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Monday
June 24, 1991

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

**WHO:** The Office of the Federal Register.

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

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

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

### WASHINGTON, DC

**WHEN:** July 2, at 9:00 am
**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
**RESERVATIONS:** 202–523–5240

### NEW ORLEANS, LA

**WHEN:** July 23, at 9:00 am
**WHERE:** Federal Building, 501 Magazine St., Conference Room 1120, New Orleans, LA
**RESERVATIONS:** Federal Information Center 1–800–366–2998

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# Presidential Documents

Title 3—

The President

## Presidential Determination No. 91–38 of May 31, 1991

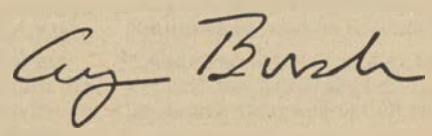
## Food Security Wheat Reserve Release

**Memorandum for the Secretary of Agriculture**

By virtue of the authority vested in me as President by the Food Security Wheat Reserve Act of 1980 (the "Act") (7 U.S.C. 1736f–1), I hereby authorize the release in fiscal year 1991 of up to 300,000 metric tons of wheat from the reserve established under the Act (the "reserve") for use under Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1691 *et seq.*), to meet relief needs that exist in developing countries of the Middle East, Africa, and Asia, which I hereby determine are suffering major disasters. The wheat will be used to provide urgent humanitarian relief to the peoples in the Middle East, Africa, and Asia who are suffering widespread hunger and malnutrition.

This action is taken because wheat needed for relief in these regions cannot be programmed for such purpose in a timely manner under the normal means of obtaining commodities for food assistance due to circumstances of unanticipated and exceptional need.

You are authorized and directed to publish this determination in the **Federal Register.**



THE WHITE HOUSE,
*Washington, May 31, 1991.*

[FR Doc. 91–15105
Filed 6–20–91; 3:46 pm]
Billing code 3195–01–M

# Rules and Regulations

Federal Register
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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 91-NM-39-AD; Amdt 39-7047; AD 91-14-06]**

## Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes, which requires modification of the nose landing gear steering selector valve. This amendment is prompted by a report of water accumulating and freezing in the selector valve. This condition, if not corrected, could result in loss of nose wheel steering.

**EFFECTIVE DATE:** July 29, 1991.

**ADDRESSES:** The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert McCracken, Flight Test and Systems Branch, ANM-111; telephone (206) 227-2118. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes, which requires modification of the nose landing gear steering selector valve, was published in the **Federal Register** on March 21, 1991 (56 FR 11971).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Since issuance of the Notice, Aerospatiale has issued Revision 2 to Service Bulletin ATR42-32-0025, dated January 30, 1991, which changes the "Compliance" noted in the service bulletin from "Recommended" to "Mandatory." The FAA has revised the final rule to reflect this latest revision to the service bulletin as an additional service information source.

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

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

It is estimated that 58 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S operators is estimated to be $28,710.

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

### PART 39—[AMENDED]

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

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

### § 39.13 [Amended]

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

**91-14-06. Aerospatiale:** Amendment 39-7047. Docket No. 91-NM-39-AD.

Applicability: Model ATR42 series airplanes, Serial Numbers 3 through 157; and ATR72 series airplanes, Serial Numbers 126 through 150; certificated in any category.

Compliance: Required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent loss of nose wheel steering, accomplish the following:

A. Modify the nose landing gear steering selector valve in accordance with Messier-Hispano-Bugatti Service Bulletin 631-32-036, Revision 1, dated May 14, 1990; and Aerospatiale Service Bulletin ATR42-32-0025, Revision 1 dated January 15, 1990, or Revision 2, dated January 30 1991, or Aerospatiale Service Bulletin ATR72-32-1001, dated April 25, 1990 as applicable.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse, Cedex 03, France.

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

This amendment (39-7047, AD 91-14-06) becomes effective July 29, 1991.

Issued in Renton, Washington, on June 13, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-14951 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-51-AD; Amdt. 39-7049; AD 91-14-08]**

## Airworthiness Directives; Aerospatiale Model SN 601 Corvette Series Airplanes With Modification 1390

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model SN 601 Corvette series airplanes, which requires replacement of the fuel heater thermostatic element. This amendment is prompted by reports that the existing thermostat does not provide adequate fuel icing protection. This condition, if not corrected, could result in ice formation in the fuel line and subsequent loss of engine power.

**EFFECTIVE DATE:** July 29, 1991.

**ADDRESSES:** The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Woodford Boyce, Standardization Branch, ANM-113; telephone (206) 227-2137. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Aerospatiale Model SN 601 Corvette series airplanes, which requires replacement of the fuel heater thermostatic element, was published in the **Federal Register** on March 20, 1991 (56 FR 11704).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry. The FAA has determined that this change will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The required parts will be supplied by the manufacturer to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $165.

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

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

**91-14-08. Aerospatiale:** Amendment 39-7049. Docket No. 91-NM-51-AD.

*Applicability:* Model SN 601 Corvette series airplanes, which have incorporated Modification 1390, certificated in any category.

*Compliance:* Required within 100 landings after the effective date of this AD, unless previously accomplished.

To prevent ice formation in the fuel line and subsequent loss of engine power, accomplish the following:

A. Remove the existing thermostatic element, Part Number 9914, and install thermostatic element Part Number 5497-1, in accordance with Aerospatiale Corvette Service Bulletin 73-3, Revision 1, dated July 30, 1990.

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

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

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

This amendment (39-7049, AD 91-14-08) becomes effective July 29, 1991.

Issued in Renton, Washington, on June 13, 1991.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91–14949 Filed 6–21–91; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 91–ANE–09; Amdt 39–6955]**

## Airworthiness Directives; Avco Lycoming ALF 502L Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Avco Lycoming ALF 502L series turbofan engines, which requires a one-time inspection of the third stage high compressor (HC) rotor disk bore for evidence of corrosion or cracking and the application of protective coatings. This amendment is prompted by reports of fatigue cracking of the third stage HC disk. This condition, if not corrected, could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft.

**DATES:** Effective July 15, 1991.

Comments must be received no later than July 15, 1991.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of July 15, 1991.

**ADDRESSES:** Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–09, 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 Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. 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:** Karen M. Grant, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7087.

**SUPPLEMENTARY INFORMATION:** There have been five reports of fatigue cracking in the bores of third stage HC rotor disks originating from pitting caused by corrosion. All cracks were found by visual inspection during scheduled shop visits. This AD requires a one-time inspection of the third stage HC rotor disk bore for evidence of corrosion or cracking. Disks found with evidence of corrosion pitting or cracks are to be removed from service prior to further flight. Disks found serviceable are to be coated with "Sermetel W" or "ALSEAL–518" surface finish and reidentified. This condition, if not corrected, could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires a one-time inspection of the third stage HC rotor disk bore for corrosion or cracking, and the application of certain protective coatings in accordance with Textron Lycoming Service Bulletin ALF 502L 72–203, Revision 3, dated December 7, 1990.

Since this condition could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft, there is a need to minimize the exposure of revenue service aircraft to this failure mode. Therefore, safety in air transportation requires adoption of this regulation without prior notice and public comment. In addition, based on the above and the urgent need to inspect certain third state HC rotor disks for which the total number of cycles in service are unknown, immediate adoption of this regulation is necessary. Therefore, it is found that notice and public procedure are impracticable, 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–09, 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, Safety, and Incorporation by reference.

### 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 Regulation (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):

**91–14–05 Avco Lycoming:** Amendment 39–6955. Docket No. 91–ANE–09.

Applicability: Avco Lycoming ALF 502L series turbofan engines installed on, but not limited to the Canadair Challenger CL601 aircraft.

Compliance required as indicated, unless previously accomplished.

To prevent complete loss of engine power, uncontained disk failure, and possible damage to the aircraft, accomplish the following:

(a) Clean, visually inspect, coat with "Sermetel W" or "ALSEAL-518" and reidentify third stage high compressor (HC) rotor disks in accordance with Textron Lycoming Service Bulletin (SB) ALF 502L 72-203, Revision 3, dated December 7, 1990, as follows:

(1) For those third stage HC disks with 7,000 cycles since new (CSN) or greater on the effective date of this AD, within the next 500 cycles in service, not to exceed 8,500 CSN.

(2) For those third stage HC disks with less than 7,000 CSN on the effective date of this AD, at or prior to accumulating a total of 7,500 CSN.

(b) Remove, prior to further flight, third stage HC disks found with evidence of corrosion pitting or cracks.

(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 Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The inspection procedures shall be done in accordance with the following Textron Lycoming service bulletin:

| Document No. | Page No. | Issue/ Revision | Date |
|---|---|---|---|
| ALF 502L 72-203 | 1, 2, 4 | 3 | December 7, 1990. |
| ALF 502L 72-203 | 3, 6 | 2 | August 8, 1990. |
| ALF 502L 72-203 | 5 | 1 | June 16, 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 Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401 Washington, DC.

This amendment (39-6599, AD 91-14-05) becomes effective July 15, 1991.

Issued in Burlington, Massachusetts, on June 12, 1991.

Jack A. Sain,

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

[FR Doc. 91-14950 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

**[Docket No. 90-NM-271-AD; Amdt. 39-7046; AD 91-14-04]**

## Airworthiness Directives; British Aerospace Model BAe 146-100A and 146-200A Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A and 146-200A series airplanes, which requires visual inspections to detect incorrect positioning of the earth stud on the avionics rack at Frame 17 and chafing damage to adjacent wiring harnesses, and repair, if necessary. This amendment is prompted by a recent report of chafing of the wiring harness on an earth stud at the rear of the avionics rack. This condition, if not corrected, could result in failure or improper functioning of the wing flap, landing gear anti-skid, and turbine vibration indication systems.

**EFFECTIVE DATE:** July 29, 1991.

**ADDRESSES:** The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model 146-100A and 146-200A series airplanes, which requires visual inspections to detect incorrect positioning of the earth stud on the avionics rack at Frame 17 and chafing damage to adjacent wiring harnesses, and repair, if necessary, was published in the **Federal Register** on February 11, 1991 (56 FR 5371).

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

The commenter objected to the applicability of the proposed rule, which extend beyond those airplanes listed in British Aerospace Service Bulletin 24-60, dated May 31, 1990. The commenter stated that information from the manufacturer indicated the abnormality addressed in the proposed rule was confined to early airplanes, prior to delivery to operators, and was corrected on later deliveries. The FAA concurs. The final rule has been revised so that it is applicable only to those airplanes listed in the aforementioned service bulletin.

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

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

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

It is estimated that 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,375.

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

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

**91–14–04. British Aerospace:** Amendment 39–7046. Docket No. 90–NM–271–AD.

Applicability: Model BAe 146–100A and 146–200A series airplanes, as listed in British Aerospace Service Bulletin 24–60, dated May 31, 1990, certificated in any category.

Compliance: Required as indicated, unless previoulsy accomplished.

To prevent failure or improper functioning of the wing flap, landing gear anti-skid, and turbine vibration indication systems, accomplish the following:

A. Within 30 days after the effective date of this AD, perform a visual inspection of the earth stud on the avionics rack at Frame 17, in accordance with British Aerospace Service Bulletin 24–60, dated May 31, 1990.

1. If the earth stud is approximately 33.0 inches from the airplane's center line, prior to further flight, perform a visual inspection of the adjacent wiring harnesses for chafing damage, and reclip any harnesses to ensure adequate clearance between the wire harnesses and the earth stud, in accordance with the service bulletin. Repair or replace any damaged wires prior to further flight.

2. If the earth stud is not positioned approximately 33.0 inches from the airplane's center line, prior to further flight, accomplish the following:

a. Perfrom an inspection of the adjacent wiring harnesses for signs of chafing damage, and, if damage is found, repair or replace any damaged wires prior to further flight in accordance with the service bulletin.

b. Remove the existing earth stud and install a new earth stud having the same part number in accordance with Figure 1 of the service bulletin.

c. Move and resecure any wiring harnesses that may contact the earth stud, in accordance with the service bulletin.

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

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

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

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

This amendment (39–7046, AD 91–14–04) becomes effective July 29, 1991.

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

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91–14928 Filed 6–21–91; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 91–NM–28–AD; Amdt. 39–7044; AD 91–14–02]**

## Airworthiness Directives; SAAB-Scania Model SF–340A and SAAB 340B Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to SAAB-Scania Model SF–340A and SAAB 340B series airplanes, which currently requires repetitive inspections to detect cracks in the vertical stabilizer top closure rib, and repair, if necessary. This action will require either the installation of a new thicker rib with a larger radius, or reinforcement of the old rib and replacement of the attachment angle. Accomplishment of either of these actions terminates the current requirement for the repetitive inspections. This amendment is prompted by continued reports of fatigue cracking in the vertical stabilizer top closure rib. This condition, if not corrected, could result in jamming of the rudder.

**EFFECTIVE DATE:** July 29, 1991.

**ADDRESSES:** The applicable service information may be obtained from SAAB-Scania AB, Product Support, S–581.88, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90–16–02, Amendment 39–6676 (55 FR 30904, July 30, 1990), applicable to SAAB-Scania Model SF–340A and SAAB 340B series airplanes, to require repetitive inspections to detect cracks in the vertical stabilizer top closure rib, and repair, if necessary, was published in the **Federal Register** on March 8, 1991 (56 FR 9911).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

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

activity to account for various inflationary costs in the airline industry.

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

It is estimated that 108 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The estimated cost for required parts is $1,400. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $246,240.

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–6676 and by adding the following new airworthiness directive:

**91–14–02. SAAB–Scania:** Amendment 39–7044. Docket No. 91–NM–28–AD. Supersedes AD 90–16–02.

Applicability: Model SF–340A series airplanes, Serial Numbers 031 through 159; and SAAB 340B series airplanes, Serial Numbers 160 through 186; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent inhibited airplane rudder control due to cracking in the vertical stabilizer top closure rib, accomplish the following:

A. Prior to the accumulation of 500 hours time-in-service since new or within 100 hours time-in-service after August 30, 1990 (the effective date of Amendment 39–6676, AD 90–16–02), whichever occurs later, inspect the vertical stabilizer top closure rib for evidence of cracking, in accordance with SAAB Service Bulletin 340–55–022, Revision 1, dated February 27, 1990.

B. If no evidence of cracking is found, reinspect the vertical stabilizer top closure rib for cracking at intervals not to exceed 500 flight hours time-in-service.

C. If cracking is found, prior to further flight, stop drill the ends of the cracks, blend, clean, and apply aluminum tape, as specified in SAAB Service Bulletin 340–55–022, Revision 1, dated February 27, 1990. Reinspect for additional cracking and the condition of the aluminum tape at intervals not to exceed 100 hours time-in-service.

D. Within one year after the effective date of this amendment, either replace the rib with a new thicker rib with a larger radius, or reinforce the rib and replace the attachment angle, in accordance with SAAB Service Bulletin 340–55–023, dated October 1, 1990. Accomplishment of either of these modifications constitutes terminating action for repetitive inspections required by paragraphs B. and C. of this AD.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Product Support, S–581.88, Linkoping, Sweden. These documents may be examined at the FAA, Northeast Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39–6676, AD 90–16–02.

This amendment (39–7044, AD 91–14–02) becomes effective July 29, 1991.

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

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91–14929 Filed 6–21–91; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 90–AWP–11]**

## Establishment of the Tucson/Ryan Field, Tucson, AZ, Control Zone

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes the Tucson/Ryan Field, Tucson, AZ, Control Zone. It provides controlled airspace for aircraft executing instrument approach and departure procedures to and from Tucson/Ryan Field.

**EFFECTIVE DATE:** 0901 UTC, September 19, 1991.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cheryl Miller, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0433.

**SUPPLEMENTARY INFORMATION:**

**History**

On March 27, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Tucson/Ryan Field, Tucson, AZ, Control Zone. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations establishes the Tucson/Ryan Field, Tucson, AZ, Control Zone. It provides controlled airpsace for aircraft executing instrument approach and departure procedures to and from Tucson/Ryan Field.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation Safety, Control Zones.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71), is amended, as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. § 71.171 is amended as follows:

**Tucson/Ryan Field, Tucson, Arizona (New)**

Within a 4-mile radius of the Tucson/Ryan Field (lat. 32°08'29" N., long. 111°10'24" W.), within 2 miles each side of the Ryan Runway 6 Localizer extending from the 4-mile radius zone to 7 miles southwest of the airport, and within 2 miles each side of the 317° bearing from the Ryan Radio Beacon (lat. 32°08'18" N., long. 111°09'39" W.) extending from the 4-mile radius zone to 7 miles northwest of the airport. This control zone shall be effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on June 6, 1991.

