview Savings Association, Pittsburgh, PA; Final Action; Approval of Conversion Application

Notice is hereby given that on June 26, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Grandview Savings Association, Pittsburgh, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania, 15222–4893.

By the Office of Thrift Supervision.

Dated: August 1, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18888 Filed 8–7–91; 8:45 am]

BILLING CODE 6720–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Notice of Special Review To Consider Requests From the Governments of Czechoslovakia, Hungary, Poland and Yugoslavia To Add Products to the List of Articles Eligible for Duty-Free Treatment Under the GSP and Deadlines for Public Comment

At the direction of the President, the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) is initiating a special review to consider requests from the Governments of Czechoslovakia, Hungary, Poland, and Yugoslavia to add products to the list of articles eligible for duty-free treatment under the GSP. Notice is hereby given that, in order to be considered in the special review, all petitions requesting the additions to the list of articles eligible for duty-free treatment under the Generalized System of Preferences (GSP) must be received at the Office of the U.S. Trade Representative no later than 5 p.m. on October 1, 1991. The GSP provides for the duty-free importation of qualifying articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974, as amended, and was implemented by Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Special GSP Review for Countries in Central and Eastern Europe

The Government of Czechoslovakia, Hungary, Poland, and Yugoslavia may submit petitions requesting the President (1) to designate additional articles as eligible for GSP; (2) to waive the competitive need limits with respect to specific GSP eligible articles; and (3) to otherwise expand GSP coverage. Requests to expand GSP product coverage from parties other than the Governments noted above, and requests for other modifications of the GSP may not be submitted at this time. Such requests can be submitted in the 1992 GSP annual review, with a tentative submission deadline of June 1, 1992.

As directed by the President, the TPSC will waive 15 CFR 2007.0(a)(1), and will re-review the following previously denied Central and Eastern European petitions:

Case Number	HTS Number	Product Description	Country
90-5	0406.90.30	Goya cheese, not grated or powdered, not processed.	Hungary
90-16	2003.10.00	Mushrooms, prepared or preserved otherwise than by vinegar or acetic acid.	Hungary
90-21 90-22	2204.21.40	Grape wine, not sparkling or effervescent, not over 14% vol. alcohol, in containers holding 2 liters or less.	Hungary
90-23	2204.21.80	Grape wine, other than "Marsala," not sparkling or effervescent, over 14% vol. alcohol, in containers holding 2 liters or less.	Hungary
90-63	7318.15.80	Screws and bolts of iron or steel, having shanks or threads 6 mm or more in diameter.	Poland

The TPSC will also waive 15 CFR 2007.0(a)(1) for other petitions that may be submitted by the Governments of Czechoslovakia, Hungary, Poland and Yugoslavia during this review.

Submission of Petitions and Requests

Petitions and requests to expand GSP treatment should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. Petitions which are hand carried should be delivered to room 517. All such submissions must conform with regulations codified in 15 CFR part 2007, except as mentioned in this notice. In addition to these requirements, the petition should identify the product of interest in the Harmonized Tariff Schedule of the United States (HTS) nomenclature. Trade data for the last three years should be provided in the HTS category.

Information submitted will be subject to public inspection by appointment only with the staff of the USTR Reading room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. The telephone number for the USTR Reading room is (202) 395-6186. Petitions and requests must be submitted in fourteen (14) copies in English. If the petition or request contains business confidential information, fourteen (14) copies of a nonconfidential version of the submission along with fourteen (14) copies of the confidential version must be submitted. In addition, the submission containing confidential information must clearly be marked "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also clearly be marked at the top and bottom of each page (either "public version" or "nonconfidential").

Prospective petitioners are strongly advised to review the GSP regulations published in the **Federal Register** on Tuesday, February 11, 1986 (51 FR 5037). Prospective petitioners are reminded that submissions which do not provide adequate information required by 15 CFR 2007.1 will not be accepted for review unless the petitioner has made a good faith effort to obtain the information required. Petitions with respect to competitive need waivers must meet the informational requirements for product addition requests in 15 CFR 2007.1(c). A model petition format is available from the GSP Information Center ((202) 395-6971) and USTR Reading room and is published in the publication A Guide to the U.S. Generalized System of Preferences Prospective petitioners are requested to use this model petition format so as to ensure that all informational requirements are met. Furthermore, prospective petitioners submitting petitions that request modifications with respect to specific articles should list on the first page of the petition the following information: (1) The requested action; and (2) the classification of the subject article(s) in HTS nomenclature. Questions about the preparation of petitions and requests should be directed to the staff of the GSP Information Center.

Notice of petitions and requests accepted for review will be published in the **Federal Register** on or about November 15. The notice will also provide updated information concerning the opportunity for interested parties to comment on requests accepted for review through public hearings and written submissions. The tentative schedule for public hearing and comment is as follows:

Deadline for Czechoslovakia, Hungary, Poland and Yugoslavia to submit petitions: October 1.

Deadline for submitting pre-hearing briefs: December 18.

Public hearings: January 6-8, 1992.

Deadline for submitting post-hearing briefs: January 20.
Deadline for submitting rebuttal briefs: February 20.
Deadline for public comment on USITC advice: March 30.

Depending on the number of petitions received, the GSP Subcommittee may shorten this schedule.

Should Bulgaria be designated a GSP beneficiary developing country prior to the petition submission deadline, the GSP Subcommittee will consider requests from the Government of Bulgaria to add products to the list of GSP eligible articles until October 15, 1991.

Any modifications to the GSP resulting from the GSP special review will be announced on or about April 10, 1992, and will take effect on or about May 1, 1992.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 91-18998 Filed 8-7-91; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 153
Thursday, August 8, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 9:00 a.m., Saturday, August 24, 1991.

PLACE: Building 1 Auditorium, Department of Commerce, 325 Broadway Boulder, Colorado.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled briefing the conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation. As time permits following the briefing, members of the public will be afforded an opportunity to comment.

MATTERS TO BE CONSIDERED: Briefing will be given by the Department of Energy and its contractors and outside experts on the status of the operational readiness reviews (ORRs) being conducted prior to the resumption of operations in Building 559 at the Rocky Flats Plant.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004, (202) 208–6400 (FTS 268–6400).

SUPPLEMENTARY INFORMATION: Requests to speak at the meeting should be submitted in writing, describe the nature and scope of the oral presentation, and be transmitted in time to assure receipt by the General Manager by 5 p.m. on August 20, 1991. The length of the oral statement shall be limited to 5 minutes.

Anyone who wishes to comment may do so in writing, either in lieu of, or in addition to, making an oral presentation. Any written submittals must be received by the Board no later than August 20, 1991. The Board members may question witnesses to the extent deemed appropriate. The Board will hold the record open until September 6, 1991, for the receipt of additional materials. A transcript of the meeting will be made avaiable by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at the DOE's Reading Room at Front Range Community College, 3645 West 112 Avenue, Westminster, CO 80030.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers under the Atomic Energy Act of 1954, as amended.

Dated: August 6, 1991.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 91–19005 Filed 8–6–91; 2:31 pm]

BILLING CODE 6820-KD-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 13, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 15, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Reconsideration of Advisory Opinion 1991–13: Richard Casagrande on behalf of the New York State Public Employees Federation, AFL–CIO
Advisory Opinion 1991–21: Robert Weiss on behalf of the Alliance for Representative Government
Advisory Opinion 1991–23: Michael Nemeroff on behalf of the National Association of Retail Druggist (NARD)
Petition for Rulemaking filed by Common Cause
Guideline for Presentation in Good Order
Updated Forecast on the Solvency of the Presidential Election Campaign Fund
Status of Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMAITON: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–19014 Filed 8–6–91; 3:58 pm]

BILLING CODE 6715-01-M

federal register

Thursday
August 8, 1991

Part II

National Credit Union Administration

12 CFR Part 747

Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations; Final Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

[Docket No. 91-06-C]

Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") requires that the National Credit Union Administration ("NCUA"), the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board of Governors"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision ("OTS") (collectively, "the Agencies") develop a set of uniform rules of practice and procedure to govern formal administrative proceedings ("Uniform Rules"). Section 916 further requires the Agencies to promulgate Uniform Rules providing for summary judgment in cases where there is no dispute as to the material facts.

To comply with the mandate of section 916 of FIRREA, this final rule makes uniform those rules concerning formal enforcement actions common to at least four of the listed Agencies. In addition to these Uniform Rules, the NCUA and each of the other Agencies are adopting complementary "Local Rules" to supplement the Uniform Rules. These Local Rules address formal enforcement actions not within the scope of the Uniform Rules; informal actions which are not subject to the Administrative Procedure Act ("APA"); and procedures which supplement or facilitate investigations and the processing of administrative enforcement actions within the NCUA and the other Agencies. This final rule is intended to standardize procedures governing formal administrative actions and to facilitate administrative practice before the Agencies.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, Office of General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456. Telephone: 202/682-9630.

SUPPLEMENTARY INFORMATION:

I. Background

Section 916 of FIRREA, Public Law No. 101-73, 103 Stat. 183 (1989), requires that the NCUA, FDIC, OCC, Board of Governors and OTS develop a set of uniform rules and procedures for administrative hearings. By including this provision in FIRREA, Congress intended that the listed Agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt.1, at 396. The Administrative Conference of the United States found in its December 30, 1987, recommendation that "given the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings." 1 CFR 305.87-12.

To comply with the requirements of section 916, the NCUA and the other Agencies issued for public notice and comment a Joint Notice of Proposed Rulemaking on June 17, 1991 (56 FR 27790). The proposed rules contained one set of Uniform Rules applicable to all of the Agencies and separate Local Rules applicable to each individual Agency.

The NCUA has received comments on the joint proposed rule and is now issuing a final rule. This final rule is intended to standardize procedures governing formal administrative actions common to at least four of the five Agencies and to facilitate administrative practice before the Agencies.

II. Analysis of Comments and Modifications

A. Comment Summary

In response to the June 17, 1991, joint notice of proposed rulemaking, the NCUA and the other Agencies received three comment letters. The Agencies have jointly reviewed the portions of the comments concerning the Uniform Rules. The comments raised certain questions and objections, but were narrowly focused given the magnitude of the regulation. One comment commended the Agencies for meeting the mandate of section 916 of FIRREA and creating a set of uniform rules of practice and procedures. The NCUA received no comments regarding its Local Rules. The specific comments and the Agencies' responses are discussed below.

B. Discussion of Comments and Agency Responses

(1) Rule 747.3(e)

One commenter suggested that the definition of "Decisional employee" in proposed § 747.3(e) be expanded to preclude from service in a decisional capacity any employee of the Agencies who had served within the previous twelve months on the enforcement staff of any of the Agencies. The commenter suggested that this expansion would protect against bias and conflicting interest.

This suggested amendment is not adopted because the final rule incorporates the formulation of the APA. The APA forbids an employee from acting in a decisional capacity in a specific case where the employee has acted in an investigative or prosecutorial function in that same case or in a factually related case. 5 U.S.C. 554(d). Accordingly, Congress has already drawn the line defining conflict of interest in this context, and the Agencies find no basis for modification.

(2) Rule 747.18(b)

A recommendation was made that § 747.18(b) be modified to require that an agency set forth in a notice not only those facts showing that an agency is entitled to relief of some kind, but also those facts required for the particular relief requested.

With respect to the amount of particularity with which a notice should be pleaded, the Agencies believe that § 747.18(b) meets those standards for notice set forth in Rule 8 of the Federal Rules of Civil Procedure. The Agencies have determined that this is sufficient pleading for administrative proceedings. *See First National Monetary Corp.* v. *Weinberger*, 819 F.2d 1334, 1339 (6th Cir. 1987); *Boise Cascade Corp.* v. *FTC*, 498 F.Supp. 772, 780 (D. Del. 1980).

(3) Rule 747.19(c)(1)

One commenter criticized the proposed rule for failing to accommodate default situations where good cause could be shown for the failure to file an Answer. This comment reflects a misunderstanding of the proposed Uniform Rules, which address such situations by allowing an administrative law judge to extend time limits for good cause (§ 747.13), and by requiring that defaults be entered only upon a motion for default filed by Enforcement Counsel (§ 747.19), thereby permitting respondents an opportunity to oppose such a motion. To alleviate confusion, the wording of the final

default rule has been modified to make this process more explicit.

(4) Rule 747.22(b)

One commenter suggested that the proposed § 747.22(b) regarding severance of proceedings is unduly stringent in light of the severity of sanctions at stake. The commenter argued that any inconsistency or conflict in the positions of respondents should warrant severance without the necessity of weighing any countervailing interests. The commenter further argued that concerns regarding administrative economy are not entitled to weight in light of the small number of cases that have been adjudicated by the Agencies in the past.

This suggestion was not adopted. A similar weighing test for severance is applied by federal courts in criminal cases, see *e.g., Roach* v. *National Transportation Safety Board*, 804 F.2d 1147, 1151 (10th Cir. 1986), *cert. denied*, 496 U.S. 1006 (1988), demonstrating that the weighing test appropriately may be applied in cases involving substantial sanctions and penalties. In addition, the general interest in economy and efficiency in resolving an administrative adjudication exists independently of the total volume of adjudications at any particular time.

(5) Rule 747.24(a)(2)

An issue was raised by two of the commenters concerning the different positions taken by the Agencies on discovery depositions. The commenters stated that use of discovery depositions would encourage settlements and would result in the increased use of summary judgment by establishing the absence of disputes as to material facts.

The scope of discovery which would be permitted in the Uniform Rules was considered at length. It was determined that broad document discovery would be permitted generally; however, it was recognized that there is no constitutional right to prehearing discovery, including deposition discovery, in Federal administrative proceedings. *See Sims* v. *National Transportation Safety Board*, 662 F.2d 668, 671 (10th Cir. 1981); *P.S.C. Resources, Inc.* v. *NLRB*, 576 F.2d 380, 386 (1st Cir. 1978); *Silverman* v. *CFTC*, 549 F.2d 28, 33 (7th Cir. 1977). Further, the APA contains no provision for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure do not apply to administrative proceedings. *Frillette* v. *Kimberlin*, 508 F.2d 205 (3d Cir. 1974) *cert. denied* 421 U.S. 980 (1975). Rather, each agency determines the extent of discovery to which a party in an administrative proceeding is entitled. *McClelland* v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979).

The Agencies attempted to strike a balance between the due process interests of respondents in obtaining pretrial disclosure, including discovery depositions, and the Agencies' need for swift adjudication while preserving limited resources. This process included taking into account the various interests and concerns of both the industry and public constituencies which each Agency serves, as well as each Agency's own institutional interests and concerns. The contrasting interests and concerns are reflected in the types, complexity and quantity of enforcement actions brought by each Agency; the methods of litigation and opportunity for settlement in such actions; the structure and available resources of each regulator; and the supervisory procedures developed internally by each Agency. This process resulted in divergent provisions on the use of discovery depositions.

Thus, the experience of the OCC, the Board of Governors and the OTS resulted in a finding that discovery depositions served a useful purpose by promoting fact finding and encouraging settlements. Because of the increasing complexity of its enforcement actions, where there were typically multiple counts and multiple parties and where several types of enforcement actions were combined into one, it was found that discovery depositions could be useful in aiding both respondents and the regulator in resolving cases expeditiously. Discovery depositions for the OCC, the Board of Governors and the OTS, however, are limited to witnesses who have factual, direct and personal knowledge of the matters at issue. The FDIC and the NCUA determined that the interests of respondents in further pretrial disclosure in their respective proceedings were mitigated by the availability under the Uniform Rules of extensive document discovery that complements the document intensive nature of their proceedings.

(6) Rule 747.24(c)

Section 747.24(c) provides that privileged documents are not discoverable. One commenter objected to the right of Enforcement Counsel to assert the deliberative process privilege on grounds that, in some instances, it is subject to abuse by Enforcement Counsel seeking to prevent disclosure of relevant and probative material. The commenter suggested, instead, that all material for which the deliberative process privilege is claimed should be produced pursuant to a protective order barring public disclosure, and that § 747.24 should provide for *in camera* inspection of disputed privileged material by the administrative law judge.

The Agencies have concluded that Enforcement Counsel should retain the right to assert the deliberative process privilege at the outset. Ample means to challenge an improper assertion of privilege already are available to respondents without modifying § 747.24. Section 747.25(e) provides that all documents withheld from production on grounds of privilege must be reasonably identified and must be accompanied by a statement of the basis for the assertion of privilege. In the event that a respondent believes that Enforcement Counsel's assertion of the deliberative process privilege is improper, respondent would be able to utilize the identifying information and statement to challenge the assertion of the privilege before the administrative law judge. Confronted with such a challenge, an administrative law judge would need no further specific authority by rule to inquire of enforcement counsel as to the basis of the assertion of the privilege, to conduct an inspection of the assertedly privileged material *in camera*, and to then rule whether the privilege can be maintained.

(7) Rule 747.33(b)

One commenter suggested that the determination to seal a document pursuant to § 747.33(b) should be subject to review by an administrative law judge under an abuse of discretion standard. It was also proposed that a respondent should be able to request that certain information such as confidential personal information be filed under seal.

The Uniform Rules accommodate this last concern by permitting a respondent to file a motion to seal a document containing confidential personal information. However, the statutory language of 12 U.S.C. 1786(s)(6), 1818(u)(6) vests the Agencies with exclusive authority to seal all or part of a document if disclosure would be contrary to the public interest.

(8) Rule 747.36(c)(2)

One commenter suggested that deletion of § 747.36(c)(2), which provides that any document prepared by a Federal financial institutions regulatory agency or by a state regulatory agency is admissible with or without a sponsoring witness. The commenter argued that the provision violates normal evidentiary standards and raises due process concerns.

The Agencies disagree with the commenter. The first sentence of § 747.36(c)(2) cross-references § 747.36(a), which makes agency prepared documents subject to the same evidentiary standards as those that are applicable to non-agency prepared documents. Moreover, the same types of agency prepared documents tend to be introduced into evidence in every case. These documents, such as examination reports, rarely give rise to authentication issues. Thus, the Agencies feel that requiring a sponsoring witness for such documents needlessly consumes judicial resources and impedes the hearing process.

(9) Rule 747.39(b)(2)

One commenter stated that, under § 747.39(b)(2), a party should be able to raise a new legal argument in the exceptions filed to an administrative law judge's recommended decision, and that the Agency Head should not be precluded from considering such an argument.

The Agencies agree with the commenter that the Agency Head should have the discretion to determine whether a new argument that is raised for the first time in the exceptions should be considered, even if the party had a prior opportunity to make the argument. For example, the Agency Head should have the discretion to consider whether a new argument has important legal and policy implications which warrant its consideration. Accordingly, the language of § 747.39(b)(2) is amended to read that "No exception *need* be considered * * *." (Emphasis added.)

The Agencies do not agree with the commenter that the Agency Head should, in effect, be required to consider new arguments raised for the first time in the exceptions. Such a provision could encourage careless or even deceptive pleading. Generally, a party should be permitted to submit a new argument if there was no previous opportunity to present the argument, *e.g.*, a relevant court decision has been issued in the interim since the filing of the recommended decision.

(10) Miscellaneous

Another issue raised by one of the commenters concerns the apparent differences in procedures for formal investigations, rules of practice before the Agencies, and rules concerning the Equal Access to Justice Act. Additionally, this commenter proposed that rules should be drafted governing informal enforcement mechanisms, such as a memoranda of understanding, "fifteen-day letter" procedures for initiation of civil money penalties, commitment letters and other informal procedures. Finally, the commenter made a suggestion that the Agencies consider other rules to promote uniformity such as the publication of all enforcement decisions of the Agencies in a loose-leaf service or on-line computer service.

The differences in the various informal or non-APA procedures is based upon the scope of section 916. The purpose behind section 916 of FIRREA is to improve and expedite formal administrative proceedings conducted pursuant to the APA. As was stated in the Report of the House of Representatives, this statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987, recommendation that "[g]iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for *formal enforcement proceedings*." (Emphasis supplied.) 1 CFR 305.87–12. Thus, the inclusion of non-APA proceedings would exceed the statutory mandate of section 916 and would present practical implementation problems as well.

For example, the Uniform Rules do not contain provisions for formal investigations. This is because such investigations are not APA proceedings. In addition, the statutory authority for formal investigations arises in several statutes (*e.g.*, the Federal Credit Union Act and the Federal Deposit Insurance Act) and the Agencies have differing policies concerning the frequency, length, and procedures for formal investigations. This diversity in statutory authority is reflected in the independent and separate procedures of each agency.

Similarly, the Uniform Rules do not contain provisions addressing the Equal Access to Justice Act. Again, the diversity of agency structure is a determining factor here. Both the OCC and the OTS are bureaus of the U.S. Department of Treasury. As such, they are subject to Treasury's Equal Access to Justice Act regulatory provisions found at 31 CFR part 6.

With respect to the publication of enforcement orders, the Agencies have already addressed this concern. Pursuant to 12 U.S.C. 1786(s), 1818(u), each of the Agencies has procedures implementing this statutory directive and most, if not all, enforcement decisions may be found by consulting the Public Reading Room or library of each Agency. In addition, each of the Agencies issues press releases concerning recent cases.

C. Additional Modifications to Uniform Rules and NCUA Local Rules

1. Uniorm Rules

In conjunction with the other Agencies, the NCUA is amending the Uniform Rules to replace generic definitional terms with terms specifically applicable to the NCUA and its operations. Thus, the NCUA is replacing the terms "Agency Head" and "Agency" with "NCUA Board" and "NCUA", respectively, and is restricting the "scope" provisions of § 747.1 to those statutes subject to NCUA jurisdiction. Further conforming changes have been made to the definitions of Local Rules, Uniform Rules, and the Office of Financial Institution Adjudication ("OFIA"). The other Agencies have made similar changes. The purpose of these changes is to make the Uniform Rules easier to understand and to use. These changes do not affect the substance of the Uniform Rules.

The NCUA also is making various other minor technical and conforming revisions to the Uniform Rules and the NCUA Local Rules to improve the clarity and consistency of the rules.

2. NCUA Local Rules

As proposed, subpart B of part 747 was reserved for Local Rules of Practice and Procedure, unique to NCUA proceedings, which the NCUA might wish to develop in the future in light of experience with the Uniform Rules. However, the NCUA has since determined to adopt § 747.100 in subpart B to limit discovery in its proceedings to the production of documents, as provided in § 747.24.

NCUA proceedings are document intensive and rely heavily on comprehensive Reports of Examination which are available through document discovery. The basis of an NCUA enforcement action is thoroughly revealed, during the examination process, at meetings and in correspondence with a credit union's board of directors. Thereofre, the NCUA believes that the Uniform Rules provide adequate pretrial disclosure to respondents in the form of pretrial submissions, document discovery, the exchange of proposed trial exhibits, proposed stipulations, and a list of witnesses which includes a summary of the expected testimony of each witness.

Section 747.24(a)(2) expressly permits the NCUA Board to adopt a Local Rule governing discovery through depositions. The NCUA's present rules of practice in existing subpart A do not address depositions on the theory that administrative law judges would not allow depositions in NCUA proceedings if the NCUA's rules of practice did not expressly provide for them. In practice, this has uniformly been the case.

With the establishment of OFIA to preside over the NCUA's formal proceedings, however, the NCUA Board is concerned that administrative law judges would feel free to allow depositions in the absence of a Local Rule prohibiting them. The implicit objective of the NCUA's silence regarding depositions in the present rules of practice [existing Subpart A] is to discourage them in order to expedite NCUA proceedings and to conserve the time and resources of the parties. This objective will be defeated if administrative law judges misinterpret the NCUA's continued silence regarding depositions as authority to allow them. Accordingly, § 747.100 expressly codifies, but does not change, the long-standing practice of conducting NCUA proceedings without depositions. Section 747.100 is identical in substance to 12 CFR 308.107, adopted by the FDIC to limit discovery in its formal proceedings.

III. Subpart-By-Subpart Summary of Uniform Rules And NCUA Local Rules

Subpart A—Uniform Rules of Practice and Procedure

Subpart A sets forth uniform rules of practice and procedure governing the conduct of administrative hearings required by the APA to be held on the record. The Uniform Rules address commencement of enforcement proceedings, filing the service of papers, motions, discovery, depositions, prehearing conferences, public hearings, hearing subpoenas, conflict of interest, *ex parte* communication, rules of evidence, and post-hearing procedures.

The Uniform Rules replace the NCUA's own rules of practice and procedure contained in existing subpart A. In addition, the Uniform Rules govern the conduct of administrative hearings addressing actions by the NCUA to issue a cease-and-desist order, to assess civil penalties, and to prohibit, remove or suspend credit union officials. Because the Uniform Rules incorporate the functions of existing subparts C, D and E pertaining to these types of actions, the new subpart A replaces these existing subparts.

Finally, the provisions of the Uniform Rules supplement the rules and procedures prescribed in new subparts C, E and I, which provide for formal adjudications, except when the new subpart A is inconsistent with those rules and procedures.

Subpart B—Local Rules of Practice and Procedure

This sole provision in this subpart, § 747.100, proscribes, depositions and all forms of discovery other than production of documents. In addition, in the event that a person producing documents to a subpoena for documents is permitted to be deposed, the provision strictly limits questioning of that person to the identification of, and adequacy of the search for, those documents. The balance of subpart B is reserved for other Local Rules which the NCUA may develop in the future to augment the Uniform Rules prescribed in subpart A.

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

This subpart redesignates and renumbers existing subpart B governing proceedings to terminate the insured status of a credit union. Such proceedings are formal adjudications. The text of existing subpart B is imported without revision, except that its scope now incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of subpart C.

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

This subpart redesignates and renumbers existing subpart F, governing proceedings to suspend or prohibit from participation in the affairs of a credit union any institution-affiliated party which is charged with a felony. Such proceedings are not formal adjudications. The text of existing subpart F is imported substantially without revision. Cross-references in existing § 746.602 to certain rules of practice in existing subpart A have, due to the elimination of that subpart, been replaced in new § 747.302 with the text of the former rules. Likewise, cross-references in existing § 747.507 to § 747.602 ("Remainder of the Board of Directors") of existing subpart E have, due to the elimination of that subpart, been replaced in new § 747.302 with the text of former § 747.507. The text of these and other provisions of new subpart D (§§ 747.302, 747.306, and 747.307) contain technical revisions to clarify and reflect that proceedings under this subpart are not formal adjudications conducted by an administrative law judge, but rather, are limited, informal proceedings conducted by a Presiding Officer designated by the Board. New subpart D does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to informal adjudications.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension of Revocation of Charters and to Involuntary Liquidations

This subpart redesignates and renumbers existing subpart G governing proceedings to suspend or revoke a solvent credit union's charter and to place a solvent credit union into involuntary liquidation under title I of the FCUA. See 12 U.S.C. 1766(b)(1). Such proceedings are formal adjudications. The text of existing subpart G is imported without revision, except that the scope of new subpart E incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of new subpart E. New subpart E also contains technical revisions to clarify and reflect that a hearing requested under this subpart is referred by the Board to OFIA and conducted by an administrative law judge.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility

This subpart redesignates existing subpart H, which is reserved for rules and procedures governing proceedings to terminate a credit union's membership in the NCUA's Central Liquidity Facility.

Subpart G—Local Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access to Justice Act in Board Adjudications

This subpart redesignates and renumbers existing subpart I governing claims proceedings under the Equal Access to Justice Act. Such proceedings are formal adjudications. The text of existing subpart I is imported without revision except for the following revisions to its scope and to the eligibility and application requirements for an award. First, new § 747.601 incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of new

subpart G. Second, paragraph (b) of existing § 747.801 has been eliminated as moot, as there is no adjudication currently pending before the NCUA which was begun prior to September 30, 1984. Third, in new § 747.602(a), the maximum net worth of an individual applicant for an award has been increased to $2 million, and the maximum net worth of an applicant who is a sole proprietor of an unincorporated business or which is a partnership, corporation, association, or public or private organization, has been increased to $7 million. These increases in maximum net worth are mandated by amendments to the Equal Access to Justice Act. Finally, in new § 747.606(c), the statement that the application and documentation requirements of subpart G are exempt from the Paperwork Reduction Act has been eliminated as superfluous. The exemption clearly is warranted because a decade of experience with the Equal Access to Justice Act has shown that fewer than ten persons or entities in a 12-month period will be subject to the application and documentation requirements of subpart G. See 5 CFR 1320.7(c) and 1320.7(s).

Subpart H—Local Rules and Procedures Applicable to Investigations

This subpart redesignates and renumbers existing subpart J governing both formal and informal investigations conducted by the NCUA. Such investigations are not adjudicative proceedings. The text of existing subpart H is imported without revision. New subpart H does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

This subpart redesignates and renumbers existing subpart K governing formal investigations conducted by the NCUA. Such investigations are not adjudicative proceedings. The text of existing subpart K is imported without revision. New subpart I does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or Committee Members Pursuant to Section 212 of the Act

This subpart redesignates and renumbers existing subpart L governing notice to the NCUA of a change in senior executive officers, directors or committee members of a credit union. The notice procedure is not a formal adjudication. The text of existing subpart L is imported without revision. New subpart J does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

IV. Rationale for Expedited Publication

The NCUA Board is adopting this regulation effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in the APA, 5 U.S.C. 553. While the APA requires publication of a substantive regulation not less than 30 days before its effective date, the delayed effective date requirement may be waived for "good cause."

Good cause for the waiver of the 30-day requirement may be found if the delayed effective date is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). See *Central Lincoln Peoples' Utility Dist.* v. *Johnson*, 735 F.2d 1101, 1117 (9th Cir. 1984). The necessity for compliance with a statutorily prescribed time limit can also contribute to a finding of good cause. See *Philadelphia Citizens in Action* v. *Schweiker*, 669 F.2d 877, 881–888 (3d Cir. 1982). In the present case, the implementation of a delayed effective date would impair the ability of the Agencies to comply with the statutory mandate in section 916 of FIRREA and would be impracticable and contrary to the public interest.

Section 916 of FIRREA contains a dual mandate from Congress to the five Agencies to (1) establish their own pool of administrative law judges and (2) develop Uniform Rules and procedures for administrative hearings "(b)efore the close of the 24-month period beginning on the date of the enactment of this Act (August 9, 1989)." In order to properly address these two requirements, the Uniform Rules and the administrative law judge pool, OFIA, should be implemented in a coordinated and harmonious fashion. If OFIA is established prior to the rules, the administrative law judges may be required to adjudicate some cases under prior regulations before the Uniform Rules are effective. The result would be confusion for parties and a lack of uniformity in adjudication directly contrary to the purpose of section 916. It would, therefore, be impracticable and contrary to the public interest to delay the effective date for implementation of the Uniform Rules.

V. Applicability of Uniform Rules to Enforcement Proceedings

Part 747, as revised by this final rule, applies to any proceeding that is commenced by the issuance of a notice on or after August 9, 1991. The former version of part 747 applies to any proceeding commenced prior to August 9, 1991, unless, with the consent of the administrative law judge, the parties agree to have the proceeding governed by revised part 747.

VI. Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the NCUA, hereby certifies that this notice of proposed uniform rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This rule implements section 916 of FIRREA which requires the NCUA and other Agencies to develop a set of uniform rules and procedures for administrative hearings. The purpose of this revised regulation is to secure a just and orderly determination of administrative proceedings. Because the Agencies already have in place rules of practice and procedure, this rule should not result in an additional burden for regulated institutions. Furthermore, the rule imposes only minor burdens on all institutions, regardless of size and should not, therefore, cause a significant economic impact on a substantial number of small entities.

VII. Executive Order 12612

This proposed rule, like the current part 747 it is replacing, will apply to all federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, however, that the proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Further, the proposed rule will not preempt provisions of State law or regulations.

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Equal Access to Justice, Hearing procedures, Investigations, Lawyers, Penalties.

Authority and issuance: For the reasons set forth in the preamble, part 747 of chapter VII of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

Sec.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1784, 12 U.S.C. 1787.

§ 747.0 Scope of part 747.

(a) This part describes the various formal and informal adjudicative actions and non-adjudicative proceedings available to the National Credit Union Administration Board ("NCUA Board"), the grounds for those actions and proceedings, and the procedures used in formal and informal hearings related to each available action. As mandated by section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1818 note), this part incorporates uniform rules of practice and procedure governing formal adjudications generally, as well as proceedings involving cease-and-desist actions, assessment of civil money penalties, and removal, prohibition and suspension actions. In addition, the Uniform Rules are incorporated in other subparts of this part which provide for formal adjudications. The administrative actions and proceedings described herein, as well as the grounds and hearing procedures for each, are controlled by sections 120(b) (except where the Federal credit union is closed due to insolvency), 202(a)(3), 206 and 304(c)(3) of the FCUA. Should any provision of this part be inconsistent with these or any other provisions of the FCUA, as amended, the FCUA shall control. Judicial enforcement of any action or order described in this part, as well as judicial review thereof, shall be as prescribed under the FCUA (12 U.S.C. 1751 *et seq.*) and the Administrative Procedure Act (5 U.S.C. 500 *et seq.*).

(b) As used in this part, the term insured credit union means any Federal credit union or any state chartered credit union insured under subchapter II of the FCUA unless the context indicates otherwise.

Subpart A—Uniform Rules of Practice and Procedure

§ 747.1 Scope.

This subpart prescribes uniform rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for a hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 206(e) of the Federal Credit Union Act ("FCUA") (12 U.S.C. 1786(e));

(b) Removal and prohibition proceedings under section 206(g) of the FCUA (12 U.S.C. 1786(g));

(c) Assessment of civil money penalties by the National Credit Union Administration Board ("NCUA Board") against institutions and institution-affiliated parties for any violation of:

(1) Section 202 of the FCUA, pursuant to 12 U.S.C. 1782(a);

(2) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder; and

(3) The terms of any final or temporary order issued under section 206 of the FCUA or any written agreement executed by the National Credit Union Administration ("NCUA"), any condition imposed in writing by the NCUA in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein, pursuant to 12 U.S.C. 1786(k);

(d) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in subparts B through J of this part.

§ 747.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 747.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to this subpart and leading to the formulation of a final order other than a regulation.

(c) *Decisional employee* means any member of the NCUA's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Agency or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(d) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the NCUA in an adjudicatory proceeding.

(e) *Final order* means an order issued by the NCUA with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(f) *Institution* includes:

(1) Any Federal credit union as that term is defined in section 101(1) of the FCUA (12 U.S.C. 1752(1)); and

(2) Any insured state credit union as that term is defined in section 101(7) of the FCUA (12 U.S.C. 1752(7)).

(g) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 206(r) of the FCUA (12 U.S.C. 1786(r)).

(h) *Local Rules* means those rules promulgated by the NCUA in the subparts of this part other than subpart A of this part.

(i) *OFIA* means the Office of Financial Institution Adjudication, which is the executive body charged with overseeing the administration of administrative enforcement proceedings for the NCUA, the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision ("OTS").

(j) *Party* means the NCUA and any person named as a party in any notice.

(k) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (f) of this section.

(l) *Respondent* means any party other than the NCUA.

(m) *Uniform Rules* means those rules in subpart A of this part that are common to the NCUA, the OCC, the Board, the FDIC and the OTS.

(n) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 747.4 Authority of the NCUA Board.

The NCUA Board may, at any time during the pendency of a proceeding perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ 747.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or pre-hearing conferences as set forth in § 747.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the NCUA Board shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the NCUA Board a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 747.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the NCUA or an administrative law judge.* (1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the NCUA if such attorney is not currently suspended or debarred from practice before the NCUA.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the NCUA.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the NCUA, shall file a notice of appearance with the OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ 747.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 747.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § 747.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 747.9 Ex parte communications.

(a) *Definition.* (1) *Ex parte communication* means any material oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, the NCUA Board, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the NCUA Board until the date that the NCUA Board issues its final decision pursuant to § 747.40(c), no party, interested person or counsel therefor shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding to the NCUA Board, the administrative law judge, or a decisional employee. No member of the NCUA Board, administrative law judge, or decisional employee shall knowingly make or cause to be made to a party, or any interested person or counsel therefor, any ex parte communication relevant to the merits of proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, a member of the NCUA Board or any other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication, to file responses thereto and to recommend

any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the NCUA Board the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 747.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 747.25 and 747.26, shall be filed with the OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the NCUA Board or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the NCUA Board or the administative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed.* (1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ x 11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 747.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the NCUA and of the filing party, the title and docket number of the processing, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the NCUA Board, or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 747.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 747.10(c).

(c) *By the NCUA Board or the administrative law judge.* (1) All papers required to be served by the NCUA Board or the administrative law judge upon a party who has appeared in the proceeding in accordance with § 747.6, shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 747.6, the NCUA Board or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 747.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the NCUA Board or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period;

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the NCUA Board or the administrative law judge in the case of

filing, or by agreement among the parties in the case of service.

§ 747.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by the Uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the NCUA Board pursuant to § 747.38, the NCUA Board may grant extensions of the time limits for good cause shown. Extensions may be granted upon the motion of a party after notice and opportunity to respond is afforded all non-moving parties, or upon the NCUA Board's or the administrative law judge's own motion.

§ 747.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the NCUA is the party requesting the subpoena. The NCUA shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the NCUA.

§ 747.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any NCUA representative other than Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 747.16 NCUA's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the NCUA to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the Agency to conduct or continue any form of investigation authorized by law.

§ 747.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 747.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1) A proceeding governed by this subpart is commenced by issuance of a notice by the NCUA Board.

(2) The notice must be served by the NCUA Board upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(3) The notice must be filed with the OFIA.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the NCUA's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the NCUA is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) That the answer and/or request for a hearing shall be filed with OFIA.

§ 747.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, the administrative law judge, upon motion of the Enforcement Counsel, shall file with the NCUA Board a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the NCUA Board based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ 747.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the NCUA Board or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended. The administrative law judge will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the

admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 747.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the NCUA Board a recommended decision containing the findings and the relief sought in the notice.

§ 747.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 747.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memorandum, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, except that upon the filing of the recommended decision, motions must be filed with the NCUA Board.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the NCUA Board, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 747.29 and 747.30.

§ 747.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by subpart B of this part.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing, except as provided in the Local Rules. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 747.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for the copying, unless the parties agree otherwise, at the current per-page copying rate imposed by the NCUA's rules implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request

may, within ten days of being served with such request, file a motion in accordance with the provisions of § 747.23 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 747.23 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 747.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to revoke or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ 747.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 747.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 747.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 747.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference

concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a failure to comply with, a subpoena issued under this section.

§ 747.28 Interlocutory review.

(a) *General rule.* The NCUA Board may review a ruling of the administrative law judge prior to the certification of the record to the NCUA Board only in accordance with the procedures set forth in this section and § 747.23.

(b) *Scope of review.* The NCUA Board may exercise interlocutory review of a ruling of the administrative law judge if the NCUA Board finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § 747.23. Any party may file a response to a request for interlocutory review in accordance with § 747.23(d). Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the NCUA Board for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the NCUA Board under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the NCUA Board.

§ 747.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the NCUA Board issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving part is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the NCUA Board. If the administrative law judge finds that no party is entitled to summary disposition,

he or she shall make a ruling denying the motion.

§ 747.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 747.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such order time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the recourse and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at its expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 747.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 747.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Agency, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the NCUA Board a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § 747.23. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 747.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, such applications may be made orally on the record before the administrative law judge. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with these rules.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may

seek enforcement of the subpoena pursuant to § 747.26(c).

§ 747.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) *Stipulations.* Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ 747.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or NCUA Board shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by an appropriate Federal financial institution regulatory agency or by a state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the NCUA Board.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing, and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 747.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ 747.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § 747.37(b), the administrative law judge shall file with and certify to the NCUA Board for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

§ 747.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 747.38, a party may file with the NCUA Board written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the NCUA Board if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failure to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ 747.40 Review by the NCUA Board.

(a) *Notice of submission to NCUA Board.* When the NCUA Board determines that the record in the proceeding is complete, the NCUA Board shall serve notice upon the parties that the proceedings has been submitted to the NCUA Board for final decision.

(b) *Oral argument before NCUA Board.* Upon the initiative of the NCUA Board or on the written request of any party filed with the NCUA Board within the time for filing exceptions, the NCUA Board may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the NCUA Board's final decision. Oral argument before the NCUA Board must be on the record.

(c) *Final Decision of NCUA Board.* (1) Decisional employees may advise and assist the NCUA Board in the consideration and disposition of the case. The final decision of the NCUA Board will be based upon review of the entire record of the proceeding, except that the NCUA Board may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The NCUA Board shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the NCUA Board orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the NCUA Board shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the NCUA Board or required by statute, upon any appropriate state or Federal supervisory authority.

§ 747.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the NCUA Board may not, unless specifically ordered by the NCUA Board or a reviewing court, operate as a stay of any order issued by the NCUA Board. The NCUA Board may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of that order.

Subpart B—Local Rules of Practice and Procedure

§ 747.100 Discovery limitations.

(a) Parties to a proceeding set forth either at § 747.1 of subpart A or in subpart C, E or G of this part may obtain discovery only through the production of documents. No other form of discovery shall be allowed.

(b) In the event that a person producing documents pursuant to a document subpoena is permitted to be deposed, all questioning shall be strictly limited to the identification of documents produced by that person and a reasonable examination to determine whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents.

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

§ 747.201 Scope.

Under the authority of section 206(b) of the FCUA (12 U.S.C. 1786(b)), the NCUA Board may terminate the insured status of an insured credit union upon the grounds set forth therein and enumerated in § 747.202. The procedure for terminating the insured status of an insured credit union as therein prescribed will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and subpart A of this part. To the extent any rule or procedure of subpart A is inconsistent with a rule or procedure prescribed in this subpart C, subpart C shall control.

§ 747.202 Grounds for termination of insurance.

The NCUA Board may institute proceedings to terminate the insured status of an insured credit union whenever it determines that an insured credit union is:

(a) Engaging or has engaged in unsafe or unsound practices in conducting its business;

(b) In unsafe or unsound condition to continue as an insured credit union; or

(c) Violating or has violated any applicable law, rule, regulation, order, written condition imposed by the NCUA Board in response to any application or request of the credit union, or any written agreement entered into with the NCUA Board.

§ 747.203 Notice of charges.

(a) Whenever the NCUA Board determines that grounds for termination of insured status exists, it will, for the

purpose of securing correction of errant or illegal conditions, serve a notice of charges upon the concerned credit union. This notice will contain a statement describing the unsafe or unsound practices, condition or the relevant violations.

(b) In the case of an insured State-chartered credit union, the NCUA Board shall send a copy of the Notice of Charges to the appropriate State authority, if any, having supervision over the credit union.

§ 747.204 Notice of intention to terminate insured status.

Unless correction of the practices, condition, or violations set forth in the Notice of Charges is made within 120 days after service of such statement, or within a shorter period of not less than 20 days after such service as the NCUA Board may require in any case where it determines that the insurance risk with respect to such credit union could be unduly jeopardized by further delay or as the appropriate State supervisory authority shall require in the case of an insured State-chartered credit union, the Board, if it determines to proceed further, shall give to the credit union not less than 30 days written notice of its intent to terminate the status of the credit union as an insured credit union. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practices or conditions or violations on which a hearing will be held. Such hearing shall commence not earlier than 30 days nor later than 60 days after the date of service of such notice upon the credit union, unless an earlier or later date is set by the NCUA Board at the request of the credit union.

§ 747.205 Order terminating insured status.

If, upon the record of the hearing held pursuant to § 747.204, the NCUA Board finds that any unsafe or unsound practice or condition or violation specified in the notice has been established and has not been corrected within the time prescribed under § 747.204, the NCUA Board may issue and serve upon the credit union an order terminating its status as an insured credit union on a date subsequent to the date of such finding and subsequent to the expiration of the time specified in the Notice.

§ 747.206 Consent to termination of insured status.

Unless the credit union appears at the hearing designated in the notice of hearing by a duly authorized representative, it will be deemed to have consented to the termination of its status as an insured credit union. In the event the credit union fails to so appear at such hearing, the administrative law judge shall forthwith report the matter to the NCUA Board and the NCUA Board may thereupon issue an order terminating the credit union's insured status.

§ 747.207 Notice of termination of insured status.

Prior to the effective date of the termination of the insured status of an insured credit union under section 206(b) of the FCUA (12 U.S.C. 1786(b)) and at such time as the Board shall specify, the credit union shall mail to each member at his or her last address of record on the books of the credit union, and publish in not less than two issues of a local newspaper of general circulation, notices of the termination of its insured status, and the credit union shall furnish the NCUA Board with proof of publication of such notice. The notice shall be as follows:

NOTICE

(Date)

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act, will terminate as of the close of business on the ____ day of ____;

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration;

3. Accounts in the credit union on the ____ day of ____, ____ up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) years after the close of business on the ____ day of ____, ____: *Provided, however,* That any withdrawals after the close of business on the day of ____, ____; will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)
(Address)

§ 747.208 Duties after termination.

(a) After the termination of the insured status of any credit union under section 206(b) of the FCUA (12 U.S.C. 1786(b)), insurance of its member accounts to the extent they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the NCUA Board.

(b) The credit union shall continue to pay premiums to the NCUA Board during such period and the Board shall have the right to examine the credit union from time to time during the period. The credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union during the one year period. If the credit union is closed for liquidation within this period, the Board shall have the same powers and rights with respect to such credit union as in the case of an insured credit union.

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

§ 747.301 Scope.

The rules and procedures set forth in this subpart are applicable to informal proceedings conducted by the NCUA Board, or a Presiding Officer designated by the Board, pursuant to section 206(i) of the FCUA (12 U.S.C. 1786(i)), to suspend, remove and/or prohibit from office or from further participation any institution-affiliated party of an insured credit union who:

(a) Is charged in a state, Federal or territorial information or indictment or complaint with committing or participating in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law; or

(b) Enters a pretrial diversion or other similar program as result of being charged in such information or indictment or complaint with participating or committing such crime; or

(c) Is convicted of such crime.

Subpart A of this part does not apply to proceedings under this subpart.

§ 747.302 Rules of practice; remainder of board of directors.

Except as otherwise specifically provided in this subpart, the following provisions shall apply to proceedings conducted under this subpart:

(a)(1) *Power of attorney and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia may represent others before the NCUA Board or Presiding Officer designated by the NCUA Board upon filing with the NCUA Board a written declaration that he or she is currently qualified as provided by this paragraph, and is authorized to represent the particular party or whose behalf he acts. Any other person desiring to appear before or transact business with the NCUA Board in a representative capacity may be required to file with the NCUA Board a power of

attorney showing his or her authority to act in such capacity, and he or she may be required to show to the satisfaction of the NCUA Board the he or she has the requisite qualifications. Attorneys and representatives of parties to proceedings shall file a written notice of appearance with the NCUA Board or with the Presiding Officer designated by the NCUA Board.

(2) *Summary suspension.* Contemptuous conduct by any person at an argument before the NCUA Board or at the hearing before a Presiding Officer shall be grounds for exclusion therefrom and suspension for the duration of the argument or hearing.

(b)(1) *Notice of hearing.* Whenever a hearing within the scope of this subpart is ordered by the NCUA Board, a notice of hearing shall be given by the NCUA Board to the party afforded the hearing and to any appropriate state supervisory authority. The notice shall state the time, place, and nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held, and shall contain a statement of the matters of fact or law constituting the grounds for the hearing. It shall be delivered by personal service, by registered or certified mail to the last known address, or by other appropriate means, not later than 30 nor earlier than 60 days before the hearing.