**Richard R. Lien,**

*Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 91–14930 Filed 6–21–91; 8:45 am]

BILLING CODE 4910–13–M

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 216

**RIN 3220–AA15**

### Eligibility for an Annuity

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board (Board) hereby revises part 216, Eligibility for an Annuity, to reflect amendments to the Railroad Retirement Act which became effective in 1981, 1983 and 1988. The action also revises the rules concerning eligibility in a manner to make them easier to use and understand.

**EFFECTIVE DATE:** June 24, 1991.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush, Chicago, Illinois 60611, (312) 751–4513, FTS 386–4513, TDD (312) 751–4701, TDD (FTS 386–4701).

**SUPPLEMENTARY INFORMATION:** Part 216 of the Board's regulations contains the eligibility requirements for annuities under the Railroad Retirement Act of 1974, as amended. Amendments made by the Omnibus Budget Reconciliation Act of 1981 (OBRA) (Pub. L. 97–36) to the Railroad Retirement Act added, as new categories of beneficiaries under the Act, divorced spouses, surviving divorced spouses, and remarried widow(er)s. Eligibility requirements for these types of annuities are found in subparts F and G. Section 1116(b)(2) of the OBRA liberalized the test to establish a current connection with the railroad industry for purposes of eligibility for the supplemental annuity and survivor annuities. Eligibility requirements reflecting these amendments are found in subpart B. Section 1117(a) of the OBRA restricted future supplemental annuity eligibility to employees with some service prior to October 1981. See subpart E. Section 104(a) of the Railroad Retirement Solvency Act of 1983 (Pub. L. 98–76) changed the eligibility requirements for a child's annuity when the child is a full-time student to conform to social security benefit provisions. These changes are reflected in subpart H. The Solvency Act, at section 413, also liberalized the eligibility conditions for a parent's annuity. This change is reflected in subpart I.

The Railroad Retirement Act of 1974, prior to its amendment in 1988 by the Railroad Unemployment and Retirement Improvement Act of 1988, provided that no annuity was payable in any month in which an annuitant performed compensated service for his or her last employer prior to retirement, commonly referred to as the "last person service restriction." An exception to this restriction was made if the last employer was a governmental unit and the annuitant was a compensated elected public official of this unit. A similar rule for appointed public officials receiving nominal salaries was established by administrative ruling. The 1988 amendments eliminated the prohibition against payment of an annuity for any month in which the beneficiary performed compensated service for the last pre-retirement employer and substituted an earnings deduction to be applied to the tier II annuity component of a beneficiary engaged in last person service. The amendment also removed the language excepting elected public service from the employment restrictions. This change is reflected in subpart C of this rule. Consistent with the amendment to the last person service provisions of the Railroad Retirement Act, the Board no longer will exempt public officers, elected or appointed, from the last person service work deductions. However, with respect to elected and appointed public officials this change will apply only to those individuals who file applications for annuities after the effective date of the final rule. Thus, elected and appointed public officials who will have applied for annuities prior to the effective date of the final rule will continue to be accorded the same treatment with respect to their service for a governmental unit as prior to the effective date of the final rule.

The Board also is reordering various sections of part 216 to facilitate the reader's use of that part. Provisions dealing with the definition of a current connection with the railroad industry are found in new subpart B.

All provisions dealing with work restrictions which impact upon eligibility for an annuity have been moved to subpart C. subparts D–I contain the eligibility provisions for the various types of annuities payable under the Railroad Retirement Act. Subpart J contains the restrictions on eligibility for more than one annuity. Finally, the following sections of the present part 216 which deal with the definitions of various family relationships have been removed and are now found in part 222: §§ 216.23, 216.24, 216.37, 216.48, and 216.63.

On March 12, 1991, the Board published this rule as a proposed rule (56 FR 10385), inviting comments on or before April 11, 1991. No comments were received.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

**List of Subjects in 20 CFR Part 216**

Railroad employees, Railroad Retirement.

For the reasons set forth in the preamble, part 216 of subchapter B, chapter II, title 20 of the Code of Federal Regulations is revised as follows:

## PART 216—ELIGIBILITY FOR AN ANNUITY



Authority: 45 U.S.C. 231f.

### Subpart A—General

**§ 216.1 Introduction.**

This part explains when an individual is eligible for a monthly annuity under the Railroad Retirement Act. An individual eligible for an annuity as described in this part may become entitled to an annuity only in such amount as set forth in parts 225 through 229 of this chapter

(a) *Regular annuity.* A regular monthly annuity is provided for:

(1) An employee who retires because of age or disability;

(2) An employee's spouse or divorced spouse; or

(3) The widow, widower, child, parent, remarried widow or widower, or surviving divorced spouse of an employee.

(b) *Supplemental annuity.* An employee who retires because of age or disability may also be entitled to a supplemental annuity.

**§ 216.2 Definitions.**

Except as otherwise expressly noted, as used in this part—*Age* means an individual's age on the day preceding the anniversary date of his or her birth.

*Annuity* means a payment due an entitled individual for a calendar month and made to him or her on the first day of the following month.

*Apply* means to sign a form or statement that the Railroad Retirement Board accepts as an application for benefits under the rules set out in part 217 of this chapter.

*Attainment of age* means that an individual attains a given age on the first moment of the day preceding the anniversary date of his or her birth corresponding to such numerical age.

*Board* means the Railroad Retirement Board.

*Claimant* means an individual who files an annuity application or for whom an annuity application is filed.

*Eligible* means that an individual meets all the requirements for payment of an annuity but has not yet applied for one.

*Employee* means an individual who is or has been in the service of an employer as here defined.

*Employer* means a company, individual, or other entity determined to be a covered employer under the Railroad Retirement Act as provided by part 202 of this chapter.

*Entitled* means that an individual has applied for and has established his or her rights to benefits.

*Railroad Retirement Act* means the Railroad Retirement Act of 1974, as amended.

*Re-entitled annuity* means an annuity to which an individual becomes entitled after an earlier-awarded annuity has been terminated. A re-entitled annuity is usually awarded on the basis of different factors of eligibility from the initial annuity, and may be awarded without the filing of another application.

*Retirement age* means, with respect to an employee who attains age 62 before January 1, 2000 (age 60 in the case of a widow(er), remarried widow(er) or surviving divorced spouse) age 65. For an employee who attains age 62 (or age 60 in the case of a widow(er), remarried widow(er), or surviving divorced spouse) after December 31, 1999, retirement age means the age provided for in section 216(1) of the Social Security Act.

*Social Security Act* means the Social Security Act as amended.

*Tier I benefit* means the benefit component calculated using Social Security Act formulas and based upon earnings covered under both the Railroad Retirement Act and the Social Security Act.

*Tier II benefit* means the benefit component calculated under a formula found in the Railroad Retirement Act and based only upon earnings and service in the railroad industry.

*Year of service* means 12 calendar months, consecutive or otherwise, of service creditable to an employee as described in part 210 of this chapter.

**§ 216.3 Other regulations related to this part.**

This part is related to a number of other parts. Part 217 of this chapter describes how to apply for an annuity. Part 218 indicates when annuities begin and when they terminate. Part 219 sets out what evidence is necessary to prove eligibility. Where eligibility for an annuity is based upon a family relationship to an employee (for example, a widow's annuity), the definition of such family relationship may be found in part 222 of this chapter. Part 225 of this chapter describes the computation of the primary insurance amount.

## Subpart B—Current Connection With the Railroad Industry

**§ 216.11 General.**

A current connection with the railroad industry is required to qualify for certain types of railroad retirement benefits. The existence of a current connection is clear in most cases where entitlement or death immediately follows continuous years of railroad employment. However, there are cases in which the employee did not work for a railroad employer for a period of time before entitlement or death. In these situations, special tests are applied to determine whether the employee can be considered to have a current connection with the railroad industry for the purpose of determining his or her eligibility for an annuity or other benefits.

**§ 216.12 When current connection is required.**

(a) A current connection is required to qualify an individual for the following types of railroad retirement benefits:

(1) An employee occupational disability annuity as described in subpart D of this part;

(2) A supplemental annuity as described in subpart E of this part;

(3) An employee vested dual benefit in certain cases;

(4) A survivor annuity as described in subparts G, H, and I of this part; and

(5) A lump-sum death payment as described in part 234 of this chapter.

(b) A current connection which was established when an employee's annuity began is effective for:

(1) Any annuity under this part for which the employee later becomes eligible; and

(2) Any survivor annuity under this part or a lump-sum death payment under part 234 of this chapter.

**§ 216.13 Regular current connection test.**

An employee has a current connection with the railroad industry if he or she meets one of the following requirements:

(a) The employee has creditable railroad service in at least 12 of the 30 consecutive months immediately preceding the earlier of:

(1) The month his or her annuity begins; or

(2) The month he or she dies.

(b) The employee has creditable railroad service in at least 12 months in a period of 30 consecutive months and does not work in any regular non-railroad employment in the interval between the month the 30-month period ends and the earlier of:

(1) The month his or her annuity begins; or

(2) The month he or she dies.

**§ 216.14 Regular non-railroad employment that will not break a current connection.**

Regular non-railroad employment will not break an employee's current connection if it is performed during the 30-month period described in § 216.13(b), in or after the month the annuity begins, or in the month the employee dies.

**§ 216.15 Special current connection test.**

(a) *For survivor annuities.* An employee who does not have a current connection under the regular test has a current connection only to qualify an individual for a survivor annuity if:

(1) The employee would not be fully or currently insured under section 214 of the Social Security Act if his or her railroad compensation after 1936 were treated as social security earnings;

(2) The employee has no quarters of coverage as defined in section 213 of the Social Security Act; or

(3) The employee received a pension or a retirement annuity that began before 1948 based on at least 114 months of service.

(b) *For survivor and supplemental annuities.* An employee who does not have a current connection under the regular test has a current connection in order to pay a supplemental or survivor annuity if he or she meets all of the following requirements:

(1) Has been credited with at least 25 years of railroad service;

(2) Stopped working in the railroad industry "involuntarily and without fault" on or after October 1, 1975, or was on furlough, leave of absence or absent for injury on that date;

(3) Did not decline an offer of employment in the same "class or craft" as his or her most recent railroad service; and

(4) Was alive on October 1, 1981.

(c) *"Involuntarily and without fault" defined.* An employee is considered to have stopped railroad employment involuntarily and without fault if:

(1) The employee loses his or her job;

(2) The employee could not, through the exercise of seniority rights, remain in railroad service in the same class or craft as his or her most recent railroad service, regardless of the location where that service would be performed; and

(3) The employee did not lose his or her job because of poor job performance, misconduct, medical reasons or other action or inaction on the part of the employee.

(d) *Effect of separation allowance.* An employee who accepts a separation allowance and in so doing relinquishes his or her seniority rights to railroad employment is deemed to have voluntarily terminated his or her railroad service. However, if the employee stopped railroad employment involuntarily and without fault, as defined in paragraph (c) of this section, receipt of a separation allowance will not affect a current connection under paragraph (b) of this section.

(e) *"Class or craft" defined.* The terms"class or craft," as used in this section, have the same meaning as they do generally in the railroad industry.

(f) *For supplemental annuities only.* An additional special current connection test is required for an individual who was receiving a disability annuity which terminated due to the individual's recovery from disability. If the individual becomes entitled to a new annuity, a new current connection test based on the new annuity beginning date must be made. This test is made using the rules contained in §§ 216.13 and 216.17.

**§ 216.16 What is regular non-railroad employment.**

(a) Regular non-railroad employment is full or part-time employment for pay.

(b) Regular non-railroad employment does not include any of the following:

(1) Self-employment;

(2) Temporary work provided as relief by an agency of a Federal, State, or local government;

(3) Service inside or outside the United States for an employer under the Railroad Retirement Act, even if the employer does not conduct the main part of its business in the United States;

(4) Involuntary military service not creditable under the Railroad Retirement Act;

(5) Employment with the following agencies of the United States Government:

(i) Department of Transportation;

(ii) Interstate Commerce Commission;

(iii) National Mediation Board;

(iv) Railroad Retirement Board; or

(v) National Transportation Safety Board;

(6) Employment entered into after early retirement by an employee who is receiving an annuity under Conrail's voluntary annuity program. This program is provided under the Staggers Rail Act of 1980 (Pub. L. 96–448); or

(7) Employment with the Alaska Railroad so long as it is an instrumentality of the State of Alaska.

**§ 216.17 What amount of regular non-railroad employment will break a current connection.**

The amount of regular non-railroad employment needed to break a current connection depends on when the applicable 30-month period ends (see § 216.13 of this part), as follows:

(a) If the 30-month period ends in the calendar year before or in the same calendar year as the annuity begins or the month the employee dies, the current connection is broken if the employee:

(1) Works in each month in the interval after the end of the 30-month period and before the earlier of the month the annuity begins or the employee dies; or

(2) Works and earns at least $200 in wages in any 3 months within the interval described in paragraph (a)(1) of this section.

(b) If the 30-month period ends more than a year before the calendar year in which the annuity begins or the employee dies, the current connection is broken if the employee:

(1) Works in any 2 consecutive years wholly or partially within the interval after the end of the 30-month period and before the month the annuity begins or the employee dies, whichever is earlier; and

(2) Earns at least $1,000 in wages in any year wholly or partially within the interval described in paragraph (b)(1) of this section (but not counting earnings during the 30-month period and after the annuity beginning date), even if that year is not one of the 2 consecutive years described in paragraph (b)(1) of this section.

## Subpart C—Railroad and Last Non-Railroad Employment

**§ 216.21 General**

To be eligible for an employee, a spouse, or a divorced spouse annuity, the Railroad Retirement Act requires that an applicant must stop work for pay performed as an employee for a railroad employer. In addition, no employee, spouse or divorced spouse annuity may be paid for any month in which the employee, spouse or divorced spouse annuitant works for pay for any railroad employer after the date his or her annuity began. No annuity may be paid to a widow or widower, surviving divorced spouse, remarried widow or widower, child, or parent for any month such individual works for pay for a railroad employer.

**§ 216.22 Work as an employee which affects payment.**

(a) *Work for a railroad employer.* Work for pay as an employee of a railroad employer always prevents payment of an annuity.

(b) *Work for last non-railroad employer.* Work for pay in the service of the last non-railroad employer by whom an individual is employed will reduce the amount of the tier II benefit of the employee, spouse and supplemental annuity as provided in part 230 of this chapter. An individual's last non-railroad employer is:

(1) Any non-railroad employer from whom the individual last resigned (in point of time) in order to receive an annuity; and

(2) Any additional non-railroad employer from whom the individual resigned in order to have an annuity become payable. Employment which an individual stops within 6 months of the date on which the individual files for an annuity will be presumed in the absence of evidence to the contrary to be service from which the individual resigned in order to receive an annuity.

(c) *Corporate officers.* An officer of a corporation will be considered to be an employee of the corporation. A director of a corporation acting solely in his or her capacity as such director is not an employee of the corporation.

**§ 216.23 Work which does not affect eligibility.**

An individual may engage in any of the following without adversely affecting his or her annuity:

(a) *Work for a railway labor organization.* An individual may work for a local lodge or division of a railway labor organization if the pay is under $25 a month, unless the work performed is solely for the purpose of collecting insurance premiums.

(b) *Work without pay.* Work performed for any person or entity for which no pay is received, or where the pay merely constitutes reimbursement for out-of-pocket expenses, or where the amount received consists only of free will donations and there is no agreement that such donation shall constitute remuneration for services, does not affect entitlement to an annuity.