(2) *Party.* The term "party" means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party; but a person or agency may be admitted for a limited purpose.

(c)(1) *Computation of time.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday or legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor such legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the time within which the act is to be performed is ten days or less in which event Saturdays, Sundays, and legal holidays shall not be included.

(2) *Service by mail.* Whenever any party has the right or is required to do some act or take some proceeding, within a period of time prescribed in this subpart, after the service upon him of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the U.S. mail.

(d) *Nonpublication of submissions.* Unless and until otherwise ordered by the NCUA Board, the notice of hearing, the transcript, written materials submitted during the hearing, the Presiding Officer's recommendation to the NCUA Board and any other papers filed in connection with a hearing under this subpart, shall not be made public, and shall be for the confidential use only of the NCUA Board, the Presiding Officer, the parties and appropriate authorities.

(e) *Remainder of board of directors.* (1) If at any time, because of the suspension of one or more directors pursuant to this subpart, there shall be on the board of directors of an insured credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum on the board of directors.

(2) In the event all of the directors of an insured credit union are suspended pursuant to this subpart, the NCUA Board shall appoint persons to serve temporarily as directors in their place pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office.

(3) Directors appointed temporarily by the NCUA Board pursuant to paragraph (e)(2) of this section, shall, within 30 days following their appointment, call a special meeting for the election of new directors, unless during such 30-day period—

(i) the regular annual meeting is convened; or

(ii) the suspensions giving rise to the appointment of temporary directors are terminated.

§ 747.303 Notice of suspension or prohibition.

Whenever an institution-affiliated party of an insured credit union is charged in any state, Federal or territorial information or indictment or complaint with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law, the NCUA Board may, if continued service or participation by the concerned party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such party, suspend him or her from office, or prohibit him or her from further participation in any manner in the affairs of the credit union, or both. A copy of the notice of suspension or prohibition shall also be served upon the credit union. This suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of, or until such suspension or prohibition is terminated by the NCUA Board.

§ 747.304 Removal or permanent prohibition.

In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against the institution-affiliated party, and at such time as the judgment, if any, is not subject to further appellate review, the NCUA Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon the individual an order removing him or her from office or prohibiting him or her from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the NCUA Board. A copy of such order will also be served upon such credit union. A finding of not guilty or other disposition of the charge will not preclude the NCUA Board from thereafter instituting proceedings, pursuant to the provisions of section 206(g) of the FCUA (12 U.S.C. 1786(g)) and subpart A of this part, to remove such director, committee member, officer, or other person from office or to prohibit his or her further participation in the affairs of the credit union.

§ 747.305 Effectiveness of suspension or removal until completion of hearing.

Any notice of suspension or prohibition issued under § 747.303 and any order of removal or prohibition issued under § 747.304 will be effective upon service on the concerned party and will remain effective and outstanding until the completion of any hearing or appeal authorized under section 206(i) of the FCUA (12 U.S.C. 1786(i)) and this subpart, unless such notice of suspension or order of removal is terminated by the NCUA Board.

§ 747.306 Notice of opportunity for hearing.

(a) Any notice of suspension or prohibition issued pursuant to § 747.303,

and any order of removal or prohibition issued pursuant to § 747.404, shall be accompanied by a further notice to the concerned individual that he or she may, within 30 says of service of such notice, request in writing an informal hearing at which he or she may present evidence and argument that his or her continued service to or participation in the conduct of the affairs of the credit union does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair confidence in the credit union. Any notice of the opportunity for such a hearing shall be accompanied by a description of the hearing procedure and the criteria to be considered.

(b) A request for a hearing filed pursuant to paragraph (a) of this section shall state with particularly the relief desired, the grounds thereof, and shall include, when available, supporting evidence. The request and supporting evidence shall be filed in writing with the Secretary of the Board, National Credit Union Administration, Washington, DC 20456.

§ 747.307 Hearing.

(a) Upon receipt of a request for a hearing which complies with § 747.306, the NCUA Board will order an informal hearing to commence within the following 30 days in Washington, DC, or at such other place as the NCUA Board designates, before a Presiding Officer designated by the NCUA Board to conduct the hearing. At the request of the concerned party, the NCUA Board may order the hearing to commence at a time more than 30 days after the receipt of the request for such hearing.

(b) The notice of hearing shall be served by the NCUA Board upon the party or parties afforded the hearing and shall set forth the time and place of the hearing and the name and address of the Presiding Officer.

(c) The subject individual may appear at the hearing personally, through counsel, or personally with counsel. The individual shall have the right to introduce relevant and material written materials (or, at the discretion of the NCUA Board, oral testimony), and to present an oral argument before the Presiding Officer. A member of the enforcement staff of the Office of General Counsel of the NCUA may attend the hearing and may participate as a party. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554–557), nor subpart A of this part shall apply to the hearing. The proceedings shall be recorded and a transcript furnished to the individual upon request and after the payment of the cost thereof. The NCUA Board shall have the discretion to permit the presentation of witnesses, within specified time limits, so long as a list of such witnesses is furnished to the Presiding Officer at least ten days prior to the hearing. Witnesses shall not be sworn, unless specifically requested by either party or directed by the Presiding Officer. The Presiding Officer may examine any witnesses and each party shall have the opportunity to cross-examine any witness presented by an opposing party. Upon the request of either the subject individual or the representative of the Office of General Counsel, the record shall remain open for a period of five business days following the hearing, during which time the parties may make any additional submissions to the record. Thereafter, the record shall be closed.

(d) In the course of or in connection with any proceeding under this subpart, the NCUA Board and the Presiding Officer will have the power to administer oaths and affirmations, to take or cause depositions to be taken, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. If the NCUA Board permits the presentation of witnesses, the NCUA Board or the Presiding Officer may require the attendance of witnesses from any place in any state or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Witnesses subpoenaed shall be paid the same fees and mileage as are paid witnesses in the District Courts of the United States. The NCUA Board or the Presiding Officer may require the production of documents from any place in any such state, territory, or other place.

(e) The Presiding Officer will make his or her recommendations to the Board, where possible, within ten business days following the close of the record.

§ 747.308 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.

(a) The subject individual may, in writing, waive an oral hearing and instead elect to have the matter determined by the NCUA Board on the basis of written submissions alone.

(b) Should any concerned party fail to request in writing an oral hearing or consideration based on written submissions alone within 30 days of service of the notice described in § 747.306, he or she will be deemed to have consented to the NCUA Board's action.

(c) Unless the concerned party appears at the hearing personally or by duly appointed representative, he or she will be deemed to have consented to the NCUA Board's action.

§ 747.309 Decision of the NCUA Board.

Within 60 days following the hearing, or receipt of the subject individual's written submissions where hearing has been waived pursuant to § 747.308, the NCUA Board shall notify the institution-affiliated party whether the suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the decision of the NCUA Board, if that decision is adverse to the respondent party. In the case of a decision favorable to the respondent on the subject of a prior order of removal or prohibition, the NCUA Board shall take prompt action to rescind or otherwise modify the order of removal or prohibition.

§ 747.310 Reconsideration by the NCUA Board.

(a) The subject individual shall have ten business days following receipt of the decision of the NCUA Board in which to petition the NCUA Board for initial reconsideration.

(b) The subject individual also shall be entitled to petition the NCUA Board for reconsideration of its decision any time after the expiration of a 12-month period from the date of the NCUA Board's decision, but no petition for reconsideration may be made within 12 months of a previous petition.

(c) Any petition shall state with particularity the basis for reconsideration, the relief sought, and any exceptions the individual has to the NCUA Board's findings. An individual's petition may be accompanied by a memorandum of points and authorities in support of his or her petition and any supporting documentation the individual may wish to have considered.

(d) No hearing need be granted on such petition for reconsideration. Promptly following receipt of the petition, the Board shall render its decision.

§ 747.311 Relevant considerations.

In deciding the question of suspension, prohibition, or removal under this subpart, the NCUA Board will consider the following:

(a) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust;

(b) Whether the continued presence of the subject individual in his or her position may pose a threat to the interests of the credit union's members because of the nature and extent of the individual's participation in the affairs of the insured credit union and/or the nature of the offense with the commission of or participation in which the individual has been charged;

(c) Whether there is cause to believe that there may be an erosion of public confidence in the integrity, safety, or soundness of a particular credit union (either generally or in the particular locality in which the credit union is situated) if the subject individual is permitted to remain in his or her position in an insured credit union;

(d) Whether the individual is covered by the credit union's fidelity bond and, if so, whether the bond is likely to be revoked, or whether coverage under the bond will be affected adversely as a result of the information, indictment, complaint, judgment of conviction or entry into a pretrial diversion or other similar program; and

(e) The NCUA Board may consider any other factors which, in the specific case, appear relevant to the decision to continue in effect, rescind, terminate, or modify a suspension, prohibition, or removal order, except that it shall not consider the ultimate question of the guilt or innocence of the subject individual with regard to the crime with which he or she has been charged.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

§ 747.401 Scope.

The rules and procedures set forth in this subpart and subpart A of this part are applicable to proceedings by the NCUA Board pursuant to section 120(b)(1) of the FCUA (12 U.S.C. 1766(b)(1)) to suspend or revoke the charter of a solvent Federal credit union, and to place a solvent Federal credit union into involuntary liquidation. To the extent a rule or procedure set forth in subpart A of this part is inconsistent with a rule or procedure set forth in this subpart E, subpart E shall control.

§ 747.402 Grounds for suspension or revocation of charter and for involuntary liquidation.

(a) *Grounds in general.* The NCUA Board may suspend or revoke the charter of any Federal credit union, and place such credit union into involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the credit union has violated any provision of its charter or bylaws or of the FCUA or regulations issued thereunder.

(b) *Immediate suspension.* In any case where the Board determines that the grounds set forth in paragraph (a) of this section exist and that immediate action is necessary in order to prevent further dissipation or credit union assets or earnings, or further weakening of the credit union's condition, or to otherwise protect the interest of the credit union's insured members or the National Credit Union Share Insurance Fund, it may order without prior notice the immediate suspension of the charter of such credit union, and if the circumstances so warrant, may take possession of all books, records, assets, and property of every description of such credit union.

§ 747.403 Notice of intent to suspend or revoke charter; notice of suspension.

(a) Upon its determination that one or more of the grounds listed in § 747.402(a) exists, or that because of conditions described in § 747.402(b) immediate suspension of charter is necessary, the NCUA Board shall cause to be served upon that credit union a notice of intent to suspend or revoke charter and of intent to place into involuntary liquidation, or a notice of suspension. Such notice shall contain a statement of the facts which constitute the grounds for this action, a recitation of the options available to the credit union under paragraph (b) of this section, and an explanation of the results that will occur if the credit union fails to exercise said options.

(b) Not later than 40 days after the receipt of the notice provided for in paragraph (a) of this section, the Federal credit union may file with the NCUA Board a statement in writing setting forth the grounds and reasons why its charter should not be suspended or revoked and why it should not be placed into involuntary liquidation; or in lieu of a written statement, request an oral hearing which shall be conducted in accordance with the procedures set forth in this subpart. This statement or request shall be accompanied by a certified copy of a resolution of the board of directors of the Federal credit union concerned authorizing such statement or request, such certification to be made by the president and secretary of the board of directors.

(c) If the Federal credit union concerned does not exercise either alternative available in paragraph (b) of this section within the time required, it shall be deemed to have admitted the facts alleged in the notice and may be deemed to have consented to the relief sought.

§ 747.404 Notice of hearing.

(a) Upon receipt of a request for hearing which complies with § 747.403(b), the NCUA Board shall transmit the request to the Office of Financial Institution Adjudication ("OFIA"). Such hearing shall commence no earlier than 30 days nor later than 60 days after the date the OFIA receives the request for a hearing, unless an earlier or later date is requested by the Federal credit union concerned and is granted by the NCUA Board in its discretion.

(b) Except as provided in § 747.405(b), the procedures of the Administrative Procedure Act (5 U.S.C. 554–557) and subpart A of this part will apply to the hearing.

(c) Unless the Federal credit union shall appear at such hearing by a duly authorized representative it shall be deemed to have consented to the suspension or revocation of its charter and to the placing of said credit union into involuntary liquidation.

§ 747.405 Issuance of order.

(a) In the event of such consent as referred to in §§ 747.403(c) or 747.404(c), or if upon the record made at any such hearing as referred to in § 747.403(b), the NCUA Board finds that the charter of the Federal credit union concerned should be suspended or revoked and the credit union closed and placed into involuntary liquidation, it shall cause to be served on such credit union an order directing the suspension or revocation of its charter and directing that it be closed and placed into involuntary liquidation. Such order shall contain a statement of the findings upon which the order is based. Additionally, the NCUA Board shall appoint a liquidating agent or agents.

(b) The NCUA Board shall render its decision and cause such order to be served not later than 45 days after receipt of consent, or written submissions as the case may be, or in the case of a formal hearing after service or the notice of submission referred to in § 747.40(a).

(c) Upon the receipt of a copy of the order which provides that the Federal credit union concerned be placed into involuntary liquidation, the officers and directors of that Federal credit union shall immediately deliver to the agent for the liquidating agent possession and control of all books, records, assets, and property of every description of the Federal credit union, and the agent for the liquidating agent shall proceed to convert said assets to cash, collect all debts due to said Federal credit union

and to wind up its affairs in accordance with the provisions of the FCUA.

§ 747.406 Cancellation of charter.

Upon the completion of the liquidation and certification by the agent for the liquidating agent that the distribution of the assets of the Federal credit union has been completed, the NCUA Board shall cancel the charter of the Federal credit union concerned.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]

Subpart G—Local Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access To Justice Act in NCUA Board Adjudications

§ 747.601 Purpose and scope.

This subpart contains the regulations of the NCUA implementing the Equal Access to Justice Act (5 U.S.C. 504), as amended ("EAJA"). The EAJA provides for the award of attorneys fees and other expenses to eligible individuals and entities who are parties to proceedings conducted under this part. An eligible party may receive an award when it prevails over NCUA in a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the NCUA was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for fee awards, explain how to apply for awards and the procedures and standards that NCUA will use to make them. To the extent a rule or procedure set forth in subpart A of this part is inconsistent with a rule or procedure set forth in this subpart G, subpart G will control.

§ 747.602 Eligibility of applicants.

(a) To be eligible for an award of attorneys fees and expenses, an applicant must be a prevailing party in the proceeding for which it seeks an award and must be:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests and not more than 500 employees at the time the proceeding was commenced (an applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests);

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; or

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

(b) For the purpose of determining eligibility, the net worth of an applicant and the number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(c) The applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(d) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control; part-time employees shall be included on a proportional basis.

(e) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the NCUA Board determines that such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, the NCUA board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(f) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 747.603 Prevailing party.

An eligible applicant may be a "prevailing party" if the applicant wins an action after a full hearing or trial on the merits, if a settlement of the proceeding was effected on terms favorable to it, or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

§ 747.604 Standards for award.

(a) A prevailing party may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, by or against NCUA unless the position of NCUA during the proceeding was substantially justified. The burden of proving that an award should not be made is on counsel for NCUA. To avoid an award, counsel for NCUA must show that its position was reasonable in law and in fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(c) Where an applicant has prevailed on one or more discrete substantive issues in a proceeding, even though all the issues were not resolved in its favor, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under this section if proration were not performed.

(d) Whether separate or prorated treatment under the preceding paragraph, including the applicable proration percentage, is appropriate shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 747.605 Allowable fees and expenses.

(a) Except as provided by § 747.604(b), awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate.

(b) No award under this subpart for the fee of an attorney or agent may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which NCUA is permitted to pay expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the NCUA Board shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, report, test, project, or similar matter prepared on behalf of the party may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 747.606 Contents of application.

(a) A prevailing eligible party, as defined in §§ 747.602, 747.603, and 747.604, seeking an award under this section, must file an application for an award of fees and expenses with the Secretary of the NCUA Board. The application shall include the following information:

(1) The identity of the applicant and the proceeding for which an award is sought;

(2) A showing that the applicant has prevailed and an identification of the issues in the proceeding on which the applicant believes that the position of NCUA was not substantially justified;

(3) A statement, with supporting documentation, that the applicant is an eligible party, as defined by § 747.602. If the applicant is an individual, he or she must state that his or her net worth does not exceed $2 million. If the applicant is not an individual, it shall state the number of its employees and that its net worth does not exceed $7 million as of the date the proceeding was initiated. However, an applicant may omit a statement of net worth if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a));

(4) A Statement of the amount of fees and expenses for which an award is sought; and

(5) Any other matters that the applicant believes may assist or wishes the NCUA Board to consider in determining whether and in what amount an award should be made.

(b) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(c) The application and documentation requirements of this subpart are required by law as a prerequisite to obtaining a benefit under the Equal Access to Justice Act and this subpart.

§ 747.607 Statement of net worth.

(a) Each applicant (other than a qualified tax exempt organization or cooperative association) must provide a detailed statement showing the net worth of the applicant and any affiliates, as defined in § 747.602(a), when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant is an eligible party. The administrative law judge or the NCUA Board may require additional information from the applicant to determine eligibility. Unless otherwise ordered by the Board or required by law, the statement shall be kept confidential and used by the NCUA Board only in making its determination of an award.

(b) If the applicant or any of its affiliates is a Federal credit union, the portion of the statement of net worth which relates to the Federal credit union shall consist of a copy of the Federal credit union's last Statement of Financial Condition filed before the initiation of the underlying proceeding.

(c) All statements of net worth shall describe any transfers of assets from or obligations incurred by the applicant or any affiliate, occurring in the six-month period prior to the date on which the proceeding was initiated, which reduced the net worth of the applicant and its affiliates below the applicable net-worth ceiling. If there were none, the applicant shall so state.

§ 747.608 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge or the NCUA Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 747.609 Filing and service of applications.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision on which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) As used in this subpart, final disposition means the issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal.

(d) Any application for an award of fees and expenses shall be filed with the Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456. Any application for an award and any other pleading or document related to an application, shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 747.607(a) for statements of net worth.

§ 747.610 Answer to application.

(a) Within 30 days after service of an application, counsel for NCUA may file an answer to the application. Unless counsel for NCUA requests and is granted an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period will be treated as a consent to the award requested.

(b) If counsel for NCUA and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the NCUA Board upon the joint request of counsel for NCUA and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, counsel shall include with the answer a request for further proceedings under § 747.613.

(d)(1) The applicant may file a reply if counsel for NCUA has addressed in his or her answer any of the following issues:

(i) That the position of NCUA in the proceeding was substantially justified;

(ii) That the applicant unduly protracted the proceedings; or

(iii) That special circumstances make an award unjust.

(2) The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply a request for further proceedings under § 747.613.

§ 747.611 Comments by other parties.

Any party to a proceeding other than the applicant and counsel for NCUA may file comments on an application within 30 days after service of the application or on an answer within 15 days after service of the answer. A commenting party may not participate further in proceedings on the application unless the administrative law judge or the NCUA Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comment.

§ 747.612 Settlement.

The applicant and counsel for NCUA may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with NCUA's standard settlement procedure. If a prevailing party and counsel for NCUA agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 747.613 Further proceedings.

(a) After the expiration of the time allowed for the filing of all documents necessary for the determination of a recommended fee award, the NCUA Board shall transmit the entire record to the administrative law judge who presided at the underlying proceeding. Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for NCUA, or on its own initiative, the administrative law judge or the NCUA Board may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the administrative law judge or the NCUA Board order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 747.614 Recommended decision.

The administrative law judge shall file a recommended decision on the application with the NCUA Board within 60 days after completion of the proceedings on the application. The recommended decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The recommended decision shall also include, if at issue, findings on whether NCUA's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the recommended decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made. The administrative law judge shall file with and certify to the NCUA Board the record of the proceeding on the fee application, the recommended decision and proposed order. Promptly upon such filing, the NCUA Board shall serve upon each party to the proceeding a copy of the administrative law judge's recommended decision, findings, conclusions and proposed order. The provisions of this section and § 747.613 shall not apply, however, in any case where the hearing was held before the NCUA Board.

§ 747.615 Decision of the NCUA Board.

Within 15 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for NCUA may file with the NCUA Board written exceptions thereto. A supporting brief may also be filed. The NCUA Board shall render its decision within 60 days after the matter is submitted to it. The NCUA Board shall furnish copies of its decision and order to the parties. Judicial review of the NCUA Board's final decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 747.616 Payment of award.

An applicant seeking payment of an award granted by the NCUA Board shall submit to the NCUA's Office of the Controller a copy of the NCUA Board's Final Decision and Order granting the award, accompanied by a statement that it will not seek review of the decision and order in the United States court. All submissions shall be addressed to the Office of the Controller, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. The NCUA will pay the amount awarded within 60 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Subpart H—Local Rules and Procedures Applicable to Investigations

§ 747.701 Applicability.

The rules in this subpart apply only to informal and formal investigations conducted by the NCUA Board itself or its delegates. They do not apply to adjudicative or rulemaking proceedings or to routine, periodic or special examinations conducted by the NCUA Board's staff.

§ 747.702 Information obtained in investigations.

Information and documents obtained by the Board in the course of any investigation, unless made a matter of public record by the NCUA Board, shall be deemed non-public, but the NCUA Board approves the practice whereby the General Counsel may engage in, and may authorize any person acting on his or her behalf or at his or her direction to engage in, discussions with representatives of domestic or foreign governmental authorities, self-regulatory organizations, and with receivers, trustees, masters and special counsels or special agents appointed by and subject to the supervision of the courts of the United States, concerning information obtained in individual investigations, including investigations conducted pursuant to any order entered by the NCUA Board or its General Counsel pursuant to delegated authority.

§ 747.703 Authority to conduct investigations.

(a) The General Counsel and persons acting on his or her behalf and at his or her direction may conduct such investigations into the affairs of any insured credit union or institution-affiliated parties as deemed appropriate to determine whether such credit union or party has violated, is violating or is about to violate any provision of the FCUA, the NCUA Board's regulations or other relevant statutes or regulations that may bear on a party's fitness to participate in the affairs of a credit union. The General Counsel and persons acting on his or her behalf may investigate whether any party is unfit to participate in the affairs of a credit union, whether formal enforcement proceedings are warranted, or such other matters as the General Counsel or his or her designee, in his or her discretion, shall deem appropriate. Such investigations may be conducted either informally or formally.

(b) Formal investigations involve the exercise of the NCUA Board's subpoena power and are referred to here as formal investigative proceedings. In formal investigative proceedings, the General Counsel and those to whom he or she delegates authority to act on his or her behalf and at his or her direction have augmented investigatory powers and need not rely on the powers available to them in informal investigations, and they may gather evidence through the issuance of subpoenas compelling the production of documents or testimony as well. In informal investigations evidence may be gathered ordinarily through the use of investigatory procedures or credit union examinations and through voluntary statements and submissions.

(c) The NCUA Board has delegated authority to the General Counsel, or designee thereof, to institute formal investigative proceedings by the entry of an order indicating the purpose of the investigation and the designation of persons to conduct that investigation on his or her behalf and at his or her direction. This delegation also extends to the NCUA Board's role as liquidator and conservator of insured credit unions. The power to issue a subpoena may not be delegated outside the agency. The General Counsel may amend such order as he deems appropriate.

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

§ 747.801 Applicability.

The rules in this subpart are applicable to a witness who is sworn in a formal investigative proceeding. Formal investigative proceedings may be held before the NCUA Board, before one or more of its members, or before any officer designated by the NCUA Board or its General Counsel, as described in subpart H of this part, and with or without the assistance of such other counsel as the NCUA Board deems appropriate, for the purpose of taking testimony of witnesses, conducting an investigation and receiving other evidence. The term "officer conducting the investigation" shall mean any of the foregoing.

§ 747.802 Non-public formal investigative proceedings.

Unless otherwise ordered by the NCUA Board, all formal investigative proceedings shall be non-public.

§ 747.803 Subpoenas.

(a) *Issuance.* In the course of a formal investigative proceeding the officer conducting the investigation may issue a subpoena directing the party named therein to appear before the officer conducting the investigation at a specified time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation.

(b) *Service.* Service of subpoenas shall be effected in the following manner:

(1) *Service upon a natural party.* Delivery of a copy of a subpoena to a natural person may be effected by—

(i) Handling it to the person;

(ii) Leaving it at his or her office with the person in charge thereof or, if there is no one in charge, by leaving it at a conspicuous place there;

(iii) Leaving it at his or her dwelling place or usual place of abode with some person of suitable age and discretion who is found there; or

(iv) Mailing it be registered or certified mail to him at his or her last known address. In the event that personal service as described in this paragraph is impracticable, any other method where by actual notice is given to the respondent may be employed.

(2) *Service upon other persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena may be effected by—

(i) Handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of such person;

(ii) Mailing it by registered or certified mail to any such representative at his or her last known address; or

(iii) Any other method whereby actual notice is given to any such representative.

(c) *Witness fees and mileage.* Witnesses appearing pursuant to subpoena shall be paid the same fees and mileage that are paid to witnesses in the United States district courts. Any such fees and mileage payments need be paid only upon submission of a properly completed application for reimbursement and in no event need they be paid sooner than 30 days after the appearance of the witness pursuant to subpoena.

(d) *Enforcement.* Whenever it appears to the General Counsel that any person upon whom a subpoena was properly served pursuant to these Rules is refusing to fully comply with the terms of that subpoena, then the General Counsel, in his or her discretion, may apply to the courts of the United States for enforcement of such subpoena.

§ 747.804 Oath; false statements.

At the discretion of the officer conducting the investigation, testimony of a witness may be taken under oath and administered by the officer. Any person making false statements under oath during the course of a formal investigative proceeding is subject to the criminal penalties for perjury in 18 U.S.C. 1621. Any person who knowingly and willfully makes false and fraudulent statements, whether under oath or otherwise, or who falsifies, conceals or covers up any material fact, or submits any false, fictitious or fraudulent information in connection with such a proceeding, is subject to the criminal penalties set forth in 18 U.S.C. 1001.

§ 747.805 Self-incrimination; immunity.

(a) *Self-incrimination.* Except as provided in paragraph (b) of this section, a witness testifying or otherwise giving information in a formal investigative proceeding may refuse to answer questions on the basis of his or her right against self-incrimination granted by the Fifth Amendment of the Constitution of the United States.

(b) *Immunity.* (1) No officer conducting any formal investigative proceeding (or any other informal investigation or examination) shall have the power to grant or promise any party any immunity from criminal prosecution under the laws of the United States or of any other jurisdiction.

(2) If the NCUA Board believes that the testimony or other information sought to be obtained from any party may be necessary to the public interest and that party has refused or is likely to refuse to testify or provide other information on the basis of his or her privilege against self-incrimination, the NCUA Board, with the approval of the Attorney General, may issue an order requiring the party to give testimony or provide other information that he or she has previously refused to provide on the basis of self-incrimination.

(3) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a formal investigative proceeding, and the officer conducting the investigation communicates to that person an order of the NCUA Board requiring him or her to testify or provide other information, the witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 747.806 Transcripts.

Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A party who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his or her documentary evidence or a transcript of his or her testimony on payment of the appropriate fees; provided, however, that in a non-public formal investigative proceeding the NCUA Board may for good cause deny such request or the NCUA Board may place reasonable limitations upon the use of the documentary evidence and transcript. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness's own testimony.

§ 747.807 Rights of witnesses.

(a) In the event that a formal investigative proceeding is conducted pursuant to a specific order entered by the NCUA Board or by its General Counsel, then any party who is compelled or requested to provide documentary evidence or testimony as part of such proceeding shall, upon request, be shown a copy of the NCUA Board's or its delegate's order. Copies of such orders shall not be provided for their retention to such persons requesting same except in the sole discretion of the General Counsel or his designee.

(b) Any party compelled to appear, or who appears by request or permission of the officer conducting the investigation, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel who is a member of the bar of the highest court of any state; provided however, that all witnesses in such proceeding shall be sequestered, and unless permitted in the discretion of the officer conducting the investigation, no witness or the counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding.

(c)(1) The right of a witness to be accompanied, represented and advised by counsel shall mean the right to have an attorney present during any formal investigative proceeding and to have the attorney—

(i) Advise such person before, during and after such testimony;

(ii) Question such person briefly at the conclusion of his testimony to clarify any answers such person has given; and

(iii) Make summary notes during such testimony solely for the use of such person.

(2) From time to time, in the discretion of the officer, it shall be necessary for persons other than the witness and his or her counsel to attend non-public investigative proceedings. For example, the officer may deem it appropriate that outside counsel to the NCUA Board attend and advise him or her concerning the proceeding including the examination of a particular witness. In these circumstances, outside counsel would not be an officer as that term is used. In other circumstances, it may be appropriate that a technical expert (such as an accountant) accompany the witness and his or her counsel in order to assist counsel in understanding technical issues. These latter circumstances should be rare, are left to the discretion of the officer conducting the investigation, and shall not in any event be allowed to serve as a ruse to coordinate testimony between witnesses, to oversee or supervise the testimony of any witnesses, or otherwise defeat the beneficial effects of the witness sequestration rule.

(d) The officer conducting the investigation may report to the NCUA Board any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of a formal investigative proceeding or any other instance of violations of these rules. The NCUA Board will thereupon take such further action as the circumstance may warrant including barring the offending person from further participation in the particular formal investigative proceeding or even from further practice before the Board.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors of Committee Members Pursuant to Section 212 of the FCUA

§ 747.901 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a credit union pursuant to section 212 of the FCUA (12 U.S.C. 1791) and § 701.14 of this chapter, for the consent of the NCUA to add to or replace an individual on the board of directors or supervisory or credit committee, or to employ any individual as a senior executive office or change the responsibilities of any individual to a position of senior executive officer where the credit union either has been chartered less than 2 years; or is in "troubled condition," as defined in § 701.14 of this chapter. Subpart A of this part shall not apply to any proceeding under this subpart.

§ 747.902 Grounds for disapproval of notice.

The NCUA Board or its designee may issue a notice of disapproval with respect to a notice submitted by a credit union pursuant to section 212 of the FCUA (12 U.S.C. 1791) and § 701.14 of this chapter, where the competence, experience character or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interest of the

members of the credit union or the public to permit the individual to be employed by or associated with, such credit union.

§ 747.903 Procedures where notice of disapproval issued; reconsideration.

(a) The notice of disapproval shall be served upon the federally insured credit union and the candidate for director, committee member or senior executive officer. The notice of disapproval shall:

(1) Summarize or cite the relevant consideration specified in § 747.902;

(2) Inform the individual and the credit union that, within 15 days of receipt of the notice of disapproval, they can request reconsideration by the Regional Director of the initial determination, or can appeal the determination directly to the NCUA Board;

(3) Specify what additional information, if any, must be constant in the reconsideration.

(b) The request for reconsideration by the Regional Director must be filed at the appropriate Regional Office.

(c) The Regional Director shall act on a request for reconsideration within 30 days of its receipt.

§ 747.904 Appeal.

(a) *Time for filing.* Within 15 days after issuance of a Notice of Disapproval or a determination on a request for reconsideration by the Regional Director, the individual or credit union (henceforth petitioner) may appeal by filing with the NCUA Board a written request for appeal.

(b) *Contents of request.* Any appeal must be in writing and include:

(1) The reasons why NCUA should review its disapproval; and

(2) Relevant, substantive and material facts that for good cause were not previously set forth in the notice required to be filed pursuant to section 212 of the FCUA (12 U.S.C. 1791) and § 701.14 of this chapter.

(c) *Procedures for review of request.* Within 30 days of the NCUA Board's receipt of an appeal, the NCUA Board may request in writing that the petitioner submit additional facts and records to support the appeal. The petitioner shall have 15 days from the date of issuance of such written request to provide such additional information. Failure by the petitioner to provide additional information may, as determined solely by the NCUA Board or its designee, result in denial of the petitioner's appeal.

(d) *Determination on appeal by NCUA Board or its designee.* (1) Within 90 days from the date of the receipt of an appeal by the NCUA Board or its designee or of its receipt of additional information requested under paragraph (c) of this section, the NCUA Board or its designee shall notify the petitioner whether the disapproval will be continued, terminated, or otherwise modified. The NCUA Board or its designee shall promptly rescind or modify the notice of disapproval where the decision is favorable to the petitioner.

(2) The determination by the NCUA Board on the appeal shall be provided to the petitioner in writing, stating the basis for any decision of the NCUA Board or its designed that is adverse to the petitioner, and shall constitute a final order of the NCUA Board.

(3) Failure by the NCUA Board to issue a determination on the petitioner's appeal within the 90-day period prescribed under paragraph (d)(1) of this section shall be deemed a denial of the appeal for purpose of § 747.905.

747.905 Judicial review.

(a) Failure to file an appeal within the applicable time periods, either to the initial determination or to the decision a request for reconsideration, shall constitute a failure by the petitioner to exhaust available administrative remedies and, due to such failure, any objections to the initial determination or request for reconsideration shall be deemed to be waived and such determination shall be deemed to have been accepted by, and shall be binding upon, the petitioner.

(b) For purposes of seeking judicial review of actions taken pursuant to this section, suit may be filed in the United States District Court for the district where the requester resides, for the district where the credit union's principal place of business is located, or for the District of Columbia.

Dated: July 30, 1991.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 91-18579 8-7-91; 8:45 am]

BILLING CODE 7535-01-M

federal register

Thursday
August 8, 1991

Part III

Department of the Interior

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Meeting; Notices

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 101–512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES, TIMES, AND PLACE: September 4, 5, and 6, 1991; 9 a.m. to 5:30 p.m. daily; the Sheraton Inn-Bismarck Galleria, 605 E. Broadway, Bismarck, North Dakota. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization may be obtained by contacting Veronica L. Murdock, Designated Federal Officer, at (202) 208–4173.

Agenda

The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will discuss the conceptual organizational structure adopted by the Task Force at its last meeting. The Task Force will identify specific functions, authorities, and structures for implementation by the Bureau at its headquarters, area, and agency offices.

Dated: August 1, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 18772 Filed 8–7–91; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
August 8, 1991

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Weight Control Drug Products for Over-the-Counter Human Use; Certain Active Ingredients; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 81N-0022]

RIN 0905-AA06

Weight Control Drug Products for Over-the-Counter Human Use; Certain Active Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that certain active ingredients in over-the-counter (OTC) weight control drug products are not generally recognized as safe and effective or are misbranded. FDA is issuing this final rule after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on the agency's advance notice of proposed rulemaking that was based on those recommendations. No substantive comments and no new data or information were submitted to FDA under 21 CFR 330.10(a)(6)(iv) opposing nonmonograph status for these ingredients. FDA has determined that these ingredients would result in an OTC weight control drug product not being generally recognized as safe and effective or would result in its misbranding. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: February 8, 1991.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 26, 1982 (47 FR 8466), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC weight control drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The Miscellaneous Internal Panel classified a total of 113 OTC weight control drug product ingredients. Two ingredients were classified in Category I (safe and effective for OTC use): Phenylpropanolamine hydrochloride and benzocaine. One hundred ingredients were classified in Category II (not safe and effective for OTC use), and 11 ingredients were classified in Category III (insufficient data to classify in Category I or Category II, more studies are needed). The ingredients classified in Category II included all of the ingredients listed in the call-for-data notice published in the **Federal Register** of August 27, 1975 (40 FR 38179) for which the Panel was not able to locate, and was not aware of, any significant body of data demonstrating the safety and effectiveness of use for weight control (47 FR 8466 at 8471). Of the 11 ingredients that the Panel classified in Category III, no data were submitted on 6 ingredients: Carrageenan, chondrus, guar gum, karaya gum, sea kelp, and psyllium, all of which are hydrophilic colloids. The Panel received safety and effectiveness data on the other 5 ingredients: Alginic acid, carboxymethylcellulose sodium, methylcellulose, sodium bicarbonate (in combination with bulking agents), and xanthan gum. Although the effectiveness data were insufficient, the Panel classified these 5 ingredients in Category III. The Panel stated that these ingredients may act as bulking agents and possibly could be shown effective for weight control use. The Panel did not question the safety of bulking agents because "they have been in use for years as food additives and some have had medicinal use," (47 FR 8477).

Interested persons were invited to submit comments on the Panel's recommendations by May 27, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by June 28, 1982. In a notice published in the **Federal Register** of April 23, 1982 (47 FR 17576), the agency advised that it had extended the comment period until July 26, 1982, and the reply comment period until August 27, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information. In response to the advance notice of proposed rulemaking, 6 drug manufacturers, 1 drug manufacturers' association, 1 clinical consulting firm, 6 professional associations, 8 physicians, 1 nutritionist, 1 health department, 2 Congressmen, 1 consumer organization, and 10 individuals submitted comments. No comments or data were submitted on OTC weight control drug products containing any ingredient that the Panel had classified as nonmonograph (Category II or Category III). Copies of the comments received are on public display in the Dockets Management Branch.

Under the OTC drug review administrative procedures (21 CFR 330.10(a)(7)(ii)), the Commissioner may publish a separate tentative order covering active ingredients that have been reviewed and may propose that these ingredients be excluded from an OTC drug monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding. This order may include active ingredients for which no substantial comments were received in opposition to the advisory panel's proposed classification and for which no new data and information were received pursuant to § 330.10(a)(6)(iv) (21 CFR 330.10(a)(6)(iv)).

In the **Federal Register** of October 30, 1990 (55 FR 45788), FDA published, under § 330.10(a)(7)(ii), a proposed rulemaking encompassing the 111 active ingredients classified as Category II and Category III in the advance notice of proposed rulemaking. No significant comments or new data have been submitted to upgrade the status of these 111 active ingredients. Comments and new data were received on the two proposed Category I ingredients, phenylpropanolamine hydrochloride and benzocaine. Comments were also received on the labeling proposed for this class of OTC drug products.

The Commissioner is issuing a separate final rule on the 111 Category II and III ingredients prior to completing the rulemaking on the Category I ingredients. The Commissioner has determined that these 111 ingredients are not generally recognized as safe and effective. Therefore, any OTC weight control drug product containing any of these active ingredients may not continue to be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. FDA has completed action on these ingredients before finalizing the rest of the monograph in order to expedite removal from the market of products that lack adequate evidence of effectiveness.

FDA advises that the active ingredients listed in this final rule will not be included in the tentative final monograph for OTC weight control drug

products because they have not been shown to be generally recognized as safe and effective for weight control use. The agency is amending 21 CFR part 310 to list all of the active ingredients covered by this final rule by adding to subpart E, new § 310.545(a)(20) (21 CFR 310.545(a)(20)). The agency further advises that these active ingredients for OTC weight control use should be eliminated from OTC drug products by February 8, 1991, regardless of whether further testing is undertaken to justify future use. Therefore, on or after February 8, 1991, no OTC drug product containing any active ingredient listed in § 310.545(a)(20), either labeled or intended as an active ingredient for weight control use, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product containing any active ingredient subject to this final rule that is repackaged or relabeled after the effective date of this final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

The agency points out that publication of this final rule does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of an application that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to amend or establish a monograph, as appropriate. (See 21 CFR 10.30.) However, marketing of products containing these active ingredients may not begin or continue while the data are being evaluated by the agency.

In response to the proposed rule on OTC weight control Category II and III ingredients, three drug manufacturers, one trade association, the Attorney General of Iowa, and six individuals submitted comments. Copies of the comments received are on public display in the Dockets Management Branch (address above). Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. General Comments

1. Two comments expressed support for the agency's proposal to prohibit the continued marketing of certain OTC weight control drug products that contain active ingredients that are not generally recognized as safe and effective or are misbranded. One comment stated that if sufficient evidence is not available to demonstrate that an ingredient is both safe and effective, it should be prohibited from use. The other comment estimated that ineffective weight loss products cost consumers billions of dollars per year. The comment added that while a certain amount of risk is inherent in taking any drug product, taking such risk is clearly unwarranted and unnecessary where the products have not been shown to be effective for their intended use. The comment asserted that under the Federal Food, Drug, and Cosmetic Act (the act) all drugs, including weight control drugs, either must be generally recognized by experts as safe and effective for their intended use or they must be the subject of a new drug application approved by the FDA. The comment contended that continued marketing of Category II and III OTC weight loss products is inconsistent with this statutory mandate.

The comment contended that consumers taking questionable diet products are often subjected to serious health risks. The comment mentioned an instance where a consumer suffered an epileptic seizure because a fiber-based diet pill absorbed the medication meant to control seizures (Ref. 1). The comment discussed another instance where a person was hospitalized due to complications resulting from taking a diet pill and following a diet program that has not been shown to be safe or effective. Lastly, the comment noted the agency's discussion of the serious safety hazard that guar gum used in diet products can pose, and stated that many individuals had been hospitalized and at least one person had died from complications resulting from esophageal obstruction caused by consumption of guar gum diet products (Ref. 1).

Reference

(1) Comment No. C00042, Docket No. 81N–0022, Dockets Management Branch.

2. One comment questioned whether the proposed rule applied to foods for special dietary use, as defined in 21 CFR part 105. The comment particularly referred to products known as formulated meal replacements, which supply nutrients and micronutrients and are intended to replace normal meals. The comment stated that a number of vitamins and minerals are classified in Category II as active ingredients for weight control. According to the comment, however, it would be reasonable to combine a weight control active ingredient with such nutritional supplements in order to replace essential vitamins and minerals missing from the reduced calorie diets normally followed by individuals attempting to lose weight. The comment added that a number of these vitamins and minerals are generally recognized by FDA as safe for use as nutritional supplements.

Part 105 of the regulations covers foods for special dietary use. The term "special dietary use" is defined in § 105.3(a)(1). Other sections set out labeling and other requirements that such products must meet.

The scope of this document, however, is limited to drug products intended for weight control use. It does not apply to foods for special dietary use as covered by 21 CFR part 105. Some foods regulated under part 105 are also Category II and III active ingredients in this final rule. When products containing such ingredients are labeled for drug use such as for appetite control, they will be regulated as drugs under § 310.545(a)(20). These same products when labeled as foods for special dietary use will be subject to part 105.

The agency recognizes that it may be difficult for a person on a diet to achieve the recommended dietary intake of essential nutrients, particularly vitamins and minerals, while using an OTC weight control drug product. The United States Department of Agriculture (Ref. 1) has stated that it is hard for a person to get the recommended levels of essential nutrients in diets of fewer that 1,800 calories, and this is particularly true of vitamins and minerals, which are present only in low concentrations in most foods. The same view has been expressed for diets ranging from 1,000 to 1,600 calories per day (Refs. 2 through 5). A publication from the National Academy of Sciences, in cautioning about the difficulty of designing a nutritionally-adequate 1,000 calorie diet, states that such a diet "* * * would have to supply most nutrients in at least double the allowance per thousand calories, an objective that is difficult to maintain without supplementation," (Ref. 5). The agency agrees with the comment that it would be reasonable to allow such nutrients to be combined with an active weight control drug. Such combination products will be discussed further in the notice of proposed rulemaking for Category I weight control

drug products in a future issue of the **Federal Register**.

References

(1) "Ideas for Better Eating," U.S. Department of Agriculture, p. 11, January 1981.

(2) Lasagna, L., "One-A-Day, Plus C," The Sciences, 21:35, 1981.

(3) Olson, R.E., "Letter to the Editor-Reply," Nutrition Reviews, 40:160, 1982.

(4) Blonz, E.R., and J.S. Stern, "Obesity and Fad Diets," in "Contemporary Issues in Clinical Nutrition: Controversies in Nutrition," Vol. 2, edited by L. Ellenbogen, Churchill Livingstone, New York, p. 120, 1981.

(5) "Recommended Dietary Allowances," 9th Ed., National Academy of Sciences, Washington, p. 13, 1980.

3. Five comments stated that the entire OTC weight control drug products rulemaking was unconstitutional under the ninth amendment of the Constitution. The comments contended that FDA has no authority to regulate the purchase, sale, manufacture, or labeling of any or all Category I, II, or III OTC weight control ingredients and that consumers have the right of freedom of choice and a "health care" right to purchase any Category I, II, or III OTC weight control ingredient.

FDA's statutory mandate includes protection and promotion of the public health by ensuring that drugs are not only safe but also effective for their intended use. The Commissioner's Decision on the Status of Laetrile, published in the **Federal Register** of August 5, 1977 (42 FR 39768), expresses the agency's position on freedom of choice with respect to ensuring that drugs are not only safe, but also effective. That statement reads in part as follows:

> In passing the 1962 Amendments to the act—the amendments that require that a drug be proved effective before it may be marketed—Congress indicated its conclusions that the absolute freedom to choose an ineffective drug was properly surrendered in exchange for the freedom from the danger to each person's health and well-being from the sale and use of worthless drugs * * *. To the extent that any freedom has been surrendered by the passage of the legislation which bans from the marketplace drugs that have not been proven to be effective, that surrender was a rational decision which has resulted in the achievement of a greater freedom from the dangers to health and welfare represented by such drugs.

It is settled law that there is no constitutional right to privacy allowing a person specific drugs regardless of FDA's determination as to their safety and effectiveness. While a patient may have a protected right not to seek treatment, the selection of a particular treatment or medication is well within the recognized area of governmental interest in protecting the public health. *Rutherford* v. *U.S.*, 616 F.2d 455, 456–457 (10th Cir.), *cert. denied*, 449 U.S. 937 (1980). The drug premarketing review provisions of the act and FDA's implementing programs, including the OTC drug review, are a legitimate exercise of congressional authority limiting a person's choice of drugs. FDA's OTC drug review has been discussed and tacitly approved in numerous court decisions. See *Cutler* v. *Hayes*, 818 F.2d 879, 895 (DC Cir. 1987), for discussion of the Supreme Court's implicit approval of the OTC drug review in *Weinberger* v. *Bentex Pharmaceuticals*, 412 U.S. 645 (1973). The review was also implicitly approved in *Cutler* v. *Kennedy*, 475 F. Supp 844, 845 (D.D.C. 1979) and *Cutler* v. *Hayes*, 549 F. Supp. 1341, 1344 (D.D.C. 1982).

OTC weight control drug products that are subject to this rulemaking, and that are not the subject of an approved new drug application (NDA), will have to comply with the final rule. In the absence of data demonstrating that the ingredients present in OTC weight control drug products are generally recognized as safe and effective, these ingredients cannot be included in an OTC drug monograph. After the effective date of the final regulation, any such OTC weight control drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this regulation will be subject to regulatory action.

4. One comment disagreed with the agency's policy that the proposed rulemaking "does not constitute a reopening of the administrative record or an opportunity to submit any new data to the OTC weight control rulemaking." (See 55 FR 45788 at 45789.) The comment argued that this approach is contrary to the FDA's rulemaking regulations and the Administrative Procedure Act. The comment argued that FDA's procedure has denied the public the opportunity to submit information and substantive comments for inclusion in the administrative record because the proposed rule announces a new rulemaking, separate from the rulemaking indicated in 1982. The comment contended that because the administrative record had been closed for over 8 years, it should now be reopened so that relevant information and data can be considered by FDA before the final rule is issued. Specifically, the comment wanted the administrative record to be reopened so that additional data regarding the safety and effectiveness of guar gum could be considered before the final rule is issued. The comment indicated that FDA should consider this request to be a petition to reopen the administrative record.