(c) *Self-employment.* Self-employment is work performed in an individual's own business, trade or profession as an independent contractor, rather than as an employee. An individual is not self-employed if the business is incorporated. The designation or description of the relationship between the individual and another person as anything other than that of an employer and employee is immaterial. If the Board determines that an employer-employee relationship exists, the fact that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like will be disregarded. An individual determined to be an employee of a railroad employer pursuant to part 203 of this chapter is not self-employed. Whether an individual performing services is an employee depends upon the degree to which the recipient of services controls the individual's work. Control is determined in accordance with general legal principles delineating an employer-employee relationship. Among the factors considered are:

(1) *Instructions.* An individual required to comply with instructions about when, where, and how to work is ordinarily an employee. Instructions may be oral or in the form of manuals or written procedures which show how the desired result is to be accomplished. An individual who ordinarily works without receiving instructions because he or she is highly skilled or knowledgeable may nevertheless be an employee if the employer has a right to instruct the individual in performance of the work.

(2) *Training.* Training provided an individual by an employer indicates that the employer wants the work to be performed in a particular method or manner, especially if the training is given periodically or at frequent intervals. An individual may be trained by an experienced employee working with him or her, by correspondence, by required attendance at meetings, or by other methods.

(3) *Integration into the employer's business.* Integration of an individual's services into the business operations of an employer generally shows that the individual is subject to direction and

control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the individuals who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

(4) *Services rendered personally.* A requirement that an individual personally work for the employer indicates that the employer is interested in the methods as well as the results, and that the employer intends to control the result by controlling who does the work.

(5) *Hiring, supervising, and payment of assistants.* An employer generally hires, supervises, and pays assistants. An individual who hires, supervises, and pays other workers at the direction of the employer may be an employee acting as a representative of the employer. However, if an individual hires, supervises, and pays his or her own assistants pursuant to a contract under which the individual agrees to provide materials and labor and under which the individual is responsible only for the attainment of a result, this factor indicates an independent contractor status.

(6) *Continuing work relationship.* A work relationship between an individual and an employer which continues over time indicates that the individual is an employee. A relationship may continue if the individual works at frequently recurring, though somewhat irregular intervals, either on call of the employer or when work is available.

(7) *Set hours of work.* A requirement that an individual work for an employer during a specified period of the day, week, month or year, or for a specified number of hours daily indicates that the individual is an employee. An individual whose occupation renders fixed hours impractical may be an employee if required by the employer to work at certain times.

(8) *Full time required.* A requirement that an individual devote full time to the employer's business indicates that the individual is an employee. What full time means may vary with the intent of the parties, the nature of the occupation, and customs in the locality. Full-time work may be required indirectly even though not specified in writing or orally. An individual required to produce a minimum volume of business for an employer may be compelled to devote full time to producing the work. Prohibiting work for any other employer may require an individual to work full time to earn a living However, part-time work performed on a regular basis, or on call of the employer, or when work is available, may also render an individual an employee.

(9) *Working on employer's premises.* Working on the employer's premises may indicate that an individual is an employee where by nature the work could be done elsewhere, because the employer's place of business is physically within the employer's direction and supervision. Desk space, telephone, and stenographic services provided by an employer place the worker within the employer's direction and supervision unless the worker has the option not to use these facilities. Work done off the employer's premises does not by itself indicate that the worker is not an employee because some occupations require that work be performed away from the premises of the employer. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

(10) *Order or sequence set.* Performing tasks in the order or sequence set by the employer indicates that the worker is an employee. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.

(11) *Oral or written reports.* Regular oral or written reports submitted to the employer indicate that the worker is an employee, compelled to account to the employer for his or her actions.

(12) *Payment by hour, week, month.* Payment at a fixed rate per hour, week, or month indicates that an individual is an employee. Payment by commission with a guaranteed minimum salary, or by a drawing account at stated intervals with no requirement to repay amounts which exceed the individual's earnings, also indicates that an individual is an employee. Payment in a lump sum for a completed job indicates that an individual is self-employed. The lump sum may be computed by the number of hours required to do the job at a fixed hourly rate, or by weekly or monthly installments toward a lump sum agreed upon in advance as the total cost. Payment made on a straight commission basis generally indicates that the worker is an independent contractor.

(13) *Payment of business and/or traveling expenses.* Payment by the employer of expenses which an individual incurs in connection with the employer's business indicates that the individual is an employee.

(14) *Furnishing of tools and materials.* The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

(15) *Investment in facilities.* If the worker invests in facilities which are used by the worker in performing services and which are not typically maintained by employees, such as an office rented by the worker from a party unrelated to the worker or to the employer, this factor tends to indicate that the worker is an independent contractor. On the other hand, if all facilities necessary to the work which an individual performs are furnished without charge by the employer, this factor indicates the existence of an employer-employee relationship. Facilities include equipment or premises necessary for the work, other than items such as tools, instruments, and clothing which may be commonly provided by an employee in a particular trade.

(16) *Realization of profit or loss.* An individual not in a position to realize a profit or suffer a loss as a result of work performed for an employer is an employee. An individual has an opportunity for profit or loss if he or she:

(i) Hires, directs, and pays assistants;

(ii) Has his or her own office, equipment, materials, or other facilities for doing the work;

(iii) Has continuing and recurring liabilities or obligations, and success or failure depends on the relation of receipts to expenditures; or

(iv) Agrees to perform specific jobs for prices agreed upon in advance and pays expenses incurred in connection with the work.

(17) *Working for more than one firm at a time.* If a worker performs more than *de minimus* services for a number of unrelated persons or firms at the same time, this factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

(18) *Making service available to the general public.* The fact that an individual makes his or her services available to the general public on a regular and consistent basis rather than to one employer indicates that the individual is self-employed rather than an employee of any one firm. An individual may make services available to the public by working from his or her own office with assistants, from his or

her own home, by holding business licenses, by a listing in a business directory, or by advertising.

(19) *Employer's right to discharge.* The right to discharge a worker is a factor which indicates that the worker is an employee and the person who possesses the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An employer's right to discharge exists even if it is restricted due to a collective bargaining agreement. An employer ordinarily cannot end a relationship without incurring liability with a self-employed individual who meets contract specifications.

(20) *Employee's right to terminate.* The fact that an individual has the right to end his or her relationship with an employer at any time without incurring liability for work to be performed indicates that the individual is an employee. A self-employed individual is legally obligated to satisfactorily complete a specific job.

**§ 216.24 Relinquishment of rights to return to work.**

(a) *What return to work rights must be given up.* Before an individual may receive an annuity based on age, he or she must give up any seniority or other rights to return to work for any railroad employer.

(b) *When right to return to work is ended.* An individual's right to return to work for a railroad employer is ended whenever any of the following events occur:

(1) The employer reports to the Board that the individual no longer has the right;

(2) The individual or an authorized agent of that individual gives the employer an oral or written notice of the individual's wish to give up that right and:

(i) The individual certifies to the Board that the right has been given up;

(ii) The Board notifies the employer of the individual's certification; and

(iii) The employer either confirms the individual's right has been given up or fails to reply within 10 days following the day the Board mailed the notice to the employer;

(3) An event occurs which under the established rules or practices of the employer automatically ends that right;

(4) The employer or the individual or both take an action which clearly and positively ends that right;

(5) The individual never had that right and permanently stops working;

(6) The Board gives up that right for the individual, having been authorized to do so by the individual;

(7) The individual dies; or

(8) The individual signs a statement that he or she gives up all rights to return to work in order to receive a separation allowance or severance pay.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0016)

## Subpart D—Employee Annuity

**§ 216.30 General.**

The Railroad Retirement Act provides annuities for employees who have reached a specified age and have been credited with a specified number of years of service. The Act also provides annuities for employees who become disabled. In addition, to be eligible for an annuity an employee must comply with the work restrictions outlined in subpart C of this part.

**§ 216.31 Who is eligible for an age annuity.**

The Railroad Retirement Act provides annuities based on the employee's age for employees who have been credited with at least 10 years of railroad service.

(a) *Annuities based on 10 years of service.* An employee with 10 years of railroad service but less than 30 years of service is eligible for an annuity if he or she:

(1) Has attained retirement age; or

(2) Has attained age 62 (the annuity cannot begin prior to the first full month during which the employee is age 62) but is less than retirement age. All components of the annuity are reduced for each month the employee is under retirement age when the annuity begins.

(b) *Annuities based on 30 years of service.* An employee who has been credited with 30 years of railroad service is eligible for an annuity at age 60 (the annuity cannot begin prior to the first full month the employee is age 60). The Tier I component of the annuity is reduced if the employee meets the following conditions:

(1) The employee annuity begins before the month in which the employee is age 62; and either

(2) He or she had not attained age 60, prior to July 1, 1984; or

(3) He or she had not completed 30 years of railroad service prior to July 1, 1984.

(c) *Change from employee disability to age annuity.* A disability annuity paid to an employee through the end of the month before the month in which the employee attains retirement age is converted to an age annuity beginning with the month in which he or she attains retirement age.

**§ 216.32 Who is eligible for a disability annuity.**

The Railroad Retirement Act provides two types of disability annuities for employees who have been credited with at least 10 years of railroad service. An employee may receive an annuity if his or her disability prevents work in his or her regular railroad occupation. An employee who cannot be considered for a disability based on ability to work in his or her regular railroad occupation may receive an annuity if his or her disability prevents work in any regular employment.

(a) *Disability for work in regular railroad occupation.* An employee disabled for work in his or her regular occupation, as defined in part 220 of this chapter, is eligible for a disability annuity if he or she:

(1) Has not attained retirement age; and

(2) Has a current connection with the railroad industry; and has either:

(3) Completed 20 years of service; or

(4) Completed 10 years of service and is at least 60 years old.

(b) *Disabled for work in any regular employment.* An employee disabled for work in any regular employment, as defined in part 220 of this chapter, is eligible for a disability annuity if he or she:

(1) Is under retirement age; and

(2) Has completed 10 years of service.

**§ 216.33 What is required for payment of an age or disability annuity.**

In addition to the eligibility requirements listed above, an employee may be required to meet other conditions before payment of his or her annuity may begin.

(a) To receive payment of an employee annuity based on age, an eligible employee must:

(1) Apply to be entitled to an annuity; and

(2) Give up the right to return to service with his or her last railroad employer.

(b) If a disability annuity is converted to an age annuity when the annuitant attains retirement age, the age annuity cannot be paid until the employee gives up the right to return to work as described in subpart C of this part. The employee may authorize the Board to relinquish any such right on his or her behalf at the time when he or she applies for the disability annuity.

(c) To receive payment of an employee annuity based on disability,

and eligible employee must apply to be entitled to an annuity.

(d) When requested, the employee must submit evidence to support his or her application, such as proof of age or evidence of disability.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 3220–0002)

## Subpart E—Supplemental Annuity

### § 216.40 General.

An employee with a current connection with the railroad industry at the time of retirement may qualify for a supplemental annuity in addition to the regular employee annuity. Supplemental annuities are paid from a separate account funded by employer taxes in addition to those assessed for regular annuities. The Board reduces a supplemental annuity if the employee receives a private pension based on contributions from a railroad employer.

### § 216.41 Who is entitled to a supplemental annuity.

An employee is entitled to a supplemental annuity if he or she:

(a) Has been credited with railroad service in at least one month before October 1981;

(b) Is entitled to the payment of an employee annuity awarded after June 30, 1966;

(c) Has a current connection with the railroad industry when the employee annuity begins;

(d) Has given up the right to return to work as shown in Subpart C of this part; and either

(e) Is age 65 or older and has completed 25 years of service; or

(f) Is age 60 or older and under age 65, has completed 30 years of service, and is awarded an annuity on or after July 1, 1974.

### § 216.42 How a private railroad pension affects a supplemental annuity.

(a) *What is a private railroad pension.* The Board determines whether a pension established by a railroad employer is a private pension that will cause a reduction in the employee's supplemental annuity. A private pension for purposes of this subpart is a plan that:

(1) Is a written plan or arrangement which is communicated to the employees to whom it applies;

(2) Is established and maintained by an employer for a defined group of employees; and

(3) Provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement or disability. Such a plan is sometimes referred to as a defined benefit plan.

(b) *Defined contribution plan.* A plan under which the employer is obligated to make fixed contributions to the plan regardless of profits (sometimes known as a money purchase plan) is a private pension plan. A plan under which the employer's contributions are discretionary is not a private pension plan under this section.

(c) *Other than retirement benefits.* A plan which provides benefits not customarily considered retirement benefits (such as unemployment benefits, sickness or hospitalization benefits) is not a private pension plan under this section.

(d) *Effective date of private railroad pension for supplemental annuity purposes.* A private pension reduces a supplemental annuity payment effective on the first day of the month after the month the Board determines that it is a private pension as defined in paragraph (a) of this section.

(e) *Effect of private railroad pension.* A supplemental annuity is reduced by the amount of any private pension the employee is receiving which is attributable to an employer's contributions, less any amount by which the private pension is reduced because of the supplemental annuity. The supplemental annuity is not reduced for the amount of a private pension attributable to the employee's contributions. The Board will determine the amount of a private pension for any month which is attributable to the employee's contributions.

### § 216.43 Effect of a supplemental annuity on other benefits.

(a) *Employee annuity.* A supplemental annuity that begins after December 31, 1974, does not affect the payment of a regular employee annuity. A supplemental annuity beginning prior to 1975 causes a reduction in the employee annuity as provided by section 3(j) of the Railroad Retirement Act of 1937.

(b) *Spouse or survivor annuity.* The payment of a supplemental annuity does not affect the amount of a spouse or survivor annuity.

(c) *Residual lump-sum.* The amount of a supplemental annuity is not deducted from the gross residual lump-sum benefit. See part 234 of this chapter for an explanation of the residual lump-sum benefit.

## Subpart F—Spouse and Divorced Spouse Annuities

### § 216.50 General.

The Railroad Retirement Act provides annuities for the spouse, and divorced spouse, of an employee who is entitled to an employee annuity. A spouse may receive an annuity based on age, or on having a child of the employee in his or her care. A divorced spouse may only receive an annuity based on age. No spouse or divorced spouse annuity may be paid based upon disability.

### § 216.51 Who is eligible for a spouse annuity.

(a) To be eligible for an annuity, a spouse must:

(1) Be the husband or wife, as defined in part 222 of this chapter, of an employee who is entitled to an annuity described under subpart D of this part; and

(2) Stop working for any railroad employer.

(b) Where the employee's annuity began before January 1, 1975, the employee has completed less than 30 years of railroad service, and is age 65 or older, the spouse must be:

(1) Age 65 or older;

(2) Less than age 65 and have in his or her care a disabled child or minor child (a child under 18 years old if the spouse claimant is a wife, or under 16 years old if the spouse claimant is a husband) of the employee; or

(3) Age 62 or older but under age 65. In such case, all annuity components are reduced for each month the spouse is under age 65 at the time the annuity begins.

(c) Where the employee's annuity begins after December 31, 1974, the employee has completed 10 years but less than 30 years of railroad service, and has attained age 62, the spouse must be:

(1) Retirement age or older;

(2) Less than retirement age and have in his or her care a disabled child or a minor child (a child under 18 years old if the spouse claimant is a wife, or under 16 years old if the spouse claimant is a husband) of the employee; or

(3) Age 62 or older but under retirement age. In such case, all annuity components are reduced for each month the spouse is under retirement age at the time the annuity begins.

(d) Where the employee's annuity began after June 30, 1974, the employee has completed 30 years of railroad service, and is age 60 or older, the spouse must be:

(1) Age 60 or older;

(2) Less than age 60 and have in his or her care a disabled child or a minor child (a child under 18 years old if the spouse claimant is a wife, or under 16 years old if the spouse claimant is a husband) of the employee; or

(3) Age 60 but less than retirement age. In such case, the tier I component is reduced if the following conditions are met:

(i) The employee was under age 62 at the time his or her annuity began;

(ii) The employee annuity began after June 30, 1984;

(iii) The employee was under age 60 on June 30, 1984 or completed 30 years of railroad service after June 30, 1984; and

(iv) The spouse annuity begins after June 30, 1984.

**§ 216.52 Who is eligible for an annuity as a divorced spouse.**

To be eligible for a divorced spouse annuity, the employee annuitant must be at least age 62 and the divorced spouse (see § 222.22 of this chapter) must:

(a) Be the divorced wife or husband of an employee;

(b) Stop work for a railroad employer;

(c) Not be entitled to an old-age or disability benefit under the Social Security Act based on a primary insurance amount that is equal to or greater than one-half of the employee's tier I primary insurance amount; and either

(d) Have attained retirement age; or

(e) Have attained age 62 but be under retirement age. The annuity is reduced for each month the spouse is under retirement age at the time the annuity begins.

**§ 216.53 What is required for payment.**

An eligible spouse or divorced spouse must:

(a) Apply to be entitled to an annuity; and

(b) Give up the right to return to work for a railroad employer.

(Approved by the Office of Management and Budget under control number 3220–0016 and 3220–0042).

**§ 216.54 Who is an employee's wife or husband.**

An employee's wife or husband is an individual who—

(a) Is married to the employee; and

(b) Has been married to the employee for at least one year immediately before the date the spouse applied for annuity;

(c) Is the natural parent of the employee's child;

(d) Was entitled to an annuity as a widow(er), a parent, or a disabled child under this part in the month before he or she married the employee; or

(e) Could have been entitled to a benefit listed in paragraph (d) of this section, if the spouse had applied and been old enough in the month before he or she married the employee.

## Subpart G—Widow(er), Surviving Divorced Spouse, and Remarried Widow(er) Annuities

**§ 216.60 General.**

The Railroad Retirement Act provides annuities for the widow(er), surviving divorced spouse, or remarried widow(er) of an employee. The deceased employee must have completed 10 years of railroad service and have had a current connection with the railroad industry at the time of his or her death. A widow(er), surviving divorced spouse, or remarried widow(er) may receive an annuity based on age, on disability, or on having a child of the employee in his or her care.

**§ 216.61 Who is eligible for an annuity as a widow(er).**

A widow(er) of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry at death is eligible for an annuity if he or she:

(1) Has not remarried; and either

(2) Has attained retirement age;

(3) Is at least 50 but less than 60 years of age and became disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity);

(4) Is less than retirement age but has in his or her care a child who either is under age 18 (16 with respect to the tier I component) or is disabled and who is entitled to an annuity under subpart H of this part; or

(5) Is at least 60 years of age but has not attained retirement age. (In this case, all components of the annuity are reduced for each month the widow(er) is age 62 or over but under retirement age when the annuity begins. For each month the widow(er) is at least age 60 but under age 62, all components of the annuity are reduced as if the widow(er) were age 62).

**§ 216.62 Who is eligible for an annuity as a surviving divorced spouse.**

(a) A surviving divorced spouse of an employee who completed 10 years of railroad service and had a current connection with the railroad industry at death, is eligible for an annuity if he or she:

(1) Is unmarried;

(2) Is not entitled to an old-age benefit under the Social Security Act that is equal to or higher than the surviving divorced spouse's annuity before any reduction for age; and either

(3) Has attained retirement age;

(4) Is at least 50 years of age but less than retirement age and is disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity.);

(5) Is less than retirement age but has in his or her care a child who either is under age 16 or is disabled and who is entitled to an annuity under subpart H of this part; or

(6) Is at least 60 years of age but has not attained retirement age. In this case, the annuity is reduced for each month the surviving spouse is under retirement age when the annuity begins.

(b) A disabled surviving spouse's annuity is converted to an annuity based on age beginning the month he or she becomes 60 years old. The annuity rate does not change.

(c) If a surviving divorced spouse marries after attaining age 60 (or age 50 if he or she is a disabled surviving divorced spouse), such marriage shall be deemed not to have occurred.

**§ 216.63 Who is eligible for an annuity as a remarried widow(er).**

(a) A widow(er) of an employee who completed 10 years of railroad service and had a current connection with the railroad industry at death is eligible for an annuity as a remarried widow(er) if he or she:

(1) Remarried either:

(i) After having attained age 60 (after age 50 if disabled); or

(ii) Before age 60 but the marriage terminated;

(2) Is not entitled to an old-age benefit under the Social Security Act that is equal to or higher than the full amount of the remarried widow(er)'s annuity before any reduction for age; and

(3) Has attained retirement age;

(4) Is at least 50 but less than 60 years of age and is disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity);

(5) Has not attained retirement age but has in his or her care a child who either is under age 16 or is disabled, and who is entitled to an annuity under subpart H of this part; or

(6) Is at least age 60 but has not attained retirement age. (In this case, the annuity is reduced for each month the remarried widow(er) is under retirement age when the annuity begins.)

(b) An individual entitled to a widow(er)'s annuity may be entitled to an annuity as a remarried widow(er) if he or she:

(1) Remarries after having attained age 60 (after age 50 if he or she has been determined to be disabled prior to his or her remarriage) and is not a surviving divorced spouse; or

(2) Is entitled to an annuity based upon having a child of the employee in his or her care and marries an individual entitled to a retirement, disability, widow(er)'s, mother's, father's, parent's, or disabled child's benefit under the Railroad Retirement Act or Social Security Act.

**§ 216.64 What is required for payment.**

An eligible widow(er), surviving divorced spouse, or remarried widow(er) must:

(a) Apply to be entitled for an annuity; and

(b) Submit evidence requested by the Board to support his or her application.

(Approved by the Office of Management and Budget under control number 3220–0030.)

**§ 216.65 Who is an employee's widow(er).**

An individual who was married to the employee at the employee's death is the deceased employee's widow(er) if he or she:

(a) Was married to the employee for at least 9 months before the day the employee died;

(b) Is the natural parent of the employee's child;

(c) Was married to the employee when either the employee or the widow(er) adopted the other's child, or they both legally adopted a child who was then under 18 years old;

(d) Was married to the employee less than 9 months before the employee died but, at the time of marriage, the employee was reasonably expected to live for 9 months; and

(1) The employee's death was accidental;

(2) The employee died in the line of duty while he or she was serving active duty as a member of armed forces of the United States; or

(3) The surviving spouse was previously married to the employee for at least 9 months;

(e) Was entitled in the month before the month of marriage to either:

(1) A benefit under section 202 of the Social Security Act as a widow, widower, spouse (divorced spouse, surviving divorced spouse), father, mother, parent, or disabled child; or

(2) An annuity under the Railroad Retirement Act as a widow, widower, divorced spouse, or surviving divorced spouse, parent or disabled child; or

(f) Could have been entitled to a benefit listed in paragraph (e) of this section, if the widow(er) had applied and been old enough to qualify therefor in the month before the month of marriage.

**§ 216.66 Who is an employee's surviving divorced spouse.**

An individual who was married to the employee is the deceased employee's surviving divorced spouse if he or she:

(a) Was married to the employee for a period of at least 10 years immediately before the date the divorce became final, and applies for an annuity based on age or disability; or

(b) Applies for an annuity based on having a "child in care" and either:

(1) Is the natural parent of the employee's child;

(2) Was married to the employee at the time the employee or the surviving divorced spouse adopted the other's child who was then under 18 years old; or

(3) Was married to the employee at the time they adopted a child who was then under 18 years old.

**§ 216.67 "Child in care."**

(a) *Railroad Retirement Act.* Part 222 of this chapter sets forth what is required to establish that a child is in an individual's care for purposes of the Railroad Retirement Act. This definition is used to establish eligibility for the tier II component of a female spouse or widow(er) annuity under that Act. Under this definition a child must be under age 18 or under a disability before any benefit is payable based upon having the child in care.

(b) *Social Security Act.* In order to establish eligibility for the tier I components of a spouse or widow(er) annuity, and eligibility for a surviving divorced spouse annuity based upon having a child of the employee in care, the definition of "child in care" found in the Social Security Act is used. Under this definition, a child must be under age 16 or under a disability.

**§ 216.68 Disability period for widow(er), surviving divorced spouse, or remarried widow(er).**

A widow(er), surviving divorced spouse, or remarried widow(er) who has a disability as defined in part 220 of this chapter is eligible for an annuity only if the disability began before the end of a period which:

(a) Begins in the later of:

(1) The month in which the employee died;

(2) The last month for which the widow(er) or surviving divorced spouse was entitled to an annuity for having the employee's child in care; or

(3) The last month for which the widow(er) or surviving divorced spouse was entitled to a previous annuity based on disability; and

(b) Ends with the earlier of:

(1) The month before the month in which the widow(er) or surviving divorced spouse or remarried widow(er) become 60 years old; or

(2) The last day of the last month of a 7-year period (84 consecutive months) following the month in which the period began.

## Subpart H—Child's Annuity

**§ 216.70 General.**

The Railroad Retirement Act provides an annuity for the child of a deceased employee but not for the child of a living employee. The Act does provide that the child of a living employee can establish another individual's eligibility for a spouse annuity or cause an increase in the annuities of an employee and spouse. The eligibility requirements described in this subpart also apply for the following purposes, except as otherwise indicated in this part:

(a) To establish annuity eligibility for a spouse under subpart F of this part if he or she has the employee's eligible child in care;

(b) To establish annuity eligibility for a widow(er), or surviving divorce spouse or remarried widow(er) under subpart G of this part if he or she has the employee's child in care; or

(c) To provide an increase in the employee's annuity under the Social Security Overall Minimum Guaranty (see part 229) by including the eligible child.

**§ 216.71 Who is eligible for a child's annuity.**

An individual is eligible for a child's annuity if the individual:

(a) Is a child of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry when he or she died;

(b) Is not married at the time the application is filed;

(c) Is dependent upon the employee as defined in part 222 of this chapter; and

(d) Meets one of the following at the time the application is filed:

(1) Is under age 18; or

(2) Is age 18 or older and either:

(i) Is disabled as defined in part 220 of this chapter before attaining age 22 (the disability must continue through the time of application for benefits);

(ii) Is under age 19 and is a full-time student as defined in § 216.74 of this part; or

(iii) Becomes age 19 in a month in which he or she is a full-time student and has not completed the requirement for, or received a diploma or certificate from, a secondary school.

**§ 216.72 What is required for payment of a child's annuity.**

An eligible child of a deceased employee is entitled to an annuity upon applying therefor and submitting any evidence requested by the Board.

(Approved by the Office of Management and Budget under control number 3220–0030)

**§ 216.73 Who may be re-entitled to a child's annuity.**

If an individual's entitlement to a child's annuity has ended, the individual may be re-entitled if he or she has not married and he or she applies to be re-entitled. The re-entitlement may begin with:

(a) The first month in which the individual is a full-time student if he or she is under age 19, or is age 19 and has not completed requirements for, or received a diploma or certificate from, a secondary school;

(b) The first month the individual is disabled, if the disability began before he or she attained age 22 and continues through the time of application for benefits; or

(c) The first month in which the individual is under a disability that began before the last day of a 7-year period (84 consecutive months) following the month in which the previous child's annuity ended, or the individual was no longer included as a disabled child in a railroad retirement annuity paid under the Social Security Overall Minimum Annuity (see part 229).

**§ 216.74 When a child is a full-time student.**

(a) *Full-time student.* A child is considered a full-time student when that individual is in full-time attendance at an elementary or secondary school. An individual is not a full-time student if while attending an elementary or secondary school he or she is paid compensation by an employer who has requested or required that the individual attend the school. An individual is not a full-time student while he or she is confined in a penal institution or correctional facility because he or she committed a felony after October 19, 1980. A student who reaches age 19 but has not completed the requirements for a secondary school diploma or certificate and who is in full-time attendance at an elementary or secondary school will continue to be eligible for benefits until the first day of the first month following the end of the quarter or semester in which he or she is then enrolled, or if the school is not operated on a quarter or semester system, the earlier of:

(1) The first day of the month following completion of the course(s) in which he or she was enrolled when age 19 was reached; or

(2) The first day of the third month following the month in which he or she reached age 19.

(b) *Full-time attendance.* Full-time school attendance means that a student is enrolled in a non-correspondence course which is considered full-time for day students under the practices and standards of the elementary or secondary school. The course must last at least 13 weeks and the student's scheduled rate of attendance must be at least 20 hours a week. A student whose full-time attendance either begins or ends in a given month is in full-time attendance for that entire month. A student is in full-time attendance in the month in which he or she graduates, but has no classes, if classes end in the month before graduation.

(c) *Elementary or secondary school.* An elementary or secondary school is a school which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which it is located.

**§ 216.75 When a child is a full-time student during a period of non-attendance.**

A student who has been in full-time attendance at an elementary or secondary school is considered a full-time student during a period of non-attendance (include part-time attendance) if:

(a) The period of non-attendance is 4 consecutive months or less;

(b) The student shows to the satisfaction of the Board that he or she intends to return, or the student does return, to full-time attendance at the end of the period; and

(c) The student has not been expelled or suspended from the school.

## Subpart I—Parent's Annuity

**§ 216.80 General.**

The Railroad Retirement Act provides an annuity for the surviving parent of a deceased employee. The deceased employee must have completed 10 years of railroad service and have had a current connection with the railroad industry at the time of his or her death. A parent may only receive an annuity based on age.

**§ 216.81 Who is eligible for a parent's annuity.**

(a) Where the employee is not survived by a widow(er), or child who is or ever could be entitled to an annuity as described by subpart G or H of this part, a parent of the deceased employee is eligible for both the tier I and tier II components of an annuity if he or she:

(1) Is age 60 or older;

(2) Has not married since the employee died;

(3) Received one-half of his or her support (as defined in part 222 of this chapter) from the employee at the time the employee died; and

(4) Files proof of support as provided for in paragraphs (b)(4) and (b)(5) of this section.

(b) Where the employee is survived by a widow(er), or child who is or ever could be entitled to an annuity as described by subpart G or H of this part, a parent of the deceased employee is eligible for an annuity consisting of the tier I component alone if he or she:

(1) Is age 60 or older;

(2) Has not married since the employee died;

(3) Is not in receipt of an old age benefit under the Social Security Act equal to or exceeding the amount of the parent's tier I annuity amount before it is reduced for the family maximum but after the sole survivor minimum is considered;

(4) Received at least one-half of his or her support (as defined in part 222 of this chapter) from the employee either:

(i) When the employee died, or

(ii) At the beginning of the period of disability if the employee has a period of disability (as explained in part 220 of this chapter) which did not end before death; and

(5) Files proof of support with the Board within 2 years after either:

(i) The month in which the employee filed an application for a period of disability if support is to be established as of the beginning of the period of disability; or

(ii) The date of the employee's death if support is to be established at that point.

(c) The Board may accept proof of support filed after the 2-year period for reasons which constitute good cause to do so as that term is defined in part 219 of this chapter.

**§ 216.82 What is required for payment.**

An eligible parent must file an application and submit the evidence requested by the Board to be entitled to an annuity.

(Approved by the Office of Management and Budget under control number 3220–0030)

## Subpart J—Eligibility for More Than One Annuity

**§ 216.90 General.**

An individual may meet the eligibility provisions for more than one annuity

described in this part. The Railroad Retirement Act generally requires that the total amount of annuities otherwise independently payable to one individual must be reduced if that individual is entitled to multiple annuities. Entitlement as a survivor includes entitlement as a widow(er), surviving divorced spouse, remarried widow(er), child, or parent.

**§ 216.91 Entitlement as an employee and spouse, divorced spouse, or survivor.**

(a) *General.* If an individual is entitled to an annuity as a spouse, divorced spouse or survivor, and is also entitled to an employee annuity, then the spouse, divorced spouse or survivor annuity must be reduced by the amount of the employee annuity. However, this reduction does not apply (except as provided in paragraph (b) of this section) if the spouse, divorced spouse or survivor or the individual upon whose earnings record the spouse, divorced spouse or survivor annuity is based worked for a railroad employer or as an employee representative before January 1, 1975.

(b) *Tier I reduction.* If an individual is entitled to an annuity as a spouse, divorced spouse or survivor, and is also entitled to an employee annuity, then the tier I component of the spouse, divorced spouse or survivor annuity must be reduced by the amount of the tier I component of the employee annuity. Where the spouse or survivor is entitled to a tier II component, then a portion of this reduction may be restored in the computation of this component.

**§ 216.92 Entitlement as a spouse or divorced spouse and as a survivor.**

If an individual is entitled to both a spouse or divorced spouse and survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

**§ 216.93 Entitlement to more than one survivor annuity.**

If an individual is entitled to more than one survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

**§ 216.94 Entitlement to more than one divorced spouse annuity.**

If an individual is entitled to more than one annuity as a divorced spouse, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

Dated: June 14, 1991.

By authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 91-14881 Filed 6-21-91; 8:45 am]

BILLING CODE 7905-01-M

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## 20 CFR Part 330

**RIN 3220-AA82**

## Determination of Daily Benefit Rates

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board (Board) hereby revises part 330 of its regulations under the Railroad Unemployment Insurance Act to reflect current procedures for computing an employee's daily benefit rate for a given benefit year, and the maximum daily benefit rate authorized under the 1988 amendments to the Act.

**EFFECTIVE DATE:** June 24, 1991.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, Bureau of Law, Chicago, Illinois 60611; (312) 751-4513 (FTS 386-4513).

**SUPPLEMENTARY INFORMATION:** Part 330 of 20 CFR chapter II was last amended on October 29, 1975 (40 FR 50257), to provide information about new Board procedures adopted following the enactment of the 1975 amendments to the Railroad Unemployment Insurance Act. In the period since then, Board procedures and forms have been modified to simplify the collection of data relating to this part and to eliminate collection of unnecessary data.

Under the 1975 amendments, the maximum daily benefit rate was increased to $25.00, and no further increase was possible except through legislative enactment. On November 10, 1988, section 7201 of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Pub. L. 100-647, 102 Stat. 3774) was enacted to amend section 2 of the Railroad Unemployment Insurance Act to increase the maximum daily benefit rate from $25.00 to $30.00 and to prescribe a procedure for determining when the maximum daily benefit rate may increase further. Under Public Law 100-647, the Railroad Retirement Board is required to compute annually the maximum daily benefit rate in accordance with the new statutory procedure and then to publish notice of such maximum daily benefit rate.

Under the 1988 amendments, future increases in the maximum daily benefit rate are indexed on a yearly basis to increases in wages, as reflected by increases in the maximum compensation base provided for tier I taxes under the Railroad Retirement Tax Act (Chapter 22 of the Internal Revenue Code of 1986). the tier I compensation base is adjusted annually so that it is the same amount as the social security wage base under the Federal Insurance Contributions Act; the social security wage base is adjusted annually to reflect growth in average national wages.

Consequently, whether the maximum daily benefit rate will increase depends on the extent of the increase in the tier I compensation base under the Railroad Retirement Tax Act. For example, the tier I compensation base increased from $45,000.00 to $48,000.00 for 1989. Under the new indexing procedure, the amount of that increase was sufficient to produce an increase in the maximum daily benefit rate from $30.00 to $31.00. That increase applied to days of unemployment and sickness in registration periods beginning after June 30, 1989, because of the increase in the tier I earnings base for 1989. However, when the tier I base increased to $51,300.00 for 1990 and to $53,400.00 for 1991, those increases were not sufficient to trigger an increase in the daily benefit rate for days of unemployment or sickness beginning after June 30, 1990 and after June 30, 1991, respectively.

Pursuant to the new statutory procedure, on December 7, 1988, the Board published a notice in the **Federal Register** that the maximum daily benefit rate would increase to $31.00 in July, 1989 (53 FR 49369-49370). On February 28, 1990, the Board published a notice in the **Federal Register** that the maximum daily benefit rate would remain at $31.00 with respect to days of unemployment or days of sickness in registration periods beginning after June 30, 1990 (55 FR 7075). On December 19, 1990, the Board published notice that the maximum daily benefit rate would continue to be $31.00 with respect to days of unemployment or days of sickness in registration periods beginning after June 30, 1991 (55 FR 52113).

Part 330 has therefore been revised to describe the procedure for computing the maximum daily benefit rate and for notifying interested parties of the results of such computation.

This Part has also been revised to reflect current Board procedures for determining an employee's daily benefit

rate and to make the language of the regulation more readable. Specifically, § 330.3(c) has been revised to reflect that the number of miles constituting a basic day for certain railroad occupations has increased from the 100 and 150 mile standards presently found in § 330.2(b). Section 330.5 has been revised to provide that an employee's daily benefit rate shall be considered the minimum daily benefit rate of $12.70 until the employee or his or her employer provides evidence as to the employee's last daily rate of compensation in the applicable base year.

On February 5, 1991, the Board published this rule as a proposed rule (56 FR 4585), inviting comments on or before April 8, 1991. No comments were received. When published as a proposed rule, the formula set forth in proposed § 330.2(b) contained an error, which appeared in column 3 of page 4586 of the **Federal Register** published February 5, 1991, and which involved the placement of the open parenthesis sign. This final rule publication corrects the error.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections under this part have been approved by the Office of Management and Budget under control numbers 3220–0007, 3220–0008 and 3220–0097.

**List of Subjects in 20 CFR Part 330**

Railroad employees, Railroad employers, Railroad unemployment benefits.

For the reasons set out in the preamble, part 330 of title 20 of the Code of Federal Regulations is revised to read as follows:

## PART 330—DETERMINATION OF DAILY BENEFIT RATES

Sec.



**Authority:** 45 U.S.C. 362(1).

### § 330.1 Introduction.

The Railroad Unemployment Insurance Act provides for the payment of benefits, at a specified daily benefit rate, to any qualified employee for his or her days of unemployment or days of sickness, subject to a maximum amount per day. The "daily benefit rate" for an employee is the amount of benefits that he or she may receive for each compensable day of unemployment or sickness in any registration period, not counting days of unemployment or sickness in the employee's non-compensable waiting period. This part explains how the daily benefit rate is determined.

### § 330.2 Computation of daily benefit rate.

(a) *Basic formula.* A qualified employee's daily benefit rate for a given benefit year, as defined in part 302 of this chapter, is an amount equal to 60 percent of the employee's daily rate of compensation for his or her last railroad employment in the applicable base year, but such rate will not exceed the maximum amount set forth in paragraph (b) of this section nor will it be less than $12.70 per day.

(b) *Maximum daily benefit rate.* The maximum daily benefit rate is the greater of $30.00, or the amount computed on the basis of this formula:

$$BR = 25\left(1 + \frac{A-600}{900}\right)$$

In this formula, "BR" represents the maximum daily benefit rate, and "A" represents the amount obtained by dividing, by 60, the amount of the tier I Railroad Retirement Tax Act earnings base as provided for in section 3231(e)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 3231(e)(2)) for the calendar year in which the benefit year begins, with this quotient being rounded down to the nearest multiple of $100.00. If the maximum daily benefit rate so computed is not a multiple of $1.00, the Board will round it to the nearest multiple of $1.00. Such rounding will be upward if the amount so computed is equidistant between two multiples of $1.00.

(c) *When increase effective.* Whenever the annual application of the formula in paragraph (b) of this section triggers an increase in the maximum daily benefit rate, such increase will apply to days of unemployment or days of sickness in registration periods beginning after June 30 of the calendar year involved in the computation of "A" in that formula.

(d) *Notice.* Whenever the annual application of the formula in paragraph (b) of this section triggers an increase in the maximum daily benefit rate, or if the annual application of the formula does not trigger an increase, the Board will publish a notice in the **Federal Register** explaining how it computed the maximum daily benefit rate for the year. The Board will also notify each employer of the maximum amount of the daily benefit rate. The Board will make the computation as soon as it knows the amount of the tier I Railroad Retirement Tax Act earnings base under section 3231(e)(2) of the Internal Revenue Code of 1986 for each calendar year and will publish notice as soon as possible thereafter but in no event later than June 1 of each year. Information as to the current amount of the maximum daily benefit rate will also be available in any Board district or regional office or from the Bureau of Unemployment and Sickness Insurance.

(e) *Sources of information.* In determining an employee's daily rate of compensation for the purpose of computing his or her daily benefit rate, the Board will rely on information furnished by the employee and his or her last employer in the base year. An employee's earnings from employment not covered by the Railroad Unemployment Insurance Act are not considered in computing his or her daily benefit rate.

### § 330.3 Daily rate of compensation.

(a) *Definition.* An employee's daily rate of compensation is his or her straight-time rate of pay, including any cost-of-living allowance provided in any applicable working agreement. It does not include any overtime pay, penalty payment, or other special allowance except as hereinafter provided. An employer's or employee's report of the daily rate of compensation shall, in the absence of information to the contrary, and subject to the considerations set forth in this section and §§ 330.4 and 330.5, be considered to show the daily rate of compensation of the employee by or for whom the report has been furnished. Where a rate other than a daily rate is reported, the Board will convert it to a daily rate.

(b) *Hourly, weekly or monthly rate.* An hourly rate shall be converted to a daily rate by multiplying such hourly rate by the number of hours constituting a working day for the employee's occupation or class of service. A weekly or monthly rate shall be converted to a daily rate by dividing such rate by the number of working days constituting the work week or work month, as the case may be, for the employee's occupation or class of service.

(c) *Mileage rate.* When a collective bargaining agreement provides for payment of compensation on a mileage basis, the employee's daily rate of compensation is his or her rate of pay for the number of miles constituting a basic day, including any allowance, as prescribed by the agreement, that is

added to his or her basic rate of pay for the number of miles constituting a basic day.

(d) *Piece rate or tonnage rate.* Where a piece rate or tonnage rate is reported, the daily rate of compensation shall be determined by computing the employee's average earnings per day for the days on which he or she worked substantially full time (excluding any overtime pay or penalty rates) at such piece rate or tonnage rate during the last two pay periods in which he or she engaged in such work in the base year.

(e) *Commissions or percentage of sales.* Where the compensation reported consists of or includes commissions or percentages of sales, the daily rate of such commissions or percentage of sales shall be determined by computing the employee's average net commissions or percentage earnings (excluding any amounts he or she received to compensate him or her for expenses) per day for the days in the last two pay periods in which he or she worked on a commission or percentage basis in the base year.

(f) *International service.* In the case of an employee who, on his last day of employment in the base year, worked partly outside the United States and partly in the United States for an employer not conducting the principal part of its business in the United States, the employee's daily rate of compensation shall be determined in the same manner as it would if all his service on that day had been rendered in the United States.

**§ 330.4 Last railroad employment in the base year.**

The phrase "last railroad employment in the applicable base year," as used in § 330.2(a) of this part, means generally the employee's last "service performed as an employee," within the meaning of section 1(g) of the Railroad Unemployment Insurance Act. If an employee did not actually perform any service as an employee in the applicable base year (the calendar year preceding a benefit year) but did receive qualifying compensation such as vacation pay or pay for time lost for days in such base year, the Board will consider that his or her last railroad employment in the base year was the employment on which the qualifying compensation was based. The daily rate of such compensation shall be deemed to be the employee's daily rate of compensation for purposes of this part. If an employee's last railroad employment in the base year was casual or temporary work and was performed while on furlough from other base year railroad employment, the Board will disregard the daily rate of compensation paid for the casual or temporary work if such rate of compensation produces a daily benefit rate lower than the daily benefit rate based on the daily rate of compensation for the employment from which the employee was furloughed.

**§ 330.5 Procedure for obtaining and using information about daily rate of compensation.**

(a) *Information furnished by employers.* Every employer, as defined in part 301 of this chapter, shall furnish information to the Board with respect to the daily rate of compensation of each employee for his or her last employment in the applicable base year. The employer shall make such report when it files its annual report of compensation in accordance with part 209 of this chapter and shall use the form prescribed by the Board for that purpose. If an employee's last daily rate of compensation in the base year is $99.99 or more, the employer may report such rate as $99.99 instead of the employee's actual last daily rate of compensation. In the absence of evidence to the contrary or a challenge by the employee, the daily rate of compensation provided by an employer under this section shall be used to compute a qualified employee's daily benefit rate. If an employer fails to report the last daily rate of compensation for a qualified employee who has applied for benefits or if an employee challenges the daily rate reported by an employer, the procedure in paragraphs (b) and (c) of this section will apply.

(b) *Information furnished by employee.* The Board will afford an employee an opportunity to establish his or her last daily rate of compensation if the base year employer did not report a rate for the employee on its annual report of compensation or if the employee challenges the accuracy of the rate reported by the employer. Unless deemed unreasonable, a daily rate of compensation reported by an employee under this paragraph will be used provisionally to compute his or her daily benefit rate, but such rate will be verified in accordance with paragraph (c) of this section. In any case in which the employee's report is deemed unreasonable and no employer report has been provided, the employee's report shall be disregarded, and the Board will seek to verify the employee's last daily pay rate in accordance with paragraph (c) of this section. Pending receipt of such verification, the employee's daily benefit rate shall be set at $12.70. When an unverified and uncorrected pay rate has been verified or corrected, appropriate redetermination of the daily benefit rate shall be made, and such redetermined benefit rate shall be applied to all the employee's days of unemployment or sickness in the benefit year.

(c) *Employer verification.* Whenever an employee has established a daily rate of compensation under paragraph (b) of this section, the Board will request the employee's base year employer to verify such rate within 30 days. If such verification is not received within 30 days, the employee's daily rate of compensation may be based upon other evidence gathered by the Board if such evidence is reasonable in light of compensation rates reported for other employees of the base year employer in the same occupation or class of service as the employer or in light of previous compensation rates reported by the base year employer for its employees. A daily benefit rate established under this paragraph may not exceed the maximum daily benefit rate established under this part.

(d) *Protest.* An employee who is dissatisfied with the daily benefit rate computed under this part may contest such computation in accordance with part 320 of this chapter.

(Approved by the Office of Management and Budget under control numbers 3220–0007, 3220–0008 and 3220–0097)

By authority of the Board.

Dated: June 14, 1991.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 91–14882 Filed 6–21–91; 8:45 am]

BILLING CODE 7905–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Fair Housing and Equal Opportunity

### 24 CFR Ch. I

**[Docket No. N–91–2011; FR–2665–N–07]**

### Fair Housing Accessibility Guidelines; Technical Corrections

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice of technical corrections; Fair Housing Accessibility Guidelines.

**SUMMARY:** On March 6, 1991 (56 FR 9472), the Department published in the **Federal Register**, final Fair Housing Accessibility Guidelines. The purpose of the Guidelines is to provide technical guidance on designing dwelling units as required by the Fair Housing Amendments Act of 1988. Subsequent to

publication of the final Guidelines, the Department noted minor editorial errors in two sections of the text and accompanying diagrams in the Guideline for Requirement 7, which provides technical guidance on designing usable kitchens and bathrooms, and in one of the diagrams accompanying the Guideline for Requirement 6, which addresses grab bar reinforcement. The purpose of this document is to correct these errors, and thus, eliminate any confusion which may have resulted from the errors. The specific corrections being made to the Guidelines are explained in the Supplementary Information section below.

**EFFECTIVE DATE:** March 6, 1991.

**FOR FURTHER INFORMATION CONTACT:** Merle Morrow, Office of HUD Program Compliance, room 5204, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–2618 (voice) or (202) 708–0015 (TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** On March 6, 1991 (56 FR 9472), the Department published in the **Federal Register**, final Fair Housing Accessibility Guidelines. (The Guidelines are to be codified as appendix II to 24 CFR ch. I, subch. A in the 1991 edition of the Code of Federal Regulations.) The design specifications presented in the Guidelines are intended to provide technical guidance to builders and developers in complying with the specific accessibility requirements of the Fair Housing Amendments Act of 1988 (Fair Housing Act). The Guidelines are divided into seven areas to address each of the seven areas of accessible design required by the Fair Housing Act. The Guideline for Requirement 6 provides technical guidance on installation of reinforcement in bathroom walls to allow later installation of grab bars. The Guideline for Requirement 7 provides technical guidance on designing usable kitchens and bathrooms as required by the Fair Housing Act. Subsequent to publication of the final Guidelines, the Department noted certain technical errors in the following text of the Guideline for Requirement 7 and in the following diagrams accompanying the Guidelines for Requirement 6 and Requirement 7:

(1) Paragraph (2)(b)(vi) of the Guideline for Requirement 7 (56 FR 9512) refers to measurement from the "head" of the bathtub; however, the accompanying illustration (Figure 8 at page 9515) shows measurement from the "foot" of the bathtub. Accordingly, paragraph (2)(b)(vi) will be corrected to provide for measurement from the "foot" of the bathtub.

(2) Paragraphs (2)(a)(ii) and (2)(b)(vii) of the Guideline for Requirement 7 (56 FR 9511, 9512, respectively) specify the appropriate measurements for a shower stall when the shower stall is the only bathing facility provided in a covered dwelling unit. Paragraph (2)(a)(iii) specifies those measurements at "at least 36 inches by 36 inches" (9511, second column). Paragraph (2)(b)(vii) specifies those measurements as "a nominal 36x36 or smaller" (9512, second column). The phrase "or smaller" in paragraph (2)(b)(vii) is incorrect. Accordingly, to appropriately reflect the Department's recommended measurements for a shower stall that is the only bathing facility in a covered dwelling unit, and to make paragraph (2)(b)(vii) consistent with paragraph (2)(a)(iii), the phrase—"or smaller"—in paragraph (2)(b)(vii) will be deleted.