FDA administrative procedures for classifying OTC drugs and for establishing monographs in 21 CFR 330.10(a)(7)(ii) provide that the Commissioner may publish a separate tentative order covering active ingredients that have been reviewed and may propose that these ingredients be excluded from an OTC drug monograph on the basis of the Commissioner's determination that they would result in a drug not being generally recognized as safe and effective or would result in misbranding. This order may include active ingredients for which no substantial comments in opposition to the advisory panel's proposed classification and for which no new data and information were received pursuant to 21 CFR 330.10(a)(6)(iv). As noted in the proposal, no substantive comments or new data were submitted to support reclassification of any of these 111 Category II and Category III OTC weight control ingredients to monograph status (55 FR 45788). Thus, the agency precisely followed its administrative procedures in issuing the notice of proposed rulemaking on October 30, 1990 stating that these ingredients are proposed for nonmonograph status.

Regarding the specific ingredient guar gum mentioned by the comment, the agency specifically discussed both the safety and effectiveness of this ingredient in the notice of proposed rulemaking (55 FR 45788 at 45790 to 45792). The agency mentioned a number of safety problems and health risks associated with the OTC use of guar gum-containing weight control drug products. Further, the agency stated that available effectiveness data were inadequate to support effectiveness of guar gum for this use. In the absence of data establishing general recognition of safety and effectiveness, the agency has concluded that guar gum-containing weight control drug products are not appropriate for OTC use and should not continue to be marketed.

The administrative procedures in 21 CFR 330.10(a)(7)(v) for classifying OTC drugs and for establishing monographs address the question of new data and information submitted after the times provided in other parts of the regulations but prior to the establishment of a final monograph. These procedures provide that such data and information will be considered as a petition to amend the monograph and will be considered by the Commissioner only after a final monograph has been

published in the Federal Register unless the Commissioner finds that good cause has been shown that warrants earlier consideration. At this time, the Commissioner does not find that good cause has been shown to warrant earlier consideration or to allow guar gum to remain under consideration in the ongoing rulemaking for OTC weight control drug products. Because this rulemaking is not likely to be finalized in the near future, any manufacturer interested in the continued marketing of guar gum for weight control use should proceed under the new drug procedures in 21 CFR parts 312 and 314.

The agency points out that publication of a final rule under this current proceeding does not preclude a manufacturer from testing any ingredient covered by the final rule. New, relevant data can be submitted to the agency at a later date as the subject of an NDA that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, if a manufacturer believes it has adequate data establishing general recognition of safety and effectiveness for any of these ingredients, such data may be submitted to the agency in an appropriate citizen petition to amend or establish a monograph, as appropriate. (See 21 CFR 10.30.) However, products containing such ingredients may not continue to be marketed while the agency evaluates any new, relevant data provided. Accordingly, the agency is not denying manufacturers an opportunity to submit information, but rather it is following the act and its regulations to ensure the safety and effectiveness of OTC drug products in the marketplace.

5. One comment contended the FDA should provide the public with detailed information regarding the requirements for studies necessary to support future petitions to modify the monograph to add Category I ingredients. The comment argued that current guidelines in this regard are vague and do not provide sufficient guidance, that such studies are costly to the manufacturers, and the public should be advised of the agency's requirements before manufacturers incur the expense of conducting such studies.

The Miscellaneous Internal Panel provided fairly extensive testing guidelines in its report (47 FR 8466 at 8480 to 8483). However, the agency is not addressing specific testing guidelines in this document. In revising the OTC drug review procedures relating to Category III ingredients, published in the Federal Register of September 29, 1981 (46 FR 47730), the agency advised that tentative final and final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. In the same issue of the Federal Register (46 FR 47740), the agency published a policy statement concerning the submission and review of protocols to evaluate an ingredient or condition in the OTC drug review. The agency will meet with manufacturers, at their request, to discuss protocols and other testing issues involving conditions that industry is interested in upgrading and to advise industry on the adequacy of proposed testing protocols.

6. One comment stated that the proposed rule is likely to cause a major increase in costs to consumers who wish to lose weight. The comment contended that increased costs to consumers would result from the agency's initial determination that all OTC drug ingredients, other than non-time-released phenylpropanolamine hydrochloride and benzocaine, would be banned unless an approved NDA is obtained under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314. The comment estimated the cost of the agency's drug approval process as between $50 million and $150 million and contended that these costs of regulatory approval will be passed on to the consumer, resulting in major price increases. The comment argued that the proposed rule is likely to have a severe adverse effect on competition and innovation because small companies are not capable of funding the new drug approval process. The comment contended that competition would be limited to the few existing major drug companies. The comment disagreed with the agency's position that the proposed rule is not a major rule under Executive Order 12291 and that it would not have a significant impact on small business. The comment concluded that the proposed rule would create an insurmountable barrier to small businesses seeking access to the OTC weight loss drug market and, therefore, the agency needs to reevaluate the impact of its proposed rule.

The agency does not agree with the comment. In the Federal Register of February 8, 1983 (48 FR 5806), FDA announced the availability of an assessment of the economic impacts of the OTC drug review process. The assessment was prepared to determine whether the economic effects of the OTC drug review process, as a whole, are sufficient to warrant a Regulatory Impact Analysis (as specified in Executive Order 12291) or a Regulatory Flexibility Analysis (as required by the Regulatory Flexibility Act, Pub. L. 96-354). The assessment evaluates the economic effects (costs) of any required labeling, reformulation, and/or testing of OTC drug products as a direct result of the OTC drug review process. The assessment also examines the economic impact of the establishment of a monograph for any particular therapeutic class of OTC drugs. The assessment demonstrates that the review process in its entirety will not have a "major impact" as defined in Executive Order 12291 and probably will not have a "significant economic impact on a substantial number of small entities," as defined in the Regulatory Flexibility Act.

Regarding this specific rule for OTC weight control drug products, the agency has determined that this rule will actually result in savings for consumers who are now spending billions of dollars a year for OTC weight control drug products containing certain ingredients that have not been proven to be safe and/or effective. Although a large number of ingredients are covered by this final rule, the agency estimates that the market impact by sales volume of the products affected by this final rule is quite small. Most of the major selling OTC weight control drug products contain the ingredients phenylpropanolamine hydrochloride or benzocaine. These ingredients are not affected by this final rule. For example, of 27 products listed in an "appetite suppressant product table" in the latest edition of the Handbook of Nonprescription Drugs (Ref. 1), all contain either phenylpropanolamine hydrochloride or benzocaine. In the same table, only five products are listed as "bulk producers" weight control products. Three of these products are marketed primarily as laxatives, not as weight control products, and may remain on the market after this final rule becomes effective. The other 2 products contain ingredients that the Panel placed in Category III, for which no additional data have been submitted. Finally, the agency believes that many of the 111 ingredients covered by this final rule, for which the Panel was not able to locate nor was aware of any significant body of data demonstrating use for weight control (39 FR 8466 at 8471), are not currently marketed as OTC weight control active ingredients. Nonetheless, a regulation is still needed to prevent their future marketing for this use and to complete the rulemaking for those ingredients.

Companies that market products containing ingredients, affected by this

final rule may (1) obtain a new drug application, (2) submit a citizen petition with supporting data to include the ingredient in the OTC weight control drug products monograph, or (3) reformulate to use alternative ingredients being considered as being generally recognized as safe and effective, without incurring additional expense of clinical testing for those ingredients. The agency does not agree with the comment that this rule would create an insurmountable barrier to small businesses because virtually all companies affected by this final rule can reformulate their products. Some products may need stability data (if none exists) or new labeling. These should be one-time expenses. In some instances, companies might be able to revise their labeling to delete claims promoting their products as effective for weight control and continue to market the products as nutritional supplements.

Many companies that market ingredients affected by this rulemaking are small companies that are not manufacturers, but rather are distributors that have their products manufactured for them by other companies that produce custom products on order. Thus, the actual reformulation will be handled by the manufacturer, not the distributor.

In its 1983 assessment, FDA states that the outcome of the OTC drug review will produce social benefits to the extent that unsafe and ineffective OTC drug ingredients are removed from the market. Private costs to manufacturers associated with any loss of markets for products using withdrawn ingredients that are not generally recognized as safe and effective, do not translate into social costs. Rather, they indicate the social benefits of the OTC drug review by reallocating consumer expenditures and industry resources away from socially counterproductive OTC drugs. The assessment also contains a detailed discussion of testing costs. The agency has reevaluated the impacts of this proposed rule for OTC weight control drug products in light of the assessment of the economic impacts of the entire OTC drug review process that was prepared in 1983. The agency concludes that the basic principles of that assessment are still applicable today. The agency also concludes that the final rule in the current proceeding is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. Accordingly, the rulemaking to remove these drugs from the marketplace will not be delayed to allow interested persons another opportunity to submit data for the FDA to review. Such an approach would only result in further delay and continued marketing of potentially unsafe and ineffective drugs at the expense of consumers. (See discussion regarding the agency's formal determination of economic impact in section II.)

Reference

(1) "Handbook of Nonprescription Drugs," 9th Ed., The American Pharmaceutical Association, Washington, pp. 578–580, 1990.

7. One comment requested clarification that this rulemaking does not affect the use of saccharin and other listed ingredients as inactive or "formulation" ingredients in OTC weight control drug products, or in drugs generally.

This final rule affects the use of the listed ingredients only as active ingredients for the specific indication of weight control. The agency recognizes that some of the ingredients included in this final rule have valid uses as inactive ingredients. Examples include the use of dextrose, fructose, saccharin, and sucrose for sweetening. It is possible that one or more of these ingredients could be present for this purpose in an OTC weight control drug product containing a monograph ingredient. This final rule does not affect such use. However, any inactive ingredient present in a product should have an appropriate purpose and be safe and suitable for use in the product in accord with 21 CFR 330.1(e).

B. Comments On Guar Gum

8. Two comments objected to the agency's determination that guar gum is unsafe and ineffective (55 FR 45788 at 45790). One comment contended that the agency did not have sufficient data to justify the reclassification of guar gum from Category III to Category II. The comment argued that the vast majority of the data discussed in the proposed rule related to a specific product. This particular product contained high levels of guar gum (another comment stated these levels were 60 to 90 percent) and was manufactured in a manner that contributed to the problem of esophageal obstruction. The comment added that FDA is aware that guar gum is safe when consumed in certain amounts.

Another comment asserted that while guar gum may be unsafe at high concentrations, it has been used safely as a food ingredient at levels of 10 percent or less. The comment requested FDA to approve the use of 10 percent or less guar gum in dietary food products that contain at least 50 percent of food grade, natural, nonswellable, cellulose fibers. Another comment described personal experience in manufacturing guar gum tablets. The comment stated that there are various grades of guar gum powder from which to choose, and each grade of guar gum appears to have different rates of gelling. The comment stated that the guar gum product that caused the esophageal obstruction problems discussed in the agency's proposal was manufactured by at least four different companies. The comment suggested that before FDA condemns guar gum as unsafe, it should try to determine if the esophageal obstruction was caused by a particular manufacturer's version of this guar gum product. The comment argued that it would be unfair to condemn guar gum because of one or two irresponsible manufacturers/distributors. The comment also mentioned that the vast majority of guar gum tablets sold over the years were manufactured by "food supplement" manufacturers without the regulatory oversight afforded to "drug manufacturers." The comment mentioned several studies that support the safety and effectiveness of guar gum (Refs. 1, 2, and 3) and stated that the medical literature is replete with studies conducted with guar gum, with minimal side effects (bloating, transient diarrhea, and flatulence) being reported.

The request for FDA to approve use of 10 percent or less guar gum in dietary food products that contain at least 50 percent of food grade, natural, nonswellable, cellulose fibers is outside the scope of the current rulemaking. The agency notes that guar gum is listed in 21 CFR 184.1339 as a direct food substance affirmed as generally recognized as safe. Various uses at low levels (with a maximum usage level of 2 percent permitted) are allowed in food products. As discussed in comment 2 above, these food uses of guar gum are not affected by this rulemaking.

The agency agrees with the comment that there may be methods of formulation and manufacture of tablets containing high concentrations of guar gum as an active weight control drug ingredient that could result in a safe product having little or no risk of esophageal obstruction. For some of the very reasons mentioned by one comment, however, the agency considers the method of manufacture and exact details of formulation, as well as dissolution and gelling data, to be critical in determining the safety and effectiveness of each product. Accordingly, the agency has determined that individual product testing and

approval under the new drug approval procedures, rather than an OTC drug monograph, are necessary to ensure the safety of such products. For this reason, the agency is not addressing the safety and efficacy data provided by the comment, but rather is deferring any further evaluation until such data are submitted as part of an NDA.

References

(1) Uncited studies by Mendeloff, A. I., and M. McIver, Comment No. C44, Docket No. 81N–0022, Dockets Management Branch.

(2) Krotkiewski, M., "Use of Various Fibres in Different Weight Reduction Programs," draft of unpublished study, Exhibit No. 1 in Comment No. C44, Docket No. 81N–0022, Dockets Management Branch.

(3) Evans, E., and D.S. Miller, "Bulking Agents in The Treatment of Obesity," *Nutrition and Metabolism*, 18:199–203, 1975.

II. The Agency's Final Conclusions on Certain OTC Weight Control Category II and III Active Ingredients

The agency has determined that no substantive comments or adequate additional data have been submitted to the OTC drug review to support any of the ingredients listed below as being generally recognized as safe and effective for use in OTC weight control drug products. Based on the agency's procedural regulations (21 CFR 330.10(a)(7)(ii)), the agency has determined that the following ingredients are not generally recognized as safe and effective and are misbranded when present in OTC weight control drug products:

Alcohol
Alfalfa
Alginic acid
Anise oil
Arginine
Ascorbic acid [1]
Bearberry [2]
Biotin
Bone marrow, red [3]
Buchu
Buchu, potassium extract
Caffeine
Caffeine citrate
Calcium
Calcium carbonate
Calcium caseinate
Calcium lactate
Calcium pantothenate [4]
Carboxymethylcellulose sodium
Carrageenan
Cholecalciferol [5]
Choline
Chondrus
Citric acid
Cnicus benedictus
Copper
Copper gluconate
Corn oil
Corn syrup
Corn silk, potassium extract
Cupric sulfate
Cyanocobalamin (vitamin B_{12})
Cystine
Dextrose
Docusate sodium [6]
Ergocalciferol [7]
Ferric ammonium citrate
Ferric pyrophopshate
Ferrous fumarate
Ferrous gluconate
Ferrous sulfate (iron)
Flax seed
Folic acid
Fructose
Guar gum
Histidine
Hydrastis canadensis
Inositol
Iodine
Isoleucine
Juniper, potassium extract
Karaya gum
Kelp [8]
Lactose
Lecithin
Leucine
Liver concentrate
Lysine [9]
Lysine hydrochloride [10]
Magnesium
Magnesium oxide
Malt
Maltodextrin
Manganese citrate
Mannitol
Methionine
Methylcellulose
Mono- and di-glycerides [11]
Niacinamide
Organic vegetables
Pancreatin [12]
Pantothenic acid
Papain
Papaya enzymes
Pepsin
Phenacetin [13]
Phenylalanine
Phosphorus
Phytolacca [14]
Pineapple enzymes
Plantago seed [15]
Potassium citrate
Pyridoxine hydrochloride (vitamin B_6)
Riboflavin
Rice polishings
Saccharin
Sea minerals
Sesame seed
Sodium
Sodium bicarbonate
Sodium caseinate
Sodium chloride (salt)
Soybean protein [16]
Soy meal
Sucrose
Thiamine hydrochloride (vitamin B_1)
Thiamine mononitrate (vitamin B_1 mononitrate)
Threonine
Tricalcium phosphate
Tryptophan
Tyrosine
Uva ursi, potassium extract
Valine
Vegetable
Vitamin A

[1] The Panel designated this ingredient "ascorbic acid (vitamin C)." However, "ascorbic acid" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[2] The Panel designated this ingredient "uva ursi." However, "bearberry" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

[3] The Panel designated this ingredient "bone marrow-red-glycerin extract." However, "bone marrow, red" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

[4] The Panel designated this ingredient "calcium pantothenate (D-calcium pantothenate)." However, "calcium pantothenate" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[5] The Panel designated this ingredient "vitamin D." However, "cholecalciferol" is the official name for this ingredient in the "United States Pharmacopeia XXII—National Formulary XVII," 1990.

[6] The Panel designated this ingredient "dioctyl sodium sulfosuccinate." However, "docusate sodium" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[7] The Panel designated this ingredient "vitamin D_2." However, "ergocalciferol" is the official name for this ingredient in the "United States Pharmacopeia XXII—National Formulary XVII," 1990.

[8] The Panel designated this ingredient "sea kelp." However, "kelp" is the official name for this ingredient in the "USAN and the USP dictionary of drugs names, 1990."

[9] The Panel designated this ingredient "L-lysine." However, "lysine" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[10] The Panel designated this ingredient "L-lysine monohydrochloride." However, "lysine hydrochloride" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[11] The Panel designated these ingredients "glycerides (mono and di)." However, "mono- and di-glycerides" is the official name for this ingredient in the "United States Pharmacopeia XXII—National Formulary XVII," 1990.

[12] The Panel designated this ingredient "pancreatin enzymes." However, "pancreatin" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[13] In the Federal Register of October 5, 1983 (48 CFR 45466), the agency stated that effective November 4, 1983, products containing phenacetin are considered new drugs for which an approved NDA is required for marketing. This action was taken because of phenacetin's high potential for misuse and its unfavorable benefit-to-risk ratio with chronic use.

[14] The Panel designated this ingredient "phytolacca berry juice." However "phytolacca" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

[15] The Panel designated this ingredient "psyllium." However, "plantago seed" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[16] The Panel designated this ingredient "soy bean protein." However, "soybean protein" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

Vitamin A acetate
Vitamin A palmitate
Vitamin E
Wheat germ
Xanthan gum
Yeast

The agency is amending 21 CFR 310.545 by adding new paragraph (a)(20) and by revising paragraph (d) to establish that certain active ingredients in OTC weight control drug products are not generally recognized as safe and effective. Any drug product containing any of these active ingredients and labeled for OTC weight control use will be considered nonmonograph and misbranded under section 502 of the act (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to amend the OTC weight control drug products monograph, after it is finalized, to include any of the above active ingredients in OTC weight control drug products. (See 21 CFR 10.30.) Products containing such ingredients may not be marketed while the agency is evaluating the petition.

Any OTC drug product containing any of the above ingredients either labeled or intended as an OTC weight control active ingredient that is initially introduced or initially delivered for introduction into interstate commerce after February 8, 1991, and that is not the subject of an approved application will be in violation of sections 502 and 505 of the act (21 U.S.C. 352 and 355) and, therefore, subject to regulatory action. Further, any OTC drug product containing an ingredient subject to this rulemaking that is repackaged or relabeled after February 8, 1991, must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

One comment was received in response to the agency's request for specific comment on the economic impact of this rulemaking (55 FR 45788 at 45792). The issues raised by this comment are discussed in comment 6 above. There currently are two other ingredients being considered for monograph status that manufacturers can use to reformulate affected products. As a result of this final rule, manufacturers may need to reformulate some products prior to promulgation of the applicable final monograph. However, there will be no additional costs because reformulation would be required, in any event, when the final monograph is published.

Early finalization of the nonmonograph status of the ingredients listed in this notice will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of ingredients for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Most manufacturers will benefit from being able to use alternative ingredients that have been recommended by the Panel as being generally recognized as safe and effective, without incurring additional expense of clinical testing for these ingredients. Based on the above, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, subchapter D of Chapter I of title 21 of the Code of Federal Regulations is amended in part 310 as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(20) and by revising paragraph (d) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(20) *Weight control drug products.*

Alcohol
Alfalfa
Alginic acid
Anise oil
Arginine
Ascorbic acid
Bearberry
Biotin
Bone marrow, red
Buchu
Buchu, potassium extract
Caffeine
Caffeine citrate
Calcium
Calcium carbonate
Calcium caseinate
Calcium lactate
Calcium pantothenate
Carboxymethylcellulose sodium
Carrageenan
Cholecalcierol
Choline
Chondrus
Citric acid
Cnicus benedictus
Copper
Copper gluconate
Corn oil
Corn syrup
Corn silk, potassium extract
Cupric sulfate
Cyanocobalamin (vitamin B_{12})
Cystine
Dextrose
Docusate sodium
Ergocalciferol
Ferric ammonium citrate
Ferric pyrophosphate
Ferrous fumarate
Ferrous gluconate
Ferrous sulfate (iron)
Flax seed
Folic acid
Fructose
Guar gum
Histidine
Hydrastis canadensis
Inositol
Iodine
Isoleucine
Juniper, potassium extract
Karaya gum
Kelp
Lactose
Lecithin
Leucine
Liver concentrate
Lysine
Lysine hydrochloride
Magnesium
Magnesium oxide
Malt
Maltodextrin
Manganese citrate
Mannitol
Methionine
Methylcellulose
Mono- and di-glycerides
Niacinamide
Organic vegetables
Pancreatin
Pantothenic acid
Papain
Papaya enzymes

Pepsin
Phenacetin
Phenylalanine
Phosphorus
Phytolacca
Pineapple enzymes
Plantago seed
Potassium citrate
Pyridoxine hydrochloride (vitamin B_6)
Riboflavin
Rice polishings
Saccharin
Sea minerals
Sesame seed
Sodium
Sodium bicarbonate
Sodium caseinate
Sodium chloride (salt)
Soybean protein
Soy meal
Sucrose
Thiamine hydrochloride (vitamin B_1)
Thiamine mononitrate (vitamin B_1 mononitrate)
Threonine
Tricalcium phosphate
Tryptophan
Tyrosine
Uva ursi, potassium extract
Valine
Vegetable
Vitamin A
Vitamin A acetate
Vitamin A palmitate
Vitamin E
Wheat germ
Xanthan gum
Yeast

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) and (d)(2) of this section.

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(19) of this section; and

(2) February 8, 1991, for products subject to paragraph (a)(20) of this section.

Dated: April 18, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-18756 Filed 8-7-91; 8:45 am]

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federal register

Thursday
August 8, 1991

Part V

Department of Commerce

International Trade Administration

19 CFR Part 356

Panel Rule Under Article 1904 of the U.S. Canada Free Trade Agreement; Final Rule

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 356

[Docket No. 81141-1052]

RIN 0625-AA33

Panel Rule Under Article 1904 of the U.S.-Canada Free Trade Agreement

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: Title IV of the United States-Canada Free-Trade Implementation Act of 1988, Public Law No. 100-4-49, 102 Stat. 1851 (1988) ("the FTA Act"), establishes procedures for review by a binational panel of United States antidumping and countervailing duty final determinations involving Canadian products and for requesting panel review of Canadian antidumping and countervailing duty final determinations involving products of the United States. Title IV implements chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement"). As authorized by section 405(d) of the FTA Act, an interim-final rule was published on December 30, 1988 (53 FR 53232) requesting comments with respect to these regulations. These regulations are intended to implement certain administrative procedures required by Article 1904 of the Agreement and the FTA Act and have been modified in response to the comments received.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Counsel for Trade Agreements, or Diane M. McDevitt, Attorney-Adviser, room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; (202) 377-5285 or 377-0834, respectively.

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

This final rule is exempt from all requirements of Section 553 of the Administrative Procedure Act (5 U.S.C. 553), including notice and opportunity to comment and a delay of the effective date because it implements Chapter 19 of the Agreement and thus relates to a foreign affairs function of the United States.

Executive Order 12291

Because this rule concerns a foreign affairs function of the United States, it is not a rule within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no Regulatory Impact Analysis was prepared.

Paperwork Reduction Act

This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*). The collection of information contained in these regulations occur within the course of ongoing investigations or actions initiated prior to the determinations that are reviewable by binational panels under the Agreement. Thus they are not covered by the Paperwork Reduction Act. See 5 CFR 1320.3(c).