(3) The center diagram in figure 5 (56 FR 9511), which illustrates the location of grab bar wall reinforcements for adaptable showers, contains an incorrect measurement. The outside measurement of 48 inches is incorrect and not applicable to this diagram. Accordingly, this document replaces Figure 5 with a corrected Figure 5.

(4) Figure 7(d) (56 FR 9514) shows the shower head control in the incorrect location. Accordingly, this document replaces this figure with a corrected Figure 7(d) which shows the shower head control in the correct location.

(5) Figure 8 (56 FR 9515) should have included the following note to clarify the illustration of clear floor space at a bathtub: "Clear floor space beside tub may overlap with clear space beneath adjacent fixtures." Accordingly, this document replaces Figure 8 with a corrected Figure 8 that includes this note.

Accordingly, FR Doc. 91–2011, published in the **Federal Register** on March 6, 1991 at 56 FR 9472, is amended by correcting the Fair Housing Accessibility Guidelines, codified as appendix II to 24 CFR ch. I, subch. A., to read and to illustrate as follows:

## Appendix II to Chapter I Subchapter A—[Amended]

*1. Guideline for Requirement 7. [Corrected]*

On page 9512, first column, paragraph (2)(b)(vi) is corrected to read as follows:

(vi) Bathtubs and tub/showers located in the bathroom provide a clear access aisle adjacent to the lavatory that is at least 2'6" wide and extends for a length of 4'0" (measured from the foot of the bathtub). (See Figure 8.)

*2. Guideline for Requirement 7. [Corrected]*

On page 9512, second column, paragraph (2)(b)(vii) is corrected to read as follows:

(vii) Stall showers in the bathroom may be of any size or configuration. A minimum clear floor space 2'6" wide by 4'0" should be available outside the stall. (See Figure 7(d). If the shower stall is the only bathing facility provided in the covered dwelling unit, or on the accessible level of a covered multistory unit, and measures a nominal 36x36, the shower stall must have reinforcing to allow for installation of an optional wall hung beach.

*3. Guideline for Requirement 6. [Corrected]*

On page 9511, Figure 5 is corrected to appear as follows: [Insert corrected Figure 5].

*4. Guideline for Requirement 7. [Corrected]*

On page 9514, Figure 7(d) is corrected to appear as follows: [Insert corrected Figure 7(d)].

*5. Guideline for Requirement 7. [Corrected]*

On page 9515, Figure 8 is corrected to appear as follows: [Insert corrected Figure 8].

Dated: June 10, 1991.

**Leonora L. Guarraia,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

BILLING CODE 4210-28-M

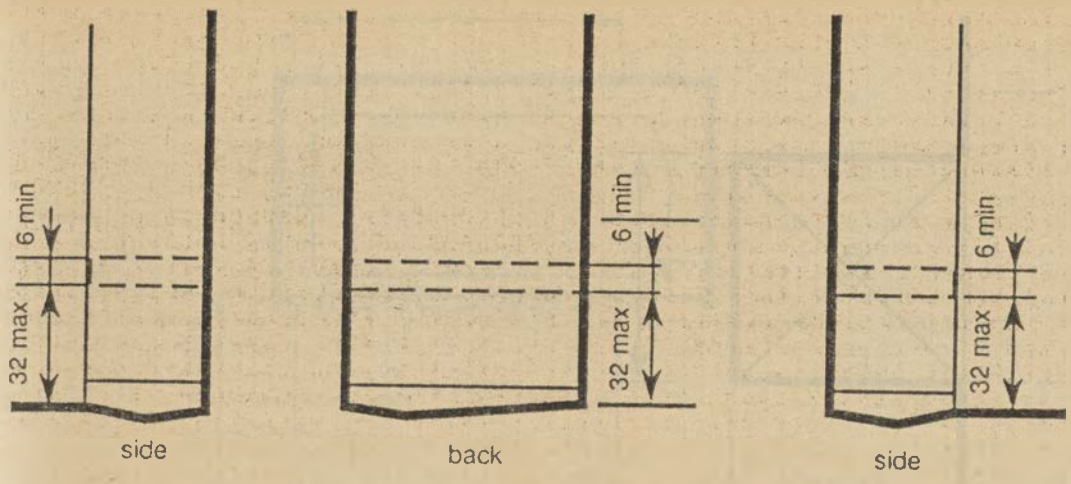
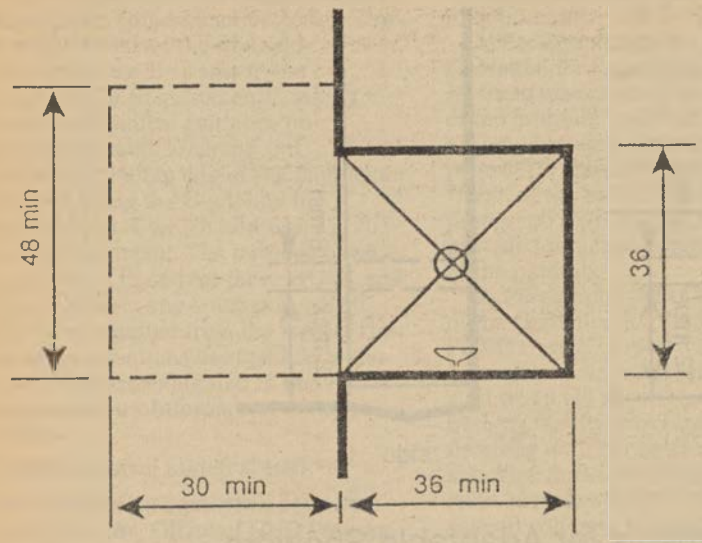



Fig. 5 Location of Grab Bar Reinforcements for Adaptable Showers

NOTE: The areas outlined in dashed lines represent locations for future installation of grab bars.




(d) Clear Floor Space at Shower

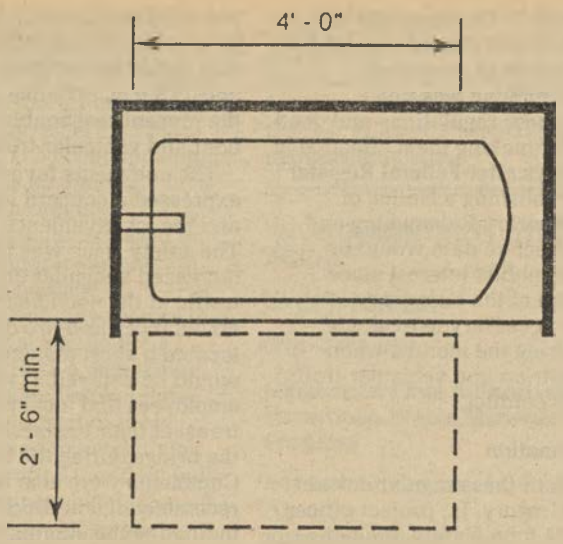



Fig. 8 Alternative Specification – Clear Floor Space at Bathtub

NOTE: Clear floor space beside tub may overlap with clear floor space beneath adjacent fixtures.

[FR Doc. 91-14924 Filed 6-21-91; 8:45 am]
BILLING CODE 4210-28-C

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD1-91-040]**

## Temporary Drawbridge Operation Regulations; Mystic River, CT

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final temporary rule.

**SUMMARY:** At the request of Connecticut Department of Transportation (CONN DOT), the Coast Guard is issuing temporary regulations governing the US Route 1 drawbridge over Mystic River, at mile 2.8, at Mystic, Connecticut in order to evaluate suggested changes during the prime boating season. The temporary regulations would eliminate the 12:15 p.m. opening, Monday through Friday, excluding holidays, for recreational vessels. Commercial and public safety vessels would be passed immediately at anytime. The regulation will be in effect for 60 days from 1 July through 29 August 1991. This temporary regulation is being made to examine the effect on pedestrian, vehicular and marine traffic during the peak recreational boating season and provides for openings in emergency situations. This action should accommodate the needs of vehicular and pedestrian traffic, while providing for the reasonable needs of navigation.

**EFFECTIVE DATE:** This temporary regulation becomes effective 1 July 1991 thru 29 August 1991.

**FOR FURTHER INFORMATION CONTACT:** William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

**SUPPLEMENTARY INFORMATION:** This Final Temporary regulation is published in accordance with 33 CFR 117.43 in order to further evaluate suggested changes in the drawbridge operating requirements. On August 16, 1990, the Coast Guard published a Notice of Proposed Rulemaking and Public Hearing (55 FR 33540) concerning a similar amendment. In addition, the Coast Guard published a Temporary Final Rule (55 FR 33534) for the period 13 August–21 September 1990. The temporary final rule eliminated the 12:15 p.m. opening, Monday through Friday, with no exemption for commercial vessels. In each instance, the Commander, First Coast Guard District, also published these proposals as a Public Notice 1–724 and 1–723 dated 10 and 9 August 1990, respectively. In Public Notice 1–724, interested persons were given until 12 October 1990 to submit comments. In accordance with 5 U.S.C. 553, a notice of proposed temporary rulemaking was not published for these regulations and good cause exists for making them effective in less than 30 days after **Federal Register** publication. Publishing a Notice of Proposed Temporary Rulemaking and delaying its effective date would be contrary to the public interest since implementation of the temporary regulations is necessary to evaluate their effect during the months when boating, pedestrian and vehicular traffic are in greatest conflict.

### Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project officer, and Lieutenant John Gately, Project Attorney.

### Discussion of Comments

A Public Hearing held in the Fitch Senior High School Auditorium, in Groton, Connecticut on 25 September 1990, had 31 attendees with nine speakers. The speakers included six favoring, and three opposing the proposed regulation which would eliminate the 12:15 p.m. opening, Monday through Friday, but would exempt commercial vessels. In addition, written comments to the public notice included three each in support and opposition to the proposed regulations with one other respondent who requested exemption for commercial vessels. Since some of the hearing speakers also provided written comments in response to the public notice, the comments are addressed in general groupings. During the hearing several speakers raised navigational safety concerns regarding the Army Corps of Engineers' Permit issued to Historic Powerhouse Ltd. for the construction and maintenance of ramps, floating docks and slips at a critical bend in the Mystic River and the potential added congestion problems that would be created if the regulation was implemented. At the hearing, the public was advised that the Corps of Engineers permit had been issued and that it contained statements regarding reliance on the applicant's data and provided for reevaluation of the permit decision for cause. It was also stated that action regarding that permit was not a matter under the jurisdiction of the Coast Guard. The public, however, noted that both the Coast Guard and the Army Corps of Engineers are responsible for navigational safety. The opposing comments in writing and at the hearing expressed concerns with the potential navigational hazard that may be created, the additional length of time that would be required at the 11:15 a.m. and 1:15 p.m. openings, and the fact that the present reasonable balance between boat and vehicular traffic is disrupted.

The comments favoring the change expressed a concern for public safety and the inconvenience to land traffic. The safety issue was based on increased vehicular and pedestrian traffic at the noon hour and concern that ambulances and fire departments located a short distance from the bridge would be delayed. It would also allow employees and local residents to transact their business on both sides of the bridge during the lunch hour. Comments were also received that recommended additional signs indicating the elimination of the 12:15 p.m. opening be placed up and downstream well in advance of any temporary regulation period. Although any regular or temporary regulations are published in the Local Notice to Mariners, it was emphasized that probably over 90% of the recreational boaters do not receive the Local Notice to Mariners, and therefore additional signs indicating the Route 1 Bridge hours of operation needed to be posted downstream of the railroad bridge.

Additionally, it was noted that the temporary regulations were implemented during the latter portion of the summer period (13 August through 21 September 1990) when tourism had reportedly sharply declined and boating traffic was also not at its peak; therefore, not providing a comprehensive assessment of the full impact on land and marine traffic during the noon hour. This data was collected by the Groton Town Police Department during a short sampling period from Monday, 13 August, to Wednesday, 17 August 1990. The 11:15 a.m. opening ranged from 4 to 7 minutes to accommodate three to four boats. The 13:15 p.m. openings ranged from 10 to 12 minutes to accommodate 11 to 23 boats. Between openings for this same period the vehicular and pedestrian traffic varied from 2,220 vehicle and 554 pedestrian to 3,188 and 1090, respectively.

As a result of the data collected and the comments it has been determined that a second test period should be conducted during the middle of the summer to more fully evaluate the effects on pedestrian, vehicular and marine traffic during the peak boating season.

### Economic Assessment and Certification

These temporary regulations are

considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that the temporary regulation will not prevent the passage of commercial vessels but only require that recreational vessels schedule their transits around the 12:15 p.m. opening during weekdays, excluding holidays. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

**Federalism Implication Assessment**

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this temporary rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Temporary Regulations**

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.211, paragraph (b)(1) is suspended and paragraphs (b) (3) and (4) are added for a 60 day period from 1 July through 29 August 1991 to read as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

**§ 117.211 Mystic River**

* * * * *

(b) * * *

(3) From July 1 through August 29 from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour. However, the draw need not open at 12:15 p.m. weekdays except federal holidays and as required by (b)(4).

(4) Public vessels of the United States, state and local vessels used for public safety, vessels in distress and commercial vessels shall be passed immediately at anytime.

Dated: June 11, 1991.

**R.I. Rybacki,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 91–14932 Filed 6–21–91; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[FRL–3967–8]**

### Minnesota: Final Authorization of State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** Minnesota has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Minnesota's application and has reached a decision, subject to public review and comment, that these hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Minnesota to operate its expanded program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA").

**DATES:** Final authorization for Minnesota's program revisions shall be effective August 23, 1991 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Minnesota's final authorization must be received by 4:30 p.m. central time on July 24, 1991. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a document containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

**ADDRESSES:** Copies of Minnesota's final authorization application are available during 9 a.m. to 4 p.m. at the following addresses for inspection and copying: Ms. Carol Nankivel, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155, Phone 612/643–3498; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone 202/382–5922; Ms. Christine Klemme, U.S. EPA, Region V, 230 S. Dearborn, 13th Floor, Chicago, Illinois 60604, Phone 312/886–3715. Written comments should be sent to Ms. Christine Klemme, Waste Management Division, Office of RCRA, 230 S. Dearborn, 5HR–JCK–13, Chicago, Illinois 60604, Phone 312/886–3715.

**FOR FURTHER INFORMATION CONTACT:** Christine Klemme, Minnesota Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR–JCK–13, 230 South Dearborn, Chicago, Illinois 60604, (312) 886–3715 [FTS 8 886–3715].

**SUPPLEMENTARY INFORMATION:**

**A. Background**

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. For further explanation, see section C of this notice.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessary because of changes to EPA's regulations in 40 CFR part 124, 260–268 and 270.

**B. Minnesota**

Minnesota initially received final authorization for its base RCRA program effective on February 11, 1985 (50 FR 3756, January 28, 1985). On June 30, 1986, January 29, 1988, November 18, 1988, and November 21, 1989, Minnesota submitted revision applications for program approval. On September 18, 1987, June 23, 1989, and August 14, 1990, (see 52 FR 27199, July 20, 1987; 54 FR 16361, April 24, 1989; and 55 FR 24232, June 15, 1990, respectively), Minnesota received authorization for additional program revisions.

Minnesota submitted an additional revision application on January 21, 1991. EPA has reviewed this application and has made an immediate final decision that Minnesota's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Minnesota final authorization for this additional program revision.

On August 23, 1991, (unless EPA publishes a prior FR action withdrawing

this immediate final rule), Minnesota will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

| Federal requirement | Analogous state authority |
|---|---|
| *Household Waste, July 15, 1985, 50 FR 28702-28755 | MN Rule 7045.0520(2)(k), 7045.0020(37a-c), 7045.0120(a), 7045.0310(1-6) effective 10-1-90. |
| *Dust Suppression, July 15, 1985, 50 FR 28702-28755 | MN Rule 7045.0665(1), (1a)(A) effective 10-1-90. |
| *Double Liners, July 15, 1985, 50 FR 28702-28755 | MN Rule 7045.0075(12), 7045.0532(3), 7045.0538(3), 7045.0630(1a), 7045.0632(4a), 7045.0638(1a) effective 2-11-91. |
| *Fuel Labeling, July 15, 1985, 50 FR 28702-28755 | MN Rule 7045.0125(10D) effective 1-9-90. |
| *Burning of Waste Fuel and Used Oil Fuel, November 29, 1985, 50 FR 49164-49212) as amended November 19, 1986, (51 FR 41900-41904), and April 13, 1987, 52 FR 11819-11822. | MN Rule 7045.0020, 7045.0125(1)(3)(4), 7045.0214(3), 7045.0219, 7045.0692, 7045.0695 effective 1-9-90. |
| Correction: Identification and Listing of Hazardous Waste, April 22, 1988, 53 FR 13382-13393). | MN Rule 7045.0135(4)(E)(F), 7045.0141 effective 1-9-90. |
| *Correction: Identification and Listing of Hazardous Waste, July 19, 1988, (53 FR 27162-27163). | MN Rule 7045.0219(4) effective 1-8-91. |
| *Correction: Farmer Exemptions, July 19, 1988, (53 FR 27164-27165) | MN Rule 7045.0520, 7045.0211, 7045.0213, 7045.0450, 7045.0552, 7045.1300 effective 1-8-91. |
| Identification and Listing of Hazadous Waste: Treatability Studies Sample Exemption, July 19, 1988, (53 FR 27290-27302). | MN Rule 7045.0075, 7045.0020, 7045.0121 effective 3-26-90. |
| *Standards for Hazardous Waste Storage and Treatment Tank Systems, September 2, 1988, (53 FR 34079-34087). | MN Rule 7045.0020(21 a and b) (103a-c), 7045.0075(6D), 7045.0488(3), 7045.0528(1 and 4), 7045.0596, 7045.0600, 7045.0628(1, 4, and 8), 7045.0629(3c) effective 1-8-91. |
| *Pre-Construction Ban, July 15, 1985, 50 FR 28702-28755 | MN Rule 7001.0520(B), effective 3/6/89. |
| Identification and Listing of Hazardous Waste, July 10, 1987, 52 FR 26012 | MN Rule 7045.0135(4)(C), effective 3/6/89. |
| *Exception Reporting for SQG's, September 23, 1987, 52 FR 35894-35899 | MN Rule 7045.0205(1), 7045.0298, effective 3/6/89. |
| *Corrective Action for Injection Wells, December 1, 1987, 52 FR 45788 | MN Rule 7045.0460, 7045.0485, 7001.0520(3), 7045.0640 effective 3/6/89. |
| Identification and Listing of Hazardous Waste, and Designation, Reportable Quantities and Notification, September 13, 1988, (53 FR 35412-35421). | MN Rule 7045.0135(3)(I-M), 7045.0139(2b), 7045.0120(I) effective 1-8-91. |
| Clarification to Radioactive Mixed Waste Rule, September 28, 1988, (53 FR 37045). | MN Statute 116.06(13) effective 4-27-87. |
| Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities, October 11, 1988, (53 FR 39720-39731). | MN Rule 7045.0020 (15a) and (22a), 7045.0484(3), (11)(12)(13) effective 1-8-91. |
| Identification and Listing of Hazardous Waste, Removal of Iron Dextran from the list of Hazardous Wastes, October 31, 1988, (53 FR 43878-43881). | MN Rule 7045.0135(4F), 7045.0141(10B) effective 1-8-91. |
| Identification and Listing of Hazardous Waste, Removal of Strontium Sulfide from the list of Hazardous Wastes, October 31, 1988, (53 FR 43881-43884). | MN Rule 7045.0135(4E), 7045.0141(18) effective 1-8-91. |
| Amendment to Requirements for Hazardous Waste Incinerators, January 30, 1989, (54 FR 4286-4288). | MN Rule 7001.0700(11) effective 8-27-90. |
| *Toxicity Characteristics, March 29, 1990, 55 FR 11798-11877 | MN Rule 7045.0120 (K) and (Q), 7045.0131(7) and (8), 7045.0135, 7045.0634(3A) effective 1-9-91. |

*HSWA requirement.

EPA shall administer any RCRA hazardous waste permits or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on February 11, 1985, September 18, 1987, June 23, 1989, and August 15, 1990, the effective dates of Minnesota's final authorization for the RCRA base program for non-HSWA Clusters I–IV and the majority of HSWA I revisions.

Minnesota is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

**C. Effect of HSWA on Minnesota's Authorization**

*1. General*

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized State and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new HSWA requirements and prohibitions take effect in authorized States at the same time they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in authorizied and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, at one point, adopt HSWA-related provisions as State law to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there is a dual State/Federal regulatory program in Minnesota. To the extent HSWA does not affect the authorized State program, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Minnesota until the State is authorized for them.

Once EPA authorizes Minnesota to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's rulemaking includes authorization of Minnesota's program for several requirements implementing the HSWA. Those requirements implementing the HSWA are specified in the "Minnesota" section of this notice. Any effective State requirement that is more stringent or broader in scope than a Federal HSWA provision will continue to remain in effect; thus regulated handlers must comply with any more stringent State requirements.

EPA published a FR notice explaining in detail the HSWA and its affect on authorized States (50 FR 28702–28755, July 15, 1985).

*2. Land Disposal Prohibitions*

EPA does not intend to authorize Minnesota to impose additional land disposal prohibitions at this time. The regulations implementing the land disposal prohibitions are found in 40 CFR part 268. Under sections 5, 6, 42(b) and 44 of part 268, EPA has authority to consider petitions for case-by-case extensions to prohibition effective dates, exemptions to prohibitions based upon a showing of no potential for waste migration, alternate treatment methods, and variances from treatment standards, respectively. Consideration of the sections 5, 42(b) and 44 petitions is permanently reserved to EPA because consideration of those petitions requires a national perspective. In the future, EPA may authorize States to consider the section 6 petitions. However, EPA is currently requiring that EPA Headquarters handle these petitions. It should be noted that Minnesota has its own procedures for considering petitions for exemptions to prohibitions based upon a showing of no potential for waste migration. Nothing in RCRA prohibits a State from adopting requirements that parallel Federal requirements. Therefore, petitioners seeking a section 6 exemption must be granted approval by both EPA and the State.

On August 17, 1990, EPA promulgated the most recent phase of the regulatory framework implementing the land disposal prohibitions. EPA promulgated earlier phases on November 7, 1986; June 4, July 8, and October 10, 1987; August 17, 1988; February 27, May 2, June 23, and September 6, 1989; and June 1, June 13, and August 17, 1990. Minnesota's rulemaking process follows the EPA rulemaking process. An unavoidable consequence is that Minnesota's current land disposal prohibitions program is not as comprehensive as the Federal program. Since each new phase of the land disposal prohibition regulations has included modifications to earlier phases, and in most instances, those modifications have made the regulatory framework more stringent, certain Minnesota land disposal requirements may be superceded by Federal land disposal requirements. Minnesota is only authorized for the November 7, 1986, June 4, 1987, July 8, 1987, and October 10, 1987, rules (see June 15, 1990, 55 FR 24232). However, since the balance of the Federal regulations are promulgated pursuant to HSWA, the regulations are effective in Minnesota and all other States and are directly implemented by EPA. Regulated handlers must comply with any requirements of the retained Federal land disposal prohibitions program that may be more stringent than the analogous requirements of the Minnesota program. Conversely, because compliance with RCRA does not exempt regulated handlers from compliance with State law, such handlers must also meet any requirements of the Minnesota program that may be more stringent than the analogous requirements of the Federal program. As a consequence, regulated handlers facing an apparent conflict between State and Federal land disposal prohibitions must always comply with the more stringent of the two requirements.

**D. Decision**

I conclude that Minnesota's program revision application meets all the statutory and regulatory requirements established by RCRA and its amendments. Accordingly, EPA grants Minnesota final authorization to operate its hazardous waste program as revised. Minnesota currently has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program and its amendments. This responsibility is subject to the limitations of its program revision applications and previously approved authorities. Minnesota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 or RCRA, and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

**E. Codification**

EPA codifies authorized State programs in part 272 of 40 CFR. The purpose of codification is to provide notice to the public of the scope of the authorized program in each State. Codification of the Minnesota program will be completed at a later date.

*Compliance with Executive Order 12291*

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

*Certification Under the Regulatory Flexibility Act*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Minnesota's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

**Lists of Subjects in 40 CFR Part 271**

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926 and 6974(b)).

Dated: June 14, 1991.

**Todd A. Cayer,**

*Acting Regional Administrator.*

[FR Doc. 91–14953 Filed 6–21–91; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 89–307; RM–6301]**

### Television Broadcasting Services; Ceres and Modesto, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document reallots UHF television Channel *23 from Modesto to Ceres, California, as that community's first local television broadcast service, and reserves the channel for noncommercial educational usage, in response to a petition for rule making filed on behalf of Bet Nahrain, Inc. See 54 FR 29756, July 14, 1989. Coordinates for Channel *23 at Ceres are 37–35–24 and 120–57–06.

This allotment falls within the boundaries of certain markets for which the Commission has imposed a "freeze" on TV allotments, or applications therefor. Ceres is further removed from the affected markets than was the allotment at Modesto. Potential applicants must seek a waiver of the freeze. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** August 5, 1991.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89–307, adopted June 10, 1991, and released June 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

**PART 73—[AMENDED]**

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

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

**§ 73.606 [Amended]**

2. Section 73.606(b), the Television Table of Allotments for California, is amended by removing Channel *23+ at Modesto, and by adding Ceres, Channel *23+.

Federal Communications Commission.

**Andrew J. Rhodes,**

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

[FR Doc. 91–14982 Filed 6–21–91; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 90–467; RM–7443; RM–7596]**

## Radio Broadcasting Services; Gualala, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 263B1 to Gualala, California, in lieu of previously proposed Channel 246B1, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Dr. Gerhard Hanneman (RM–7443). See 55 FR 45624, October 30, 1990. CBS, Inc., licensee of Station KRQR(FM), Channel 247B, San Francisco, California, counterproposed the allotment of Channel 263B1 to Gualala (RM–7596), to which the petitioner consented. Coordinates for Channel 263B1 at Gualala are 38–46–00 and 123–31–42. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** August 5, 1991. The window period for filing applications for Channel 263B1 at Gualala, California, will open on August 6, 1991, and close on September 5, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90–467, adopted June 10, 1991, and released June 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

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

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

**§ 73.202 [Amended]**

2. § 73.202(b), the Table of FM Allotments under California, is amended by adding Gualala, Channel 263B1.

Federal Communications Commission.

**Andrew J. Rhodes,**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**50 CFR Part 17**

**RIN 1018–AB52**

## Endangered and Threatened Wildlife and Plants; Uncompahgre Fritillary Butterfly Determined To Be Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service determines a butterfly, the Uncompahgre fritillary (*Boloria acrocnema*), to be an endangered species. Critical habitat has not been designated. This butterfly has been verified at only two major sites and two possible small colonies above 4,040 meters (13,200 ft.) elevation in the San Juan Mountains and southern Sawatch Range of southwestern Colorado. In 1989, the total known population was estimated to be less than 1,000 individuals. Taking by collectors, adverse climatic changes, lack of protective regulations, small population size, and low genetic variation endanger the species. Its habitat is potentially threatened by trampling from humans and livestock. This rule implements the protection provided by the Endangered Species Act of 1973, as amended.

**EFFECTIVE DATE:** June 24, 1991.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Western Colorado Suboffice, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 529 25½ Road, suite B–113, Grand Junction, Colorado 81505.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Anderson, Biologist, (see **ADDRESSES** above) at (303) 243–2778.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Uncompahgre fritillary butterfly was discovered on Uncompahgre Peak,

Hinsdale County, Colorado, on July 30, 1978. It was subsequently described as a new species (*Boloria acrocnema*) by Gall and Sperling (1980). The butterfly also has been included in the genus *Clossiana* (Ferris 1984), although this name is more properly considered a subgenus of *Boloria*.

The most recent treatment of North American butterflies lists this taxon as a species (Ferris 1989). Other major books published in the last 10 years also consider the Uncompahgre fritillary to be a full species (Ferris and Brown 1981, Gall 1983, Pyle 1981). However, one recent book considers the Uncompahgre fritillary to be a subspecies (*Boloria improba* ssp. *acrocnema*) of the dingy arctic fritillary (*Boloria improba*) (Scott 1986). For the purpose of this listing action, the Service will recognize this taxon at the species level. If the Uncompahgre fritillary is later recognized as a subspecies of *B. improba*, the designation of this taxon as an endangered species will remain valid because section 3(15) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) permits the listing of subspecies.

The Uncompahgre fritillary is a small butterfly with a 2–3 centimeter (1 in.) wingspan. Males have rusty brown wings criss-crossed with black bars; females' wings are somewhat lighter (Gall 1983). Underneath, the forewing is light ocher and the hindwing has a bold, white jagged bar dividing the crimson brown inner half from the purple-grey scaling on the outer wing surface. The body has a rusty brown thorax and a brownish black abdomen (Gall and Sperling 1980).

The Uncompahgre fritillary has the smallest total range of any North American butterfly species. Its habitat is limited to two verified major sites and two possible small colonies in the San Juan Mountains and southern Sawatch Range in Gunnison, Hinsdale, and possibly Chaffee counties in southwestern Colorado. One major site is the type locality on Uncompahgre Peak, which is managed by the Forest Service. The second major site was discovered in 1982 on land managed by the Bureau of Land Management and is not generally known. Because of the potential threat from collecting, the location of this colony is referred to herein only as "site 2."

Despite numerous attempts to locate other populations, no other major populations have been verified. In 1988, three individuals were captured at one new location and one individual was captured at another new location. These sites must be investigated to determine if they represent possible new colonies. There is a report of four (formerly five) colonies in the San Juan Mountains and southern Sawatch Range, but these unverified sites, if extant, have been kept secret by their discoverer. As the butterfly is found only in remote, generally inaccessible areas, it is possible that the species may occur in other mountain ranges in Colorado, but there have been no reports of the butterfly from these other mountain ranges.

All populations known to the Service are associated with large patches of snow willow (*Salix reticulata* spp. *nivalis*) above 4,040 meters (13,200 ft.), which provide food and cover. The species has been found only on northeast-facing slopes, which are the coolest and wettest microhabitat available in the San Juans (Brussard and Britten 1989). The females lay their eggs on snow willow, which also is the larval food plant, while adults take nectar from a wide range of flowering alpine plants.

Brussard and Britten (1989) believe that the species has a biennial life history, which means that it requires 2 years to complete its life cycle. Eggs laid in 1990 (even-year brood) would be caterpillars in 1991 and mature into adults in 1992. Similarly, eggs laid in 1991 (odd-year brood) would become adults in 1993. The odd- and even-year broods would function as essentially separate populations. It is assumed that odd- and even-year populations existed at both major sites historically, because there is anecdotal evidence that butterflies flew each year at these sites prior to 1987 (Brussard and Britten 1989).

During 1987 and 1988, field surveys and genetic studies were carried out by Dr. Peter Brussard and students under a contract funded by the Forest Service, Bureau of Land Management, and Fish and Wildlife Service (Brussard and Britten 1989). Though they visited over 50 sites that appeared to satisfy the butterfly's habitat requirements, they found only the few individuals at the two new sites previously mentioned.

These researchers believe there has been a decline in the butterfly's known population. Based on 1978–1988 data, the even-year broods at the two known sites appear to be declining. The odd-year brood at the type locality may be extinct, while the status of the odd-year brood at site 2 is unclear. On Uncompahgre Peak, the 1978 population (even-year brood) was estimated to be 800 individuals (Interagency Agreement 1984); the 1988 population was estimated to be 208 individuals (Brussard and Britten 1989). At site 2, the 1982 population was estimated to be between 1,000 and 1,500 individuals (Interagency Agreement 1984); the 1988 estimate was 492 individuals (Brussard and Britten 1989). There are anecdotal reports of an odd-year population at Uncompahgre Peak prior to 1987, but no Uncompahgre fritillaries were captured in 1987. The status of the odd-year population at site 2 is difficult to assess due to a lack of historical data on estimated population size. Assuming the species has a biennial life history, then adding the 1987 and 1988 data results in a total estimated population size at the two major sites of approximately 950 to 1,000 individuals.