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because the rule was not required to be promulgated as a proposed rule before issuance as a final rule by Section 553 of the Administrative Procedure Act or by any other law. Accordingly, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612 (52 FR 41685, October 30, 1987).

Background

Some of the amendments to the interim-final rule involve the correction of typographical errors or minor ministerial corrections that do not warrant explanation. Other changes result from the comments received in response to the interim-final rule and request for comments that was published on December 30, 1988 (53 FR 53232). These comments and the Department's responses to them are summarized below.

Section 356.2

Note: We have deleted the definition of "Court" because the only reference to this term in § 356.4 has been deleted in the final rule. We have added a definition for "privileged information" because a definition of this term was omitted inadvertently from the interim-final rule.

Section 356.3 (a) and (b)

Note: We have increased the number of copies of a Notice of Intent to Commence Judicial Review and Request for Panel Review that are filed with the United States or Canadian Secretary to meet the Secretariat's filing needs. In addition, we have rearranged paragraphs (a) and (b) and have addressed the two documents separately for ease of reference. Finally, rather than repeat the specific filing and service requirements in this section, we refer to the respective sections governing the time limits fixed for filing a Notice Of Intent to Commence Judicial Review and a Request for Panel Review, and the U.S. Secretary's service requirements for Requests for Panel Review filed with the Canadian Secretary.

Section 356.4

Comment: We received several comments noting the confusion that the interim-final rule has caused among practitioners. For example, paragraph (a) repeated the service requirements articulated in § 356.3. In addition, some practitioners were listing the address of the party to the proceeding as the service address, even if the party to the proceeding had counsel.

Department Position: We agree. For ease of reference, we have rearranged the requirements set forth in § 356.4. We have deleted the service requirements listed in paragraph (a) of the interim-final rule and merely cross-reference § 356.3 for such requirements in paragraph (c) of the final rule. We have revised the language in paragraph (b) of the interim-final rule to conform with the Article 1904 Panel Rules, as amended, (54 FR 53165, December 27, 1989) which clarified what information was required in a Notice of Intent to Commence Judicial Review. In particular, "service address" is a defined term. If the party to the proceeding is represented by counsel, the service address is the address of counsel; otherwise, the service address is the address of the party to the proceeding.

Section 356.5(a)

Comment: We have received several comments noting that paragraph (a) erroneously requires that a Request for Panel Review must be filed with the United States Secretary, thus, precluding the parties from filing a Request with the Canadian Secretary.

Department Position: We agree. Because the FTA and existing Article 1904 Panel Rules permit the filing of a Request for Panel Review with either Secretary, we have revised the language accordingly.

Section 356.5(c)

Comment: We received several comments noting the confusion that the interim-final rule has caused among practitioners. For example, it was unclear under paragraph (c) of the interim-final rule whether the party to the proceeding filing a Request for Panel Review should list as the service address counsel's address or the party's own address.

Department Position: See the Department's response to comments on § 356.4.

Section 356.5(d)

Note: Because § 356.5 of the interim-final rule made no reference to service requirements, we have added a provision to the final rule which cross-references the appropriate service provision in § 356.3.

Section 356.7 (b) and (c)

Comment: We received one comment recommending that § 356.7(b) should conform with 19 CFR 353.31 (d) and (e)(2) and 355.31 (d) and (e)(2), the Department's antidumping and countervailing duty regulations pertaining to the submission of factual information in administrative proceedings. The comment suggests that the latter procedures should apply to this section as well because a request under this section is filed with the Department as part of an administrative proceeding and requires a response from the Department. Likewise, the comment notes that § 356.7(c) should conform to 19 CFR 353.31(g) and 355.31(g) because the requester should be required to serve a copy of its request on the interested parties, just as with any other document filed with the Department that requires further administrative action.

Department Position: We agree that the filing and service requirements for requests to determine when the Canadian Government was informed of a scope determination should conform to the Department's regulations pertaining to filings made during an administrative proceeding. We have amended the interim-final rule accordingly.

Section 356.8(d)(1)

Comment: We received one comment recommending that § 356.8(d)(1) should conform with 19 CFR 353.31 (d) and (e)(2) and 355.31 (d) and (e)(2), the Department's antidumping and countervailing duty regulations pertaining to the submission of factual information in administrative proceedings. The comment suggests that the latter procedures should apply to this section as well because a request under this section is filed with the Department as part of an administrative proceeding and requires responsive action by the Department. In addition, several parties argue that the ten-day deadline for filing a Request for Continued Suspension of Liquidation is unfair and contrary to the statute.

Department Position: Consistent with the Department's response to comments on § 356.7(b), we agree that the filing requirements should conform to those for administrative proceedings under §§ 353 and 355, and have made the necessary changes. With respect to the ten-day deadline for filing a Request for Continued Suspension of Liquidation, we agree that the interim-final rule is unnecessarily strict. The formulation in the interim-final rule reflected the reasonable interpretation of the statute that the Department cannot continue the suspension of liquidation if the suspension has already been lifted. Nevertheless, this interpretation may be unduly technical. The chance that some entries might have been liquidated should not act as a prohibition against requesting suspension generally. A party may make such a request whenever it wishes but the party must realize that is does so at its own peril.

Section 356.9(f)

Note: In the final rule we have added to the list of persons eligible to receive access to business proprietary information in the administrative record those officials of the Canadian Government who are designated to determine whether to seek an extraordinary challenge committee. This addition conforms to the amendments to section 777(d) of the Tariff Act of 1930 that were enacted in section 134(a)(4)(B)(iv) of the Customs and Trade Act of 1990, Public Law No. 380 (1990). Comparable conforming changes have been made to paragraphs 356.10 (b)(2) and (c).

Section 356.10(b)(1)

Note: We note in the final rule that the Department has adopted application forms for the disclosure of proprietary information and provide information regarding the availability of such forms. We further note that such forms may be amended from time to time.

Section 356.10(b)(2)

Comment: We have received comments regarding the deadline for the submission of protective order applications for counsel and professionals described in § 356.9(b). The comments note that the interim-final rule incorrectly requires counsel and professionals to file their applications at the same time that they file their complaint or notice of appearance in order for the Department to consider their applications timely filed.

Department Position: We agree. Thus, we have clarified the timing of applications on behalf of counsel and professionals by providing that persons described in § 356.9(b) may file their applications at the same time that they file their complaint or notice of appearance or any time thereafter. We have also amended the timing of applications for the Secretariat staff and now require the staff to file their applications immediately upon assuming their official duties because they need access to proprietary information as soon as practicable in order for these individuals to afford the efficient, prompt service contemplated under the FTA.

Section 356.10(b)(3)

Note: We have rearranged and renumbered subsections (i), (ii), and (iii) and have added subsection (iv) to provide clearer guidance with respect to the filing and service requirements governing protective order applications for the release of proprietary information.

Section 356.10(b)(3)(i)

Comment: We have received one comment suggesting that the processing of protective orders for persons described under § 356.9(a) (panelists, extraordinary challenge committee members and assistants), would proceed much smoother if the Department only required these persons to submit their completed applications to the United States Secretary for handling.

Department Position: We agree. In order to further assist panelists, extraordinary challenge committee members and assistants, the final rule requires these persons to submit the completed original application only to the United States Secretary. The United States Secretary, in turn, shall file the original plus six copies along with an appropriate letter of transmittal with the competent investigating authority.

Section 356.10(b)(3)(ii)

Comment: We received one comment recommending that § 356.10(b)(3)(ii) should conform with 19 CFR 353.31 (d) and (e)(2) and 19 CFR 355.31 (d) and (e)(2), the Department's antidumping and countervailing duty regulations pertaining to the submission of factual information in administrative proceedings. The comment notes that these procedures should apply here as well because a request under this section is filed with the Department and requires further administrative processing.

Department Position: We agree. Because a request under this section is filed with the Department and requires further administrative processing, the final rule requires the applicants to file the appropriate number of copies and a letter of transmittal in conformity with other administrative filings. It is hoped through this change that the Department will be able to process these applications in a more efficient, expeditious manner.

Section 356.10(b)(3)(iv)

Note: In order to eliminate the repetitious listing of the specific methods of service required under the FTA, we have cross-referenced § 356.3(c)–(e), the general provision regarding the service of documents in a binational panel proceeding.

Section 356.10(c)(1) (ii) and (iii)

Note: In order to further assist the members and staff of binational panels and extraordinary challenge committees in the release of proprietary information pursuant to protective order, the final rule merely requires that these applicants submit one copy of the Department's protective order to the United States Secretary. The United States Secretary, in turn, will transmit a copy of the countersigned order (panelists only) to the Department and make the appropriate copies for the United States and the Canadian Secretariat files.

Section 356.10(d) (1) and (2)

Comment: We received several comments that this section is unclear with respect to the Department's timing of decisions on applications filed by counsel or professionals. For example, § 356.10(d)(1) of the interim-final rule led the reader to believe that the Department's decision would be rendered on the tenth day following the filing of the application.

Department Position: We agree. In order to eliminate the noted confusion, we have clarified the first paragraph to read that the Department's decision will not be made until at least the tenth day following the request. In addition, we have added a paragraph to this section and have renumbered the remaining paragraphs in order to further clarify when the Department will normally render decisions on applications filed by counsel and professionals and to bring this section into conformity with 19 CFR 353.34(b)(5) and 355.34(b)(5), the Department's antidumping and countervailing duty regulations dealing with the disclosure of proprietary information under protective order. Thus, barring any objection, § 356.10(d)(2) of the final rule requires the Department normally to render a decision to approve or deny an application for protective order within fourteen days. Where an objection has been filed, the Department normally will render a decision within 30 days. With respect to service requirements, we have merely cross-referenced § 356.3(c)–(e) in subparagraph (1) of the final rule, rather than repeat the methods of service required pursuant to this rule.

Section 356.10(d) (3) and (4)

Note: We have eliminated the requirement in these paragraphs that the Department serve the submitter of proprietary information with a copy of the protective order or denial letter. Because the recipient of a protective order is required under § 356.10(d)(5) to serve a copy of the protective order on all participants in the panel review, the former service requirement resulted in unnecessary, duplicated service.

Section 356.10(d)(5)

See the above Comment and Department Position pertaining to § 356.10(b)(3)(iv).

Section 356.10(e)

Note: We have relettered this subsection to correct a previous lettering error (*e.g.*, no paragraph (e) in the interim-final rule). In addition, we have changed the terminology in this section from "motion" to "notification" to more accurately characterize the action taken before the Department.

Section 356.11(a)

See the above Comment and Department Position pertaining to § 356.10(b)(3)(i).

Section 356.11(a)(3)

See Note pertaining to § 356.9(f).

Section 356.11(b)(1)

See Note pertaining to § 356.10(b)(1).

Section 356.11(b)(2)(i)

Comment: We have received a few comments noting the confusion in this section because under the interim-final rule, it appeared that the persons listed in category (C) were already covered in category (B). In addition, the interim-final rule inadvertently failed to include mention of the staff of extraordinary challenge committee members.

Department Position: We agree. Accordingly, in the final rule, we have eliminated the specific reference to officials of the United States Government appointed by the United States Trade Representative and have included persons retained or employed by an extraordinary challenge committee member.

Section 356.11(b)(2)(iv)

Note: We have renumbered this paragraph in the final rule (paragraph (3) in the interim-final rule) and have made the appropriate changes so that this paragraph conforms grammatically with paragraphs (i), (ii), and (iii).

Section 356.11(d)(2)

See the Department's Note regarding § 356.10(c)(1) (ii) and (iii).

Section 356.11(e)

Note: We have changed the terminology in this section from "motion" to "notification" to more accurately reflect the action taken before the Department.

Section 356.27(e)

Comment: We received a comment that the interim-final rule was unclear concerning the United States Government's handling of violations of Canadian disclosure undertakings.

Department Position: We agree. We have clarified this provision in the final rule, noting that a final decision made in the United States in conjunction with a charge by an authorized agency of Canada will be forwarded to the Secretariat for transmittal to that agency for publication.

List of Subjects in 19 CFR Part 356

Antidumping, Canada, Countervailing Duty, Imports, Judicial Review, Trade Agreements.

Dated: July 1, 1991.

J. Michael Farren,

Under Secretary for International Trade.

For the reasons set forth in the preamble, 19 CFR part 356 is revised to read as follows:

PART 356—PROCEDURES AND RULES FOR IMPLEMENTING ARTICLE 1904 OF THE UNITED STATES-CANADA FREE-TRADE AGREEMENT

Subpart A—Scope and Definitions

Sec.

Subpart B—Procedures for Commencing Review of Final Determinations

Subpart C—Proprietary and Privileged Information

Subpart D—Violation of a Protective Order or a Disclosure Undertaking

Authority: 19 U.S.C. 1516a and 1677f(d).

Subpart A—Scope and Definitions

§ 356.1 Scope.

This part sets forth procedures and rules for the implementation of Article 1904 of the United States-Canada Free-Trade Agreement under the Tariff Act of 1930, as amended by title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Act") (19 U.S.C. 1516a and 1677f(d)).

§ 356.2 Definitions.

For purposes of this part:

(a) *Act* means the Tariff Act of 1930, as amended;

(b) *Administrative law judge* means the person appointed under 5 U.S.C. 3105 who presides over the taking of evidence as provided by Subpart D;

(c) *Affected party* means a person against whom sanctions have been proposed for alleged violation of a protective order or disclosure undertaking but who is not a charged party;

(d) *Agreement* means the Free-Trade Agreement between Canada and the United States of America entered into between the Government of Canada and the Government of the United States of America, which took effect on January 1, 1989;

(e) *APO Sanctions Board* means the Administrative Protective Order Sanctions Board;

(f) *Authorized agency of Canada* means any Canadian government agency that is authorized by Canadian law to request the Department to initiate proceedings to impose sanctions for an alleged violation of a disclosure undertaking;

(g) *Binational panel* means a binational panel established pursuant to annex 1901.2 to chapter 19 of the Agreement for the purpose of reviewing a final determination;

(h) *Canadian Secretary* means the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on behalf of the Secretary;

(i) *Charged party* means a person who is charged by the Deputy Under Secretary with violating a protective order or an undertaking;

(j) *Chief Counsel* means the Chief Counsel for Import Administration, U.S. Department of Commerce, or designee;

(k) *Competent investigating authority* means the agency of a government that issued the final determination at issue, which may be:

(1) in the case of Canada,

(i) the Deputy Minister of National Revenue for Customs and Excise as defined in the Special Import Measures Act, or his successor, or

(ii) the Canadian International Trade Tribunal, or its successor; and

(2) in the case of the United States,

(i) the International Trade Administration of the United States Department of Commerce, or its successor, or

(ii) the United States International Trade Commission, or its successor;

(l) *Date of service* means, for purposes of Subpart C only, the day a document is deposited in the mail or delivered in person;

(m) *Days* means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

(n) *Department* means the U.S. Department of Commerce;

(o) *Deputy Under Secretary* means the Deputy Under Secretary for International Trade, U.S. Department of Commerce;

(p) *Director* means an Office Director under the Deputy Assistant Secretary for Investigations, U.S. Department of Commerce, or designee, if the panel review is of a final determination by the Department under section 751 of the Act, or an Office Director under the Deputy Assistant Secretary for Compliance, or designee, if the panel review is of a final determination by the Department under section 705(a) or 735(a) of the Act;

(q) *Disclosure undertaking* means the Canadian mechanism for protecting proprietary or privileged information during proceedings pursuant to Article 1904 of the Agreement, as prescribed by § 77.21(2) of the Special Import Measures Act;

(r) *Extraordinary challenge committee* means the committee established pursuant to section 407 of the FTA Act to review decisions of a panel or conduct of a panelist;

(s) *Final determination* has the meaning assigned to the term "final determination" by Article 1911 of the Agreement and includes a Canadian definitive decision within the meaning of § 77.1(1) of the Special Import Measures Act;

(t) *Lesser-included sanction* means a sanction of the same type but of more limited scope than the proposed sanction for violation of a protective order or disclosure undertaking; thus, a one-year bar on representation before the Department is a lesser-included sanction of a proposed seven-year bar;

(u) *Panel review* means review of a final determination pursuant to chapter 19 of the Agreement;

(v) *Party to the proceeding* means a person that would be entitled, under section 516A of the Act, to commence proceedings for judicial review of a final determination;

(w) *Participant* means a party to the proceeding that files a Complaint or a Notice of Appearance in a panel review, or the Department;

(x) *Parties* means, in an action under subpart D, the Department and the charged party or affected party;

(y) *Person* means, an individual, partnership, corporation, association, organization, or other entity;

(z) *Privileged information* means

(1) With respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States and with respect to which the privilege has not been waived, and;

(2) With respect to a panel review of a final determination made in Canada, information of the Government of Canada that is subject to the solicitor-client privilege under the laws of Canada or that constitutes part of the deliberative process with respect to the final determination and with respect to which the privilege has not been waived.

(aa) *Proprietary information* means information the disclosure of which the Department has decided is limited under the procedures adopted pursuant to Article 1904.14 of the Agreement, including business or trade secrets; production costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter; or information the disclosure of which an authorized agency of Canada has decided is limited under the procedures adopted pursuant to Article 1904.14 of the Agreement;

(bb) *Protective order* means an administrative protective order issued by the Department under 19 CFR 356.10(c)(1), 356.10(c)(2), 356.10(d)(2) or 356.11(c)(1);

(cc) *Scope determination* means a determination by the Department, reviewable under section 516A(a)(2)(B)(vi) of the Act, as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or an antidumping or countervailing duty order covering Canadian merchandise;

(dd) *Secretariat* means the Secretariat established pursuant to Article 1909 of the Agreement and includes the Secretariat sections located in both Canada and the United States;

(ee) *Service address* means the facsimile number, if any, and address set out by a party to the proceeding as the address of counsel at which the party may be served, or, where the party is not represented by counsel, the facsimile number, if any, and address of the party;

(ff) *Service list* means, with respect to a panel review,

(1) Where the final determination was made in the United States, the list maintained by the competent investigating authority of parties to the proceeding leading to the final determination, and

(2) Where the final determination was made in Canada, the list of persons to whom notice of the final determination was sent by the Deputy Minister or the list of persons that appeared in the proceedings before the Tribunal, as the case may be;

(gg) *Under Secretary* means the Under Secretary for International Trade, U.S. Department of Commerce, or designee;

(hh) *United States Secretary* means the Secretary of the United States section of the Secretariat and includes any person authorized to act on behalf of the Secretary.

Subpart B—Procedures for Commencing Review of Final Determinations

§ 356.3 Filing and service requirements.

(a) *Notice of Intent to Commence Judicial Review.* Where a party to the proceeding intends to commence judicial review of a final determination, the party shall serve an original and 8 copies of the Notice of Intent to Commence Judicial Review on the United States Secretary or the Canadian Secretary during normal business hours of the Secretariat and within the time limits established in § 356.4(b). The party shall serve the Notice on all other parties to the proceeding and the competent investigating authority in accordance with paragraph (c) of this section.

(b) *Request for Panel Review.* Where a party to the proceeding seeks panel review of a final determination by filing a Request for Panel Review with the United States Secretary, the party shall file an original and 8 copies of the Request for Panel Review during the normal business hours of the Secretariat and within the time limits established in § 356.5(a). The party shall serve the Request on all other parties to the proceeding and the competent investigating authority, except where the document is required to be served by the United States Secretary, as provided in § 356.5(e).

(c) Service of a document on a party to the proceeding may be effected in the following manner:

(1) By delivering a copy of the document to the service address of the party to the proceeding, as defined in § 356.2(ee);

(2) By sending a copy of the document to the service address of the party to the proceeding, as defined in § 356.2(ee) by facsimile transmission or an expedited delivery courier or mail service, such as express mail; or

(3) By personal service on the party to the proceeding.

(d) Service of a document on the competent investigating authority may be effected in any manner provided in paragraph (c) of this section, when made on the General Counsel of the competent investigating authority.

(e) A certificate of service or certificate of receipt shall appear on, or be affixed to, the documents referred to in paragraphs (a) and (b) of this section.

(f) Where a Notice of Intent to Commence Judicial Review or a Request for Panel Review is served by an expedited delivery courier or mail service, the date of service set out in the certificate of service shall be the day on which the document is consigned to the courier service or mailed.

(g)(1) The normal business hours during which the offices of the United States section of the Secretariat shall be open to the public are 9:00 a.m. to 5:00 p.m. each weekday except for legal holidays of the United States section of the Secretariat, as defined in the rules of procedure adopted pursuant to Article 1904.14 of the Agreement.

(2) The normal business hours during which the offices of the Canadian section of the Secretariat shall be open to the public are 9:00 a.m. to 5:00 p.m. each weekday except for legal holidays of the Canadian section of the Secretariat, as defined in the rules of procedure adopted pursuant to Article 1904.14 of the Agreement.

(h)(1) The United States section of the Secretariat is located at Room 4012, U.S. Department of Commerce, Pennsylvania Avenue & 14th Street, NW., Washington, DC 20230.

(2) The Canadian section of the Secretariat is located at Royal Bank Center, suite 705, 90 Sparks Street, Ottawa, Ontario, Canada K1P5B4.

§ 356.4 Notice of intent to commence judicial review.

(a) A Notice of Intent to Commence Judicial Review shall include the following information:

(1) The name of the party to the proceeding filing the Notice;

(2) The name of counsel for the party to the proceeding, if any;

(3) The service address, as defined in § 356.2(ee);

(4) The telephone number of counsel for the party to the proceeding, or where the party is not represented by counsel, the telephone number of the party;

(5) The title of the final determination for which judicial review is sought, the case number assigned by the competent investigating authority, and the appropriate citation if the final determination was published in the **Federal Register**; and

(6) If the final determination is a scope determination, the date on which notice of the scope determination was received by the Government of Canada.

(b) A Notice of Intent to Commence Judicial Review shall be deemed to be timely filed if a Notice in compliance with these regulations is delivered no later than 20 days after:

(1) The date the final determination was published in the **Federal Register**; or

(2) If the final determination is a scope determination, the date on which notice of the scope determination was received by the Government of Canada.

(c) A Notice of Intent to Commence Judicial Review shall be served in accordance with § 356.3 of these regulations.

§ 356.5 Request for panel review.

(a) Only a party to the proceeding may request binational panel review of a final determination. To make such a request, a party shall file a Request for Panel Review with the United States Secretary or the Canadian Secretary no later than the date that is 30 days after:

(1) The date the final determination was published in the **Federal Register** or **Canada Gazette**; or

(2) If the final determination is a scope determination, the date on which notice

of the scope determination was received by the government of the other country.

(b) Receipt of a request in compliance with this section by the United States Secretary or the Canadian Secretary, shall be deemed to be a request for binational panel review within the meaning of section 516A(g)(8) of the Act.

(c) A Request for Panel Review shall contain the following information:

(1) The name of the party to the proceeding requesting panel review;

(2) The name of counsel for the party to the proceeding, if any;

(3) The service address, as defined in § 356.2(ee);

(4) The telephone number of counsel for the party to the proceeding, or where the party is not represented by counsel, the telephone number of the party;

(5) The title of the final determination for which panel review is requested, the case number assigned by the competent investigating authority, and the appropriate citation if the final determination was published in the **Federal Register** or **Canada Gazette**;

(6) Where a Notice of Intent to Commence Judicial Review has been served and the sole reason that the Request for Panel Review is made is to require review of the final determination by a panel, a statement to that effect;

(7) If the final determination is a scope determination, the date on which notice of the scope determination was received by the government of the other country; and

(8) The service list.

(d) A Request for Panel Review shall be filed and served in accordance with § 356.3 of these regulations.