In 1989, no population surveys were conducted. In 1990, a limited survey effort confirmed that the Uncompahgre fritillary persisted at site 2 (Seidl 1990, 1991). No Uncompahgre fritillaries were found at Uncompahgre peak in 1990 during three day trips; however, this does not constitute conclusive evidence that the butterfly no longer exists at Uncompahgre Peak. Thus, the limited data gathered since 1988 do not contradict the apparent downward trend shown for the 1978–1988 period.

Brussard and Britten (1989) also used electrophoretic techniques to examine population genetic variability. Their studies revealed only half the genetic variability in the Uncompahgre fritillary when compared to the Wind River Range, Wyoming, population of *Boloria improba harryi*, its closest geographic relative. This low genetic variability would indicate less environmental adaptability, i.e., a reduced ability to adapt to a changing environment. In fact, its range of habitat usage is less than that of *Boloria improba* populations in Wyoming and British Columbia.

The species faces many threats. As it is one of the few new North American butterfly species discovered in the last half century, it is attractive to collectors. Its sedentary nature, weak flying ability, and tendency to fly low to the ground make it easy to collect. Possible overcollection is considered the greatest human-caused threat to the species. Other actual or potential threats to the species include adverse climatic changes, lack of protective regulations, small population size, and low genetic variability. There is a minor potential threat from trampling by humans and livestock.

On November 5, 1979, the Service was petitioned by Lawrence F. Gall to list the butterfly under provisions of the Act of 1973. In response, the Service published a notice of status review on the butterfly on February 6, 1980 (45 FR 8029), which solicited public comments. Comments from the public supported listing and protection under the Act, but

the Service did not propose its listing. Subsequently, the Service included the butterfly in a notice of petition findings on January 20, 1984 (49 FR 2485), which stated that listing the butterfly was warranted but precluded, and noted that it was a category 2 species (a species which may be appropriate to list, but for which there is not enough biological data at the time to support listing). Its status was changed from category 2 to category 1 (a species for which there is sufficient biological data on hand to support listing) in the Invertebrate Notice of Review published on May 22, 1984 (49 FR 21664). The Service made 1-year findings that listing the species was warranted but precluded on May 10, 1985 (50 FR 19761); January 9, 1986 (51 FR 996); June 30, 1987 (52 FR 24312); July 7, 1988 (53 FR 25511); December 29, 1988 (53 FR 52746); and April 25, 1990 (55 FR 17475). On October 15, 1990 (55 FR 41721), the Service published a proposed rule to determine that the species was endangered.

**Summary of Comments and Recommendations**

In the October 15, 1990, proposed rule and associated notifications all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Gunnison Country Times and the Rocky Mountain News on October 31, 1990, which invited general public comment. Fourteen comments, including 3 from other Federal agencies, 1 from the State of Colorado, and 10 from conservation organizations and individuals, were received.

Written comments received during the comment period are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. After describing generally supportive comments, four issues and the Service's response to each are discussed.

Thirteen of the fourteen persons who commented supported listing of the Uncompahgre fritillary as an endangered species. Four comments stated that they believed the Uncompahgre fritillary would receive increased protection by being listed under the Act. One commentor, although not specifically opposing the rule, stated that he believed the species would not receive additional benefits from being listed, because he believed that the Forest Service and Bureau of Land Management already prohibited collecting and patrolled the colonies during the butterfly's flight season. He also stated his belief that rare butterflies benefitted most from benign neglect and by having the location of their populations kept secret.

With regard to threats to the species, seven commentors stated they believed that collection of specimens for scientific or commercial purposes was a threat. Three commentors mentioned that grazing was a threat, although two mentioned that steps already had been taken to eliminate or reduce grazing at the known colonies. Two commentors mentioned recreational use as a threat. This recreational use is represented by potential disturbance to the habitat by hikers. Some trails through or near the colony areas already have been moved. One commenter believed that no further mark-recapture studies should be allowed because trampling of the caterpillar food plants by researchers could be a major mortality factor for the butterfly. Two commentors mentioned that the butterfly's low genetic variability was a factor contributing to its susceptibility to colony loss and extinction. One commentor mentioned that, based on his studies of the butterfly and its nearest relatives, the Uncompahgre fritillary was a narrow habitat specialist and that was a factor in its endangerment. One commentor stated that because of global warming and the butterfly's susceptibility to drought its chances for long-term survival were nil. One commentor mentioned that mining was a potential threat. One commentor stated that the colony areas should be closed to off-road vehicles, implying that off-road vehicles such as mountain bikes might constitute a threat to the species.

*Issue 1:* Whether critical habitat should be designated. Three commentors believed that designation of critical habitat would not be prudent. They believed that because collecting of specimens was a primary threat, critical habitat designation would increase that threat from collectors. In contrast, another commentor argued that critical habitat for the Uncompahgre fritillary should be designated. He stated that without critical habitat designation, degradation of the butterfly's habitat could occur as long as the continued existence of the species was not immediately threatened. This commentor also stated that because most butterfly collectors know the location of the two major colonies, the Uncompahgre fritillary would not be further jeopardized by specifically revealing the colony locations.

*Response:* At present, possible overcollection is perceived to be a greater threat to the Uncompahgre fritillary than potential habitat degradation. Because of this, the Service finds that designation of critical habitat is not prudent at this time. The Service believes that many collectors do not know the location of site 2, and only a few collectors are aware of other locations where only a few individual butterflies have been found. Designation of critical habitat requires publication of detailed maps of the location of critical habitat in the **Federal Register** and would only serve to increase the likelihood of illegal collection of the butterflies.

*Issue 2:* Whether listing would add to the protection already received by the butterfly. Three commentors stated that they believed the butterfly would gain added protection through its being listed under the Act, while another commentor believed that listing would probably not be beneficial because he believed the Bureau of Land Management and Forest Service already prohibited collection of butterflies at the two major colony sites. This commentor also believed that, in general, rare butterflies benefitted from benign neglect and having their population sites kept secret by their discoverer.

*Response:* The Service feels that listing is necessary to bring into effect the various conservation provisions of the Act including, but not limited to, prohibitions against taking, interagency consultation, recovery planning, and cooperation with the State of Colorado's conservation program. Moreover, though there is a collecting ban at the Uncompahgre Peak site, there is no such ban at site 2. The inadequacy of existing regulatory mechanisms and the additional protections that would follow from listing the Uncompahgre fritillary as endangered are discussed further under Factor D.

*Issue 3:* Whether the Uncompahgre fritillary is more widespread. One commentor listed 11 alleged "colonies," including seven locations known to the Service: The two major sites, a small satellite colony on Uncompahgre Peak, two places near site 2 (including one where a single individual butterfly was observed), and two other sites (one in the southern Sawatch Range, where either a single or a few butterflies were found). In the past, this commentor claimed to have found five new colonies, but would not disclose their locations. Based on the fact that Dr. Brussard and colleagues found only one of his undisclosed colonies in their searches, this commenter extrapolated

that there must be 40–50 colonies in the San Juans and southern Sawatch Range. He recommended that the Service use a helicopter and qualified butterfly colony locators to find all the probable colonies.

*Response:* The Service agrees that the Uncompahgre fritillary may be more abundant than is currently known but it must make its assessment of endangerment based on the best available scientific and commercial data available. The Service cannot accept this commenter's four undisclosed colonies as fact without independent scientific confirmation of their location and magnitude. Until such time that sufficient populations are verified that are not threatened, the Service must consider the Uncompahgre fritillary as an endangered species.

*Issue 4:* Whether the Uncompahgre fritillary is a subspecies. One commenter stated that the Uncompahgre fritillary is a subspecies of the dingy arctic fritillary (*Boloria improba*), while another commenter stated that she is aware of the issue and believes that the butterfly is a full species. The first commenter stated as his evidence that the Uncompahgre fritillary is similar in appearance, hostplants, and habits to Wyoming and Alberta populations of *Boloria improba*. He stated that Edward Pike and Clyde Gillette, two advanced amateurs, also believe that *Boloria acrocnema* should be referred to as *Boloria improba acrocnema*. In their letters, Dr. Brussard and Dr. Britten referred to the butterfly as *Boloria acrocnema*, but also used the name *Boloria improba/acrocnema* group or complex for the grouping that includes both species.

*Response:* The Service is aware that the known occurrences of the Uncompahgre fritillary are at the southernmost end of a series of *B. improba* populations extending down the Rocky Mountain cordillera from the Arctic. Whether the Uncompahgre fritillary is referred to as a species or subspecies depends on whether it is reproductively and behaviorally compatible with *B. improba* populations. Currently, no direct information exists on which to make this decision, but the preponderance of expert opinion is that the full species designation is most suitable. In any event, even if considered as a subspecies, the decision to list would be unaffected because endangered subspecies also qualify for full protection under the Act.

**Summary of Factors Affecting the Species**

After a through review and consideration of all information available, the Service has determined that the Uncompahgre fritillary butterfly should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. 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 Uncompahgre fritillary butterfly (*Boloria acrocnema*) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment if its Habitat or Range*

The populations of the butterfly known to the Service are on Federal land. The Uncompahgre Peak habitat is in the Big Blue Wilderness in the Uncompahgre National Forest, while site 2 is in a wilderness study area or land administered by the Bureau of Land Management. Both areas are above timberline, hence there are not threats from logging. Mining activity does not appear to be a threat to the known population. Historically, herds of sheep were driven over both mountains where the butterflies occur, but the Bureau of Land Management and Forest Service do not allow grazing at the major sites.

Traffic deviating from the main hiking trail to the summit of Uncompahgre Peak could impact the colony on that mountain, but there seems to be no evidence that hikers or pack horses have damaged the nature of the butterfly's habitat. One day's observation by the author of this rule demonstrated that hikers do not linger or rest in the colony area. Moreover, pack horses are uncommon on this trail. A hiking trail passes near site 2, but routing changes were made to the trail to reduce the likelihood that hikers will deviate from the trail and cross through the butterfly site. Trampling of the colonies by collectors or biologists is a potential threat, but there has been no demonstrated habitat change due to this factor.

The other two locations are small and remote, and no information on extent habitat-related threats is available.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The Uncompahgre fritillary butterfly has been the subject of intense sampling by biologists and collectors since its discovery. In 1981, collection of the species for research or marketing to private collectors probably exceeded 100 adults, or up to 20 percent of the Uncompahgre Peak population (Interagency Agreement 1984). The genus *Boloria* is extremely popular with collectors. Specimens of *B. acrocnema* have been offered by dealers for prices exceeding $100 for males and even higher prices for females (Gall 1983). Collecting from small colonies or repeated handling and marking (particularly of females and/or in years of low abundance) could seriously damage the populations through loss of individuals and genetic variability. Collection of females dispersing from a colony also can reduce the probability that new colonies will be founded. Continual walking over the colony areas by collectors or researchers could result in mortality of the butterfly's early stages or change the nature of the habitat. Extremely small populations, such as those of the Uncompahgre fritillary, should not be subjected to undue pressure from collectors or researchers.

*C. Disease or Predation*

There are no known diseases of the butterfly that could threaten its continued existence. Wilcove (1980) recorded an instance of direct predation on the butterfly by a brown-capped rosy finch (*Leucosticte australis*), and identified other potential avian predators. However, there is no indication as yet that predation is a significant threat.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The Uncompahgre Peak site is in the Big Blue Wilderness. In addition to wilderness management restrictions, the Forest Service has prohibited the collection of butterflies on Uncompahgre Peak since 1984. Nevertheless, it has been reported that some collectors may be collecting the species despite the ban. There is no sheep grazing on the site at the present time, and there is a proposal to restrict horse use on an area downslope from the butterfly site. Site 2 is located in a wilderness study area. The Bureau of Land Management has terminated grazing in this area, but there is no prohibition against collecting. The Colorado Division of Wildlife does not possess the legal authority to protest the species. The Colorado Natural Areas Program has registered, but not yet designated, the Uncompahgre Peak site as a State Natural Area. This means that the site has been identified as one deserving special attention, but a management agreement (for a Natural Area) has not been finalized. In 1984, the Forest Service and Bureau of Land Management signed an interagency

agreement for the conservation of the Uncompahgre fritillary. The parties are implementing this agreement, but the level of implementation is limited by available funding.

These voluntary efforts on the part of the Forest Service, Bureau of Land Management, and the Colorado Natural Areas Program are commendable. Having identified the Uncompahgre fritillary as a species in need of protection, they have taken important steps to protect this species. However, these species-specific protections are discretionary and could be withdrawn or lapse in effectiveness if funding diminishes. Federal listing of the butterfly would provide a greater level of protection. Listing would ensure that Federal Agencies would not take actions likely to jeopardize the species, and promote efforts toward species recovery. It also would allow for the prosecution of collectors under Federal law and provide for the issuance of permits to limit and manage those who wish to conduct scientific studies of the butterfly. Finally, it would improve the cooperating agencies' chances of obtaining additional funding to protect, research, and recover the species.

*E. Other Natural or Manmade Factors Affecting its Continued Existence*

Many other factors threaten the continued existence of the Uncompahgre fritillary. First, the butterfly exists only in the highest, wettest peaks in southwestern Colorado. Biologists who completed population surveys of the butterfly in 1987–88 believe that several recent drought years have stressed the butterfly, which evidently requires a cool and wet microhabitat to successfully complete development (Brussard and Britten 1989). Climatic stress may be a major factor underlying recent population declines. If so, populations of the butterfly would possible disappear if predictions about global warming become a reality (Brussard, Univ. of Nevada, *in litt.*, 1990).

If the species does have a biennial life history, then the possible extinction of the odd-year population at Uncompahgre Peak is cause for concern. Odd-year and even-year broods function essentially as separate populations. It may be possible for an extinct odd-year population to be re-established if a few individuals from the even-year brood at the same site take 3 years instead of 2 years to complete development, but re-establishment would be very slow.

The small population size and limited genetic variability of the species is itself a threat. The small size of the known populations makes them vulnerable to extinction from natural (e.g., drought, exceptionally warm temperatures) or human (e.g., overcollection) causes. In addition, random demographic effects (e.g., skewed sex ratios) and/or loss of alleles due to random genetic effects could cause permanent loss of one or both populations.

As noted earlier, this butterfly has the smallest known range of any North American species when the total area occupied by the two verified major colonies are considered. Although small habitat size might normally be a threat in itself, the colonies are placed such that snow avalances, fire, or other kinds of calamities are not likely.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Uncompahgre fritillary butterfly (*Boloria acrocnema*) as endangered. Since the species' discovery in 1978, only two major colonies and two possible small colonies have been verified, and, based on available data, the total population has declined. The odd-year population at the type locality already may be extinct. Despite the administrative protections currently being implemented, the remaining populations are endangered by taking by collectors, adverse climatic changes, lack of protective regulations, small population size, and low genetic variation. The species' habitat is potentially threatened by trampling from humans and livestock. These factors could lead to the species' extinction throughout all or a significant portion of its range. Therefore, the Uncompahgre fritillary qualifies for endangered status as defined by the Act.

The Service recognizes that listing the species may increase collection pressures due to the loss of protective anonymity. However, the Service is required to list species deserving of the Act's protection, and final listing will provide additional protection, as explained above, and encourage actions to recover the species. The decision not to designate critical habitat will reduce any possible threat of increased overcollection that might result from listing the species.

**Critical Habitat**

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time that a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the Uncompahgre fritillary. As discussed under Factor B in the "Summary of Factors Affecting the Species," possible overcollection of this butterfly is one of the major threats to its existence. Though some collectors know of the Uncompahgre Peak site, the exact location of site 2 is not generally known. Publication of the exact location of these sites would endanger the species further. The Forest Service and the Bureau of Land Management, upon whose land the butterfly occurs, are aware of the location of the butterfly populations and the importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the management measures already in place, the recovery process, and section 7 procedures.

**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 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 a listed 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.

Current Federal involvement and management for the species was discussed earlier. Long-term monitoring should be continued, as well as research into the species' life history and habitat requirements. If possible, artificial recolonization should be attempted to

establish additional colonies in suitable habitat to reduce the risk of extinction.

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. 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 inter-State commerce in the course of commercial activity, or sell or offer for sale in inter-State or foreign commerce 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 N. Fairfax Drive, Arlington, Virginia