(e) Where a party to the proceeding files a Request for Panel Review with the Canadian Secretary, the United States Secretary shall serve a copy of the request on:

(1) Any other party to the proceeding; and

(2) The competent investigating authority.

§ 356.6 Receipt of notice of scope determinations by the Government of Canada.

(a) Where the Department has made a scope determination, notice of such determination shall be deemed received by the Government of Canada when a certified copy of the determination is delivered to the Chancery of the Embassy of Canada during its normal business hours.

(b) Where feasible, the Department, or an agent therefor, will obtain a certificate of receipt signed by a person authorized to accept delivery of documents to the Embassy of Canada acknowledging receipt of the scope determination. The certificate will describe briefly the document being delivered to the Embassy of Canada, state the date and time of receipt, and include the name and title of the person who signs the certificate. The certificate will be retained by the Department in its public files pertaining to the scope determination at issue.

§ 356.7 Request to determine when the Government of Canada received notice of a scope determination.

(a) Pursuant to section 516A(g)(10) of the Act, any party to the proceeding may request in writing from the Department the date on which the Government of Canada received notice of a scope determination made by the Department.

(b) A request shall be made by filing a written request and the correct number of copies in accordance with the requirements set forth in 19 CFR 353.31 (d) and (e)(2) or 355.31 (d) and (e)(2) with the Secretary of Commerce, Attention: Import Administration, Central Records Unit, room B-099, U.S. Department of Commerce, Pennsylvania Ave. & 14th Street NW., Washington, DC 20230. A letter of transmittal must be bound to the original and each copy as the first page of the request. The letter of transmittal must be marked according to the requirements of 19 CFR 353.31(e)(2)(i)-(v) or 355.31(e)(2)(i)-(v).

(c) The requesting party shall serve a copy of the Request to Determine When the Government of Canada Received Notice of a Scope Determination by first class mail or personal service on any interested party on the Department's service list in accordance with the service requirements listed in 19 CFR 353.31(g) or 355.31(g).

(d) The Department will respond to the request referred to in paragraph (b) of this section within five business days of receipt.

§ 356.8 Continued suspension of liquidation.

(a) *In General.* In the case of an administrative determination specified in clause (iii) or (vi) of section 516A(a)(2)(B) of the Act and involving Canadian merchandise, the Department shall not order liquidation of entries of merchandise covered by such a determination until the forty-first day after the date of publication of the notice described in clause (iii) or receipt of the determination described in clause (vi), as appropriate. If requested, the Department will order the continued suspension of liquidation of such entries in accordance with the terms of paragraphs (b), (c), and (d) of this section.

(b) *Eligibility To Request Continued Suspension of Liquidation.*

(1) A participant in a binational panel review that was a domestic party to the proceeding, as described in section 771(9) (C), (D), (E), (F), or (G) of the Act, may request continued suspension of liquidation of entries of merchandise covered by the administrative determination under review by the panel and that would be affected by the panel review.

(2) A participant in a binational panel review that was a party to the proceeding, as described in section 771(9)(A) of the Act, may request continued suspension of liquidation of the merchandise which it manufactured, produced, exported, or imported and which is covered by the administrative determination under review by the panel.

(c) A request for continued suspension of liquidation must include:

(1) The name of the final determination subject to binational panel review and the case number assigned by the Department;

(2) The caption of the binational panel proceeding;

(3) The name of the requesting participant;

(4) The requestor's status as a party to the proceeding and as a participant in the binational panel review; and

(5) The specific entries to be suspended by name of manufacturer, producer, exporter, or U.S. importer.

(d) *Filing and Service.*

(1) A request for Continued Suspension of Liquidation must be filed with the Assistant Secretary for Import Administration, room B-099, Pennsylvania Ave. at 14th Street NW., Washington, DC 20230, in accordance with the requirements set forth in 19 CFR 353.31 (d) and (e)(2) or 355.31 (d) and (e)(2). A letter of transmittal must be bound to the original and each copy as the first page of the request. The letter of transmittal must be marked according to the requirements of 19 CFR 353.31(e)(2)(i)-(v) or 355.31(e)(2)(i)-(v). The envelope and the first page of the request must be marked: Panel Review—Request for Continued Suspension of Liquidation. The request may be made no earlier than the date on which the first request for binational panel review is filed.

(2) The requesting party shall serve a copy of the Request for Continued Suspension of Liquidation on the United States Secretary and all parties to the Proceeding in accordance with the requirements of 19 CFR 353.31(g), or 19 CFR 355.31(g).

(e) *Termination of Continued Suspension.* Upon completion of the panel review, including any panel review of remand determinations and any review by an extraordinary challenge committee, the Department will order liquidation of entries, the suspension of which was continued pursuant to this section.

Subpart C—Proprietary and Privileged Information

§ 356.9 Persons authorized to receive proprietary information.

Persons described in paragraphs (a), (d), (e), and (f) of this section shall, and persons described in paragraphs (b) and (c) of this section may, be authorized by the Department to receive access to proprietary information if they comply with these regulations and such other conditions imposed upon them by the Department:

(a) The members of, and appropriate staff of, a binational panel or extraordinary challenge committee;

(b) Counsel to participants in panel reviews and professionals retained by, or under the direction or control of such counsel, provided that the counsel or professional does not participate in competitive decision-making activity (such as advice on production, sales, operations, or investments, but not legal advice) for the participant represented or for any person who would gain competitive advantage through knowledge of the proprietary information sought;

(c) Other persons who are retained or employed by and under the direction or control of a counsel or professional, panelist, or committee member who has been issued a protective order, such as paralegals, law clerks, and secretaries, if such other persons are:

(1) Not involved in the competitive decision-making of a participant to the panel review or for any person who would gain competitive advantage through knowledge of the proprietary information sought; and

(2) Have agreed to be bound by the terms set forth on the application for protective order of the counsel or professional, panelist, or committee member;

(d) The Secretaries of the United States and Canadian sections of the Secretariat and persons retained or employed by the Secretaries, including court reporters hired by the Secretariat to transcribe panel reviews;

(e) Such officials of the United States government as the United States Trade Representative informs the Department require access to proprietary information for the purpose of evaluating whether the United States should seek an extraordinary challenge committee review of a panel determination; and

(f) Such officials of the Canadian government as an authorized agency of Canada informs the Department require access to proprietary information for the purpose of evaluating whether Canada should seek an extraordinary challenge committee review of a panel determination.

§ 356.10 Procedures for obtaining access to proprietary information.

(a) *Persons Who Must File An Application for Disclosure Under Protective Order.* In order to be permitted access to proprietary information in the administrative record of a final determination under review by a panel, all persons described in § 356.9(a), (b), (d), (e), or (f) shall file an application for a protective order.

(b) *Procedures for Applying for a Protective Order.*

(1) *Contents of Applications.* (i) The Department has adopted application forms for disclosure of proprietary information to those persons described in § 356.9 (a), (b), (d), (e), and (f). Application forms for persons described in § 356.9, (a), (d), (e), and (f) are available from the United States Secretariat. Application forms for persons described in § 356.9(b) are available from the Central Records Unit, room B-099, U.S. Department of Commerce, Pennsylvania Avenue & 14th Street NW., Washington, DC 20230. These forms may be amended from time to time.

(ii) Such forms require the applicant to submit a personal sworn statement stating, in addition to such other terms as the Department may require, that the applicant shall:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to the applicant, to any person other than:

(*1*) An official of the Department involved in the particular panel review in which the proprietary information is part of the administrative record,

(*2*) The person from whom the information was obtained,

(*3*) A person who has been granted access to the proprietary information at issue under § 356.9; and

(*4*) A person employed by and under the direction or control of a counsel or professional, panelist, or committee member who has been issued a protective order, such as a paralegal, law clerk, or secretary if such person:

(*i*) Is not involved in competitive decision-making for a participant in the panel review or for any person that would gain competitive advantage through knowledge of the proprietary information sought, and

(*ii*) Has agreed to be bound by the terms set forth in the application for protective order by the counsel, professional, panelist, or committee member;

(B) Not use any of the proprietary information not otherwise available to the applicant for purposes other than proceedings pursuant to Article 1904 of the Agreement; and

(C) Upon completion of the panel review, or at such earlier date as may be determined by the Department, return to the Department or certify to the Department the destruction of all documents released under the protective order and all other documents containing the proprietary information (such as briefs, notes, or charts based on any such information received under the protective order).

(D) Acknowledge that breach thereof may subject the signatory to sanctions under § 356.12.

(2) *Timing of Applications.* Any person described in § 356.9(a) may file an application for disclosure under protective order after a Notice of Request for Panel Review has been filed with the Secretariat. Any person described in § 356.9(b) may file at any time but not before that person files a Complaint or a Notice of Appearance. Any person described in § 356.9(d) shall file an application immediately upon assuming official responsibilities in the United States or Canadian Secretariat. Any person described in § 356.9(e) shall submit an application to the United States Trade Representative for filing with the Department. Any person described in § 356.9(f) shall submit an application to the Canadian Secretary for filing with the Department.

(3) *Filing and Service of Applications.* (i) *Applications of Persons Described in § 356.9(a).*

A person described in 356.9(a) shall submit the completed original of this form to the United States Secretary, FTA Binational Secretariat, room 4012, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. The United States Secretary, in turn, shall file the original plus six copies of the application with the competent investigating authority. A letter of transmittal must be bound to the original and each copy as the first page of this document. The letter of transmittal must be marked according to the requirements of 19 CFR 353.31(e)(2)(i)–(v) or 355.31(e)(2)(i)–(v).

(ii) *Applications of Persons Described in § 356.9(b).*

A Person described in Paragraph (b) of § 356.9 shall submit the completed original and correct number of copies of this form in accordance with the requirements set forth in 19 CFR 353.31(d) and (e)(2) or 355.31 (d) and (e)(2). A letter of transmittal must be bound to the original and each copy as the first page of this document. The letter of transmittal must be marked according to the requirements of 19 CFR 353.31(e)(2)(i)–(v) or 19 CFR 355.31(e)(2)(i)–(v). If the application is filed before the date on which notices of appearance must be filed in the panel review, such person shall concurrently serve four copies of such application on the United States Secretary and one copy on each person listed on the service list. If the application is filed after the deadline for filing a Notice of Appearance, such person shall serve four copies of the application on the United States Secretary and one copy on each participant in the panel review.

(iii) *Applications of Persons Described in § 356.9 (d) and (e).* Any person described in paragraph (d) or (e) of § 356.9 who files an application with the Department shall file four copies with the United States section of the Secretariat, for placement in the public inspection files of the United States and Canadian sections of the Secretariat.

(iv) *Method of Service.* Service of an application shall be made in accordance with § 356.3(c)–(e).

(4) *Release to Employees of Panelists, Committee Members, and Counsel or Professionals.* A person described in paragraph (c) of § 356.9, including a paralegal, law clerk, or secretary, may be permitted access to proprietary information disclosed under protective order by the counsel or professional, panelist, or committee member who retains or employs such person, if such person has agreed to the terms of the protective order issued to the counsel or professional, panelist, or committee member, by signing and dating a completed copy of the application for protective order of the representative panelist, or committee member in the location indicated in that application.

(5) *Counsel or Professional Who Retains Access to Proprietary Information Under a Protective Order Issued During the Administrative Proceeding.* Any counsel or professional who has been granted access to proprietary information under protective order during an administrative proceeding that resulted in a final determination that becomes the subject of panel review may, if permitted by the terms of the protective order previously issued by the Department, retain such information until the applicant receives a protective order under this part.

(c) *Issuance of a Protective Order to Persons Described in § 356.9 (a), (d), (e), and (f).*

(1) *Issuance to Persons Described in § 356.9 (a) and (d).* (i) Upon receipt by the Department of an application from a person described in paragraph (a) or (d) of § 356.9, the Department will issue a protective order authorizing disclosure of proprietary information included in the administrative record of the final determination that is the subject of the panel review at issue.

(ii) Any panelist to whom the Department issues a protective order must countersign the protective order, and return one copy of the countersigned protective order to the United States Secretary who shall return one copy to the Department and retain four copies for placement in the public inspection files of the United States and Canadian sections of the Secretariat.

(iii) When the Department issues a protective order to any person described in paragraph (a) of § 356.9, other than a panelist, that person shall return one copy to the United States Secretary who shall retain four copies for placement in the public inspection files of the United States and Canadian sections of the Secretariat.

(2) *Issuance to Persons Described in § 356.9 (e) or (f).* Upon receipt by the Department from the United States Trade Representative or from the Canadian government of applications from persons requiring access to proprietary information for the purpose of evaluating whether the United States or Canada should request an extraordinary challenge committee, the Department will issue a protective order authorizing disclosure of proprietary information included in the record of the panel review at issue.

(3) The terms and obligations of any protective order issued under this paragraph will be the same as those established in paragraph (b)(1) of this section.

(d) *Consideration of Applications From Counsel or Professionals.* (1) *Opportunity to Object to Disclosure to Persons Described in § 356.9 (b) or (c).* The Department will not rule on an application for a protective order filed by a counsel or professional until at least ten days after the request is filed, unless there is compelling need to rule more expeditiously. Unless the Department has indicated otherwise, any person may file an objection to the application within seven days of filing of the application. Any such objection shall state the specific reasons in the view of such person why the application should not be granted. One copy of the objection shall be served on the applicant and on all persons who were served with the application. Service shall be made in accordance with § 356.3(c)–(e). Any reply to an objection will be considered if it is filed before the Department renders a decision.

(2) *Timing of Decisions on Applications.* Normally, the Department will render a decision to approve or deny an application for protective order within 14 days. If the person who submitted the information files an objection, the Department will normally render the decision within 30 days.

(3) *Approval of the Applications.* If appropriate, the Department will issue a protective order permitting the release of proprietary information to an applicant.

(4) *Denial of the Application.* If the Department denies an application, it shall issue a letter notifying the applicant of its decision and the reasons therefor.

(5) *Service of a Protective Order.* If the Department issues a protective order to a person pursuant to paragraph (d)(3) of this section, such person shall immediately file four copies of the protective order with the United States Secretariat and, as soon as the deadline for the filing of Notices of Appearances has passed in the appropriate panel review, shall serve a copy of that order upon all participants in that review. Service upon the Secretariat and the participants shall be made in accordance with § 356.3(c)–(e).

(e) *Modification or Revocation of Protective Orders.* If any person believes that changed conditions of fact or law, or the public interest, may require that a protective order issued pursuant to paragraph (c) of this section be modified or revoked, in whole or in part, such person may notify the Department in writing. The notification shall state the changes desired and the changed circumstances warranting such action and shall include materials and argument in support thereof. Such notification shall be served by the person submitting it upon the person to whom the Protective Order was issued. Responses to the notification may be filed within 20 days after the notification is filed unless the Department indicates otherwise. The Department may also consider such action *sua sponte.*

§ 356.11 Procedures for obtaining access to privileged information.

(a) *Persons Who May Apply for Access to Privileged Information Under Protective Order.* (1) *Panelists.*

(i) If a panel decides that *in camera* examination of a document containing privileged information in an administrative record is necessary in order for the panel to determine whether the document, or portions thereof, should be disclosed under a Protective Order for Privileged Information to counsel or professionals retained by or under the direction or control of counsel, each panelist who is to conduct the *in camera* review, pursuant to the rules of procedure adopted by the United States and Canada to implement Article 1904 of the Agreement, shall submit an application for disclosure of the privileged information under Protective Order for Privileged Information to the United States Secretary for filing with the Department; and

(ii) If a panel orders disclosure of a document containing privileged information, any panelist who has not filed an application pursuant to paragraph (a)(1)(i) of this section shall submit an application for disclosure of the privileged information under a Protective Order for Privileged Information to the United States Secretary for filing with the Department.

(2) *Designated Officials of the United States Government.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the United States should request an extraordinary challenge committee, each official of the United States government whom the United States Trade Representative informs the Department requires access for the purpose of such evaluation shall file an application for a Protective Order for Privileged Information.

(3) *Designated Officials of the Government of Canada.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the United States government should request an extraordinary challenge committee, each official of the Canadian government whom an authorized agency of Canada informs the Department requires access for the purpose of such evaluation shall file an application for a Protective Order for Privileged Information.

(4) *Members of an Extraordinary Challenge Committee.* Where an extraordinary challenge record contains privileged information and a Protective Order for Privileged Information was issued to counsel or professionals representing participants in the panel review at issue, each member of the extraordinary challenge committee shall submit an application for a Protective Order for Privileged Information to the United States Secretary for filing with the Department.

(5) *Other Designated Persons.* If the panel decides, in accordance with the rules of procedure adopted by the United States and Canada to implement Article 1904 of the FTA, that disclosure of a document containing privileged information is appropriate, any person identified in such a decision as entitled to release under Protective Order for Privileged Information, *e.g.* counsel or a professional under the direction or control of counsel, Secretariat personnel, or a member of the staff of the panel, shall file an application for release under Protective Order for Privileged Information with the Department.

(b) *Contents of Applications for Release Under Protective Order for Privileged Information.* (1) The Department has adopted application forms for disclosure of privileged information to those persons described in section 356.11(a). Application forms for persons described in paragraphs (a)(1) and (4) of this section, Secretariat personnel, and members of the staff of a panelist or extraordinary challenge committee member are available from the United States Secretariat. Application forms for counsel or professionals are available from the Central Records Unit, room B-099, U.S. Department of Commerce, Pennsylvania Avenue & 14th Street NW., Washington, DC 20230. These forms may be amended from time to time.

(2) Such forms require the applicant for release of privileged information under Protective Order for Privileged Information to submit a personal sworn statement stating, in addition to such other conditions as the Department may require, that the applicant shall:

(i) Not disclose any privileged information obtained under protective order to any person other than:

(A) Officials of the Department involved in the particular panel review in which the privileged information is part of the record;

(B) A person who has furnished a similar application and who has been issued a Protective Order for Privileged Information concerning the privileged information at issue; and

(C) A person retained or employed by counsel, a professional, a panelist or extraordinary challenge committee member who has been issued a Protective Order for Privileged Information, such as a paralegal, law clerk, or secretary, if such person has agreed to be bound by the terms set forth in the application for Protective Order for Privileged Information of the counsel, professional, panelist or extraordinary challenge committee member by signing and dating the completed application at the location indicated in such application.

(ii) Use such information solely for purposes of the proceedings under Article 1904 of the Agreement;

(iii) Upon completion of the panel review, or at such earlier date as may be determined by the Department, return to the Department or certify to the Department the destruction of all documents released under the Protective Order for Privileged Information and all other documents containing the privileged information (such as briefs, notes, or charts based on any such information received under the Protective Order for Privileged Information); and

(iv) Acknowledge that breach thereof may subject the signatory to sanctions under §§ 356.12 and 356.30.

(c) *Issuance of Protective Orders for Privileged Information.* Upon receipt of an application for protective order under this section, the Department shall issue a protective order.

(d) *Service of Protective Order for Privileged Information.* (1) If the Department issues a Protective Order for Privileged Information to a counsel or professional, such person shall immediately file four copies of the application and Protective Order for Privileged Information with the United States section of the Secretariat and, as soon as the deadline for the filing of a Notice of Appearance has passed in the appropriate panel review, shall serve a copy of that application and order upon all participants in the panel review.

(2) If the Department issues a Protective Order for Privileged Information to any other person, such person shall return one copy to the United States Secretary, who shall return one copy to the Department and retain four copies for placement in the public inspection files of the United States and Canadian sections of the Secretariat. If the person described in the above sections is a panelist, the panelist shall countersign the protective order, and return one copy of the countersigned protective order to the United States Secretary, who shall return one copy to the Department and retain four copies for placement in the public inspection files of the United States and Canadian sections of the Secretariat.

(e) *Modification or Revocation of Protective Order for Privileged*

Information. If any person believes that changed conditions of fact or law, or the public interest, may require that a Protective Order for Privileged Information be modified or revoked, in whole or in part, such person may notify the Department in writing. The notification shall state the changes desired and the changed circumstances warranting such action and shall include materials and argument in support thereof. Such notification shall be served by the person submitting it upon the person to whom the Protective Order for Privileged Information was issued. Responses to the notification may be filed within 20 days after the notification is filed unless the Department indicates otherwise. The Department may also consider such action *sua sponte*.

Subpart D—Violation of a Protective Order or a Disclosure Undertaking

§ 356.12 Sanctions for violation of a protective order or disclosure undertaking.

(a) A person determined under this part to have violated a protective order or a disclosure undertaking may be subjected to any or all or the following sanctions:

(1) Liable to the United States for a civil penalty not to exceed $100,000 for each violation;

(2) Barred from appearing before the Department to represent another for a designated time period from the date of publication in the **Federal Register** or **Canada Gazette** of a notice that a violation has been determined to exist;

(3) Denied access to proprietary information for a designated time period from the date of publication in the **Federal Register** or **Canada Gazette** of a notice that a violation has been determined to exist;

(4) Other appropriate administrative sanctions, including striking from the record of the panel review any information or argument submitted by, or on behalf of, the violating party or the party represented by the violating party; terminating any proceeding then in progress; or revoking any order then in effect; and

(5) Required to return material previously provided by the investigating authority, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or a disclosure undertaking.

(b)(1) The firm of which a person determined to have violated a protective order or a disclosure undertaking is a partner, associate, or employee; any partner, associate, employer, or employee of such person; and any person represented by such person may be barred from appearing before the Department for a designated time period from the date of publication in the **Federal Register** or **Canada Gazette** of notice that a violation has been determined to exist or may be subjected to the sanctions set forth in paragraph (a) of this section, as appropriate.

(2) Each person against whom sanctions are proposed under paragraph (b)(1) of this section is entitled to all the administrative rights set forth in this subpart separately and apart from rights provided to a person subject to sanctions under paragraph (a), including the right to a charging letter, right to representation, and right to a hearing, but subject to joinder or consolidation by the administrative law judge under § 356.23(b).

§ 356.13 Suspension of rules.

Upon request by the Deputy Under Secretary, a charged or affected party, or the APO Sanctions Board, the administrative law judge may modify or waive any rule in this subpart upon determining that no party will be unduly prejudiced and the ends of justice will thereby be served and upon notice to all parties.

§ 356.14 Report of violation and investigation.

(a) An employee of the Department or any other person who has information indicating that the terms of a protective order or a disclosure undertaking have been violated will provide the information to a Director or the Chief Counsel.

(b) Upon receiving information which indicates that a person may have violated the terms of a protective order or an undertaking, the Director will conduct an investigation concerning whether there was a violation of a protective order or a disclosure undertaking, and who was responsible for the violation, if any. For purposes of this subpart, the Director will be supervised by the Deputy Under Secretary with guidance from the Chief Counsel. The Director will conduct an investigation only if the information is received within 30 days after the alleged violation occurred or, as determined by the Director, could have been discovered through the exercise of reasonable and ordinary care.

(c) The Director will provide a report of the investigation to the Deputy Under Secretary, after review by the Chief Counsel, no later than 180 days after receiving information concerning a violation. Upon the Director's request, and if extraordinary circumstances exist, the Deputy Under Secretary may grant the Director up to an additional 180 days to conduct the investigation and submit the report.

(d) The following examples of actions that constitute violations of an administrative protective order shall serve as guidelines to each person subject to a protective order. These examples do not represent an exhaustive list. Evidence that one of the acts described in the guidelines has been committed, however, shall be considered by the Director as reasonable cause to believe a person has violated a protective order within the meaning of § 356.15.

(1) Disclosure of proprietary information to any person not granted access to that information by protective order, including an official of the Department or member of the Secretariat staff not directly involved with the panel review pursuant to which the proprietary information was released, an employee of any other United States, foreign government, or international agency, or a member of Congress or the Canadian Parliament.

(2) Failure to follow the detailed procedures outlined in the protective order for safeguarding proprietary information, including maintaining a log showing when each proprietary document is used, and by whom, and requiring all employees who obtain access to proprietary information (under the terms of a protective order granted their employer) to sign and date a copy of that protective order.

(3) Loss of proprietary information.

(4) Failure to return or destroy all copies of the original documents and all notes, memoranda, and submissions containing proprietary information at the close of the proceeding for which the data were obtained by burning or shredding of the documents or by erasing electronic memory, computer disk, or tape memory, as set forth in the protective order.

(5) Failure to delete proprietary information from the public version of a brief or other correspondence filed with the Secretariat.

(6) Disclosure of proprietary information during a public hearing.

(e) Each day of a continuing violation shall constitute a separate violation.

§ 356.15 Initiation of proceedings.

(a) If the Deputy Under Secretary concludes, after an investigation and report by the Director under § 356.14(c) and consultation with the Chief Counsel, that there is reasonable cause to believe that a person has violated a protective order or a disclosure undertaking and that sanctions are appropriate for the

violation, the Deputy Under Secretary will, at his discretion, either initiate a proceeding under this subpart by issuing a charging letter as set forth in § 356.16 or request that the authorized agency of Canada initiate a proceeding by issuing a request to charge as set forth in § 356.17. In determining whether sanctions are appropriate and, if so, what sanctions to impose, the Deputy Under Secretary will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case. The Deputy Under Secretary will decide whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

(b) If the Department receives a request to charge from an authorized agency of Canada, the Deputy Under Secretary will promptly initiate proceedings under this part by issuing a charging letter as set forth in § 356.16.

§ 356.16 Charging letter.

(a) *Contents of Letter.* The Deputy Under Secretary will initiate proceedings by issuing a charging letter to each charged party and affected party which includes:

(1) A statement of the allegation that a protective order or a disclosure undertaking has been violated and the basis thereof;

(2) A statement of the proposed sanctions;

(3) A statement that the charged or affected party is entitled to review the documents or other physical evidence upon which the charge is based and the method for requesting access to, or copies of, such documents;

(4) A statement that the charged or affected party is entitled to a hearing before an administrative law judge if requested within 30 days of the date of service of the charging letter and the procedure for requesting a hearing, including the name, address, and telephone number of the person to contact if there are further questions;

(5) A statement that the charged or affected party has a right, if a hearing is not requested, to submit documentary evidence to the Deputy Under Secretary and an explanation of the method for submitting evidence and the date by which it must be received; and

(6) A statement that the charged or affected party has a right to retain counsel at the party's own expense for purposes of representation.

(b) *Settlement and Amendment of the Charging Letter.* The Deputy Under Secretary may amend, supplement, or withdraw the charging letter at any time with the approval of an administrative law judge if the interests of justice would thereby be served. If a hearing has not been requested, the Deputy Under Secretary will ask the Under Secretary to appoint an administrative law judge to make this determination. If a charging letter is withdrawn after a request for a hearing, the administrative law judge will determine whether the withdrawal will bar the Deputy Under Secretary from seeking sanctions at a later date for the same alleged violation. If there has been no request for a hearing, or if supporting information has not been submitted under § 356.28, the withdrawal will not bar future actions on the same alleged violation. The Deputy Under Secretary and a charged or affected party may settle a charge brought under this Subpart by mutual agreement at any time after service of the charging letter; approval of the administrative law judge or the APO Sanctions Board is not necessary.

(c) *Service of Charging Letter on a Resident of the United States.* (1) Service of a charging letter on a United States resident will be made by:

(i) Mailing a copy by registered or certified mail addressed to the charged or affected party at the party's last known address;

(ii) Leaving a copy with the charged or affected party or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for the party; or

(iii) Leaving a copy with a person of suitable age and discretion who resides at the party's last known dwelling.

(2) Service made in the manner described in paragraph (c)(1) (ii) or (iii) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left.

(d) *Service of Charging Letter on a Non-resident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (c) of this section inappropriate or ineffective, service of the charging letter on a person who is not a resident of the United States may be made by any method that is permitted by the country in which the person resides and that, in the opinion of the Deputy Under Secretary, satisfies due process requirements under United States law with respect to notice in administrative proceedings.

§ 356.17 Request To charge.

Upon deciding to initiate a proceeding pursuant to § 356.15, the Deputy Under Secretary will request an authorized agency of Canada to initiate a proceeding for imposing sanctions for violation of a protective order or a disclosure undertaking by issuing a letter of request to charge that includes a statement of the allegation that a protective order or a disclosure undertaking has been violated and the basis thereof.

§ 356.18 Interim sanctions.

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under § 356.16 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department, an authorized agency of Canada, or others, including the protection of proprietary information, the Deputy Under Secretary may petition an administrative law judge to impose such sanctions.

(b) The administrative law judge may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of a protective order or a disclosure undertaking and the Department is likely to prevail in obtaining sanctions under this Subpart,

(2) The Department, authorized agency of Canada, or others are likely to suffer irreparable harm if the interim sanctions are not imposed, and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department, authorized agency of Canada, or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed.

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department, authorized agency of Canada, or others, including, but not limited to:

(1) Denying a person further access to proprietary information,

(2) Barring a person from representing another person before the Department,

(3) Barring a person from appearing before the Department, and

(4) Requiring the person to return material previously provided by the Department or the competent investigating authority of Canada, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or disclosure undertaking.

(d) The Deputy Under Secretary will notify the person against whom interim sanctions are sought of the request for interim sanctions and provide to that person the material submitted to the administrative law judge to support the request. The notice will include a

reference to the procedures of this section.

(e) A person against whom interim sanctions are proposed has a right to oppose the request through submission of material to the administrative law judge. The administrative law judge has discretion to permit oral presentations and to allow further submissions.

(f) The administrative law judge will notify the parties of the decision on interim sanctions and the basis therefor within five days of the conclusion of oral presentations or the date of final written submissions.

(g) If interim sanctions have been imposed, the investigation and any proceedings under this Subpart will be conducted on an expedited basis.

(h) An order imposing interim sanctions may be revoked at any time by the administrative law judge and expires automatically upon the issuance of a final order.

(i) The administrative law judge may reconsider imposition of interim sanctions on the basis of new and material evidence or other good cause shown. The Deputy Under Secretary or a person against whom interim sanctions have been imposed may appeal a decision on interim sanctions to the APO Sanctions Board, if such an appeal is certified by the administrative law judge as necessary to prevent undue harm to the Department or authorized agency of Canada, a person against whom interim sanctions have been imposed or others, or is otherwise in the interests of justice. Interim sanctions which have been imposed remain in effect while an appeal is pending, unless the administrative law judge determines otherwise.

(j) The Deputy Under Secretary may request an administrative law judge to impose emergency interim sanctions to preserve the status quo. Emergency interim sanctions may last no longer than 48 hours, excluding weekends and holidays. The person against whom such emergency interim sanctions are proposed need not be given prior notice or an opportunity to oppose the request for sanctions. The administrative law judge may impose emergency interim sanctions upon determining that the Department or authorized agency of Canada is, or others are, likely to suffer irreparable harm if such sanctions are not imposed and that the interests of justice would thereby be served. The administrative law judge will promptly notify a person against whom emergency sanctions have been imposed of the sanctions and their duration.

(k) If a hearing has not been requested, the Deputy Under Secretary will request that the Under Secretary appoint an administrative law judge for making determinations under this section.

(l) The Deputy Under Secretary will notify the Secretariat concerning the imposition or revocation of interim sanctions or emergency interim sanctions.

§ 356.19 Request for a hearing.

(a) Any party may request a hearing by submitting a written request to the Under Secretary within 30 days after the date of service of the charging letter. However, the Deputy Under Secretary may request a hearing only if the interests of justice would thereby be served.

(b) Upon timely receipt of a request for a hearing, the Under Secretary will appoint an administrative law judge to conduct the hearing and render an initial decision.

§ 356.20 Discovery.

(a) *Voluntary Discovery.* All parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending sanctions proceeding.

(b) *Limitations on Discovery.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitations set forth in this Part.

(c) *Interrogatories and Requests for Admissions or Production of Documents.* A party may serve on any other party interrogatories, requests for admissions, or requests for production of documents for inspection and copying, and the party may then apply to the administrative law judge for such enforcement or protective order as that party deems warranted concerning such discovery. The party will serve a discovery request at least 20 days before the scheduled date of a hearing, if a hearing has been requested and scheduled, unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admissions, and requests for production of documents and responses thereto will be served on all parties. Matters of fact or law of which admission is requested will be deemed admitted unless, within a period designated in the request (at least 10 days after the date of service of the request, or within such further time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either admitting or denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny such matters.

(d) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person who is a party, or under the control or authority of a party, by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(e) *Supplementation of Responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty to seasonably supplement his response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at a hearing, the subject matter on which the witness is expected to testify, and the substance of the testimony.

(2) A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which he or she:

(i) Knows the response was incorrect when made; or

(ii) Knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the administrative law judge, agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

(f) *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or items, or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make any determination or enter any order in the proceedings as he or she deems reasonable and appropriate. The administrative law judge may strike related charges or defenses in whole or in part, or may take particular facts relating to the discovery request to which the party failed or refused to

respond as being established for purpose of the proceeding in accordance with the contentions of the party seeking discovery. In issuing a discovery order, the administrative law judge will consider the necessity to protect proprietary information and will not order the release of information in circumstances where it is reasonable to conclude that such release will lead to unauthorized dissemination of such information.

§ 356.21 Subpoenas.

(a) *Application for Issuance of a Subpoena.* An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge. An application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, at a prehearing conference, at a hearing, or under any other circumstances, shall be made in writing to the administrative law judge and shall specify the material to be produced as precisely as possible, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) *Use of Subpoena for Discovery.* Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books, or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of such person.

(c) *Application for Subpoenas for Nonparty Department Records or Personnel or for Records or Personnel of Other Government Agencies.* (1) An application for issuance of a subpoena requiring the production of nonparty documents, papers, books, physical exhibits, or other material in the records of the Department, or requiring the appearance of an official or employee of the Department, or requiring the production of records or personnel of other Government agencies shall specify as precisely as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent could not be obtained without undue hardship by alternative means.

(2) Such applications shall be ruled upon by the administrative law judge. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge.

(d) *Motion To Limit or Quash.* Any motion to limit or quash a subpoena shall be filed within 10 days after service thereof, or within such other time as the administrative law judge may allow.

(e) *Ex Parte Rulings on Applications for Subpoenas.* Applications for the issuance of subpoenas pursuant to this section may be made *ex parte*, and, if so made, such applications and rulings thereon shall remain *ex parte* unless otherwise ordered by the administrative law judge.

(f) *Role of the Under Secretary.* If a hearing has not been requested, the party seeking enforcement will ask the Under Secretary to appoint an administrative law judge to rule on applications for issuance of a subpoena under this section.

§ 356.22 Prehearing conference.

(a)(1) If an administrative hearing has been requested, the administrative law judge will direct the parties to attend a prehearing conference to consider:

(i) Simplification of issues;

(ii) Obtaining stipulations of fact and of documents to avoid unnecessary proof;

(iii) Settlement of the matter;

(iv) Discovery; and

(v) Such other matters as may expedite the disposition of the proceedings.

(2) Any relevant and significant stipulations or admissions will be incorporated into the initial decision.

(b) If a prehearing conference is impractical, the administrative law judge will direct the parties to correspond with each other or to confer by telephone or otherwise to achieve the purposes of such a conference.

§ 356.23 Hearing.

(a) *Scheduling of Hearing.* The administrative law judge will schedule the hearing at a reasonable time, date, and place, which will be in Washington, DC, unless the administrative law judge determines otherwise based upon good cause shown, that another location would better serve the interests of justice. In setting the date, the administrative law judge will give due regard to the need for the parties adequately to prepare for the hearing and the importance of expeditiously resolving the matter.

(b) *Joinder or Consolidation.* The administrative law judge may order joinder or consolidation if sanctions are proposed against more than one party or if violations of more than one protective order or disclosure undertaking are alleged if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

(c) *Hearing Procedures.* Hearings will be conducted in a fair and impartial manner by the administrative law judge, who may limit attendance at any hearing or portion thereof if necessary or advisable in order to protect proprietary information from improper disclosure. The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material the administrative law judge determines to be relevant and material to the proceeding and not unduly repetitious may be received into evidence and given appropriate weight. The administrative law judge may make such orders and determinations regarding the admissibility of evidence, conduct of examination and cross-examination, and similar matters as are necessary or appropriate to ensure orderliness in the proceedings. The administrative law judge will ensure that a record of the hearing will be taken by reporter or by electronic recording, and will order such part of the record to be sealed as is necessary to protect proprietary information.

(d) *Rights of Parties.* At a hearing each party shall have the right to:

(1) Introduce and examine witnesses and submit physical evidence,

(2) Confront and cross-examine adverse witnesses,

(3) Present oral argument, and

(4) Receive a transcript or recording of the proceedings, upon request, subject to the administrative law judge's orders regarding sealing the record.

(e) *Representation.* Each charged or affected party has a right to represent himself or herself or to retain private counsel for that purpose. The Chief

Counsel will represent the Department, unless the General Counsel of the Department determines otherwise. The administrative law judge may disallow a representative if such representation constitutes a conflict of interest or is otherwise not in the interests of justice and may debar a representative for contumacious conduct relating to the proceedings.

(f) *Ex Parte Communications.* The parties and their representatives may not make any *ex parte* communications to the administrative law judge concerning the merits of the allegations or any matters at issue, except as provided in § 356.18(j) regarding emergency interim sanctions.

§ 356.24 Proceeding without a hearing.

If no party has requested a hearing, the Deputy Under Secretary, within 40 days after the date of service of a charging letter, will submit for inclusion into the record and provide each charged or affected party information supporting the allegations in the charging letter. Each charged or affected party has the right to file a written response to the information and supporting documentation within 30 days after the date of service of the information provided by the Deputy Under Secretary unless the Deputy Under Secretary alters the time period for good cause. The Deputy Under Secretary may allow the parties to submit further information and argument.

§ 356.25 Witnesses.

Witnesses summoned before the Department shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

§ 356.26 Initial decision.

(a) *Initial Decision.* The administrative law judge, if a hearing was requested, or the Deputy Under Secretary will submit an initial decision to the APO Sanctions Board, providing copies to the parties. The administrative law judge or the Deputy Under Secretary will ordinarily issue the decision within 20 days of the conclusion of the hearing, if one was held, or within 15 days of the date of service of final written submissions. The initial decision will be based solely on evidence received into the record and the pleadings of the parties.

(b) *Findings and Conclusions.* The initial decision will state findings and conclusions as to whether a person has violated a protective order or a disclosure undertaking; the basis for those findings and conclusions; and whether the sanctions proposed in the charging letter, or lesser included sanctions, should be imposed against the charged or affected party. The administrative law judge or the Deputy Under Secretary may impose sanctions only upon determining that the preponderance of the evidence supports a finding of violation of a protective order or a disclosure undertaking and that the sanctions are warranted against the charged or affected party.

(c) *Finality of Decision.* If the APO Sanctions Board has not issued a decision on the matter within 60 days after issuance of the initial decision, the initial decision becomes the final decision of the Department.

§ 356.27 Final decision.

(a) *APO Sanctions Board.* Upon request of a party, the initial decision will be reviewed by the members of the APO Sanctions Board. The Board consists of the Under Secretary for International Trade, who shall serve as Chairperson, the Under Secretary for Economic Affairs, and the General Counsel.

(b) *Comments on Initial Decision.* Within 30 days after issuance of the initial decision, a party may submit written comments to the APO Sanctions Board on the initial decision, which the Board will consider when reviewing the initial decision. The parties have no right to an oral presentation, although the Board may allow oral argument in its discretion.

(c) *Final Decision by the APO Sanctions Board.* Within 60 days but not sooner than 30 days after issuance of an initial decision, the APO Sanctions Board may issue a final decision which adopts the initial decision in its entirety; differs in whole or in part from the initial decision, including the imposition of lesser included sanctions; or remands the matter to the administrative law judge or the Deputy Under Secretary for further consideration. The only sanctions that the Board can impose are those sanctions proposed in the charging letter or lesser included sanctions.

(d) *Contents of Final Decision.* If the final decision of the APO Sanctions Board does not remand the matter and differs from the initial decision, it will state findings and conclusions which differ from the initial decision, if any, the basis for those findings and conclusions, and the sanctions which are to be imposed, to the extent they differ from the sanctions in the initial decision.

(e) *Public Notice of Sanctions.* If the final decision is that there has been a violation of a protective order or a disclosure undertaking and that sanctions are to be imposed, notice of the decision will be published in the **Federal Register** and forwarded to the Secretariat. Such publication will be no sooner than 30 days after issuance of a final decision or after a motion to reconsider has been denied, if such a motion was filed. If the final decision is made in a proceeding based upon a request to charge by an authorized agency of Canada, the decision will be forwarded to the Secretariat for transmittal to the authorized agency of Canada for publication in the **Canada Gazette** or other appropriate action. The Deputy Under Secretary will also provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations whenever the Deputy Under Secretary subjects a charged or affected party to a sanction under paragraph (a)(2) of § 356.12 and to any Federal agency likely to have an interest in the matter and will cooperate in any disciplinary actions by any association or agency.

§ 356.28 Reconsideration.

Any party may file a motion for reconsideration with the APO Sanctions Board. The party must state with particularity the grounds for the motion, including any facts or points of law which the party claims the APO Sanctions Board has overlooked or misapplied. The party may file the motion within 30 days of the issuance of the final decision or the adoption of the initial decision as the final decision, except that if the motion is based on the discovery of new and material evidence which was not known, and could not reasonably have been discovered through due diligence prior to the close of the record, the party shall file the motion within 15 days of the discovery of the new and material evidence. The party shall provide a copy of the motion to all other parties. Opposing parties may file a response within 30 days of the date of service of the motion. The response shall be considered as part of the record. The parties have no right to an oral presentation on a motion for reconsideration, but the Board may permit oral argument at its discretion. If the motion to reconsider is granted, the Board will review the record and affirm, modify, or reverse the original decision or remand the matter for further consideration to an administrative law judge or the Deputy Under Secretary, as warranted.

§ 356.29 Confidentiality.

(a) All proceedings involving allegations of a violation of a protective order or a disclosure undertaking shall

be kept confidential until such time as the Department makes a final decision under these regulations, which is no longer subject to reconsideration, imposing a sanction.

(b) The charged party or counsel for the charged party will be, to the extent possible, granted access to proprietary information in these proceedings, as necessary, under administrative protective order, consistent with the provisions of § 356.10.

§ 356.30 Sanctions for violations of a protective order for privileged information.

The provisions of this Subpart shall apply to persons who are alleged to have violated a Protective Order for Privileged Information.

[FR Doc. 91-16427 Filed 8-7-91; 8:45 am]
BILLING CODE 3510-GT-M

federal register

Thursday
August 8, 1991

Part VI

The President

Presidential Certification—Cook Inlet Regional Citizens Advisory Council

Federal Register
Vol. 56, No. 153
Thursday, August 8, 1991

Presidential Documents

Title 3—

The President

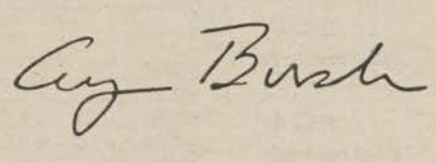
Presidential Certification of August 6, 1991

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5002(o)(2) of the Oil Pollution Act of 1990, I hereby certify for the year 1991 the following:

(1) that the Cook Inlet Regional Citizens Advisory Council has met the general goals and purposes of section 5002 of the Oil Pollution Act of 1990 for the year 1991; and

(2) that the Cook Inlet Regional Citizens Advisory Council is broadly representative of the communities and interests in the vicinity of the terminal facilities and offshore facilities in Cook Inlet.

This certification shall be published in the **Federal Register**.



THE WHITE HOUSE,
August 6, 1991.

[FR Doc. 91-19075
Filed 8-7-91; 11:09 am]
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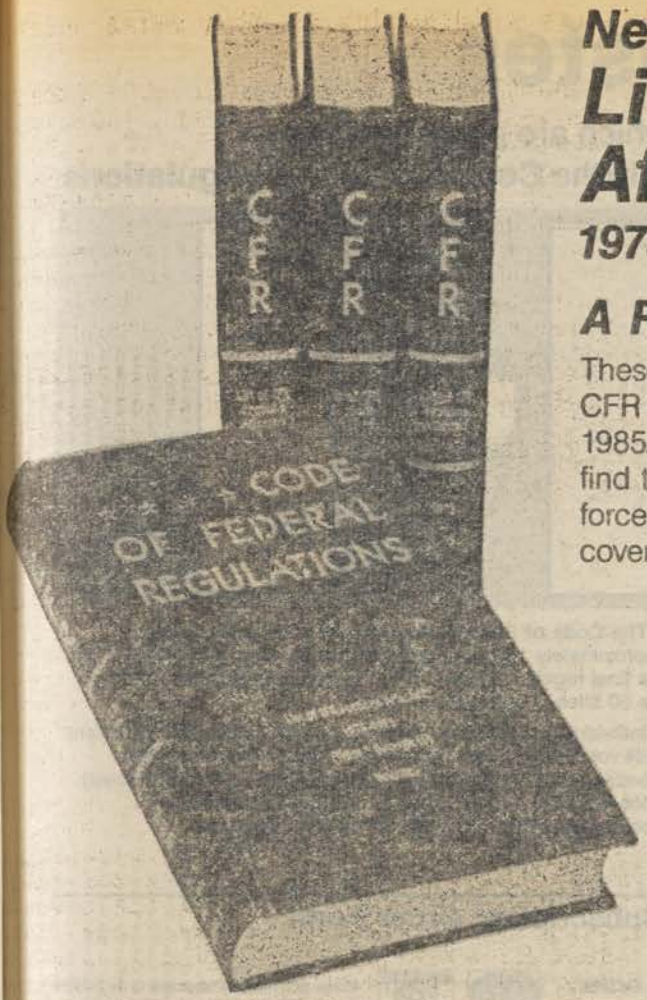

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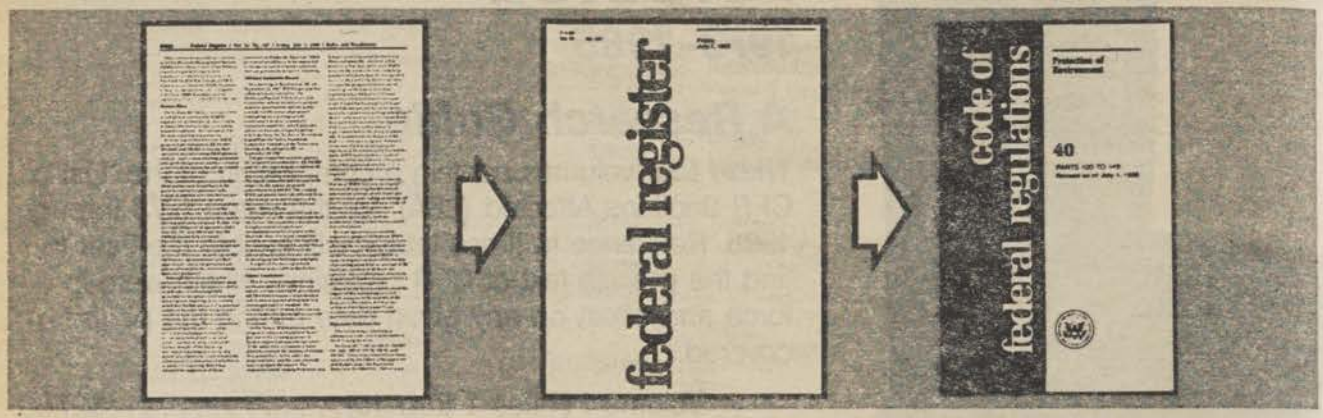

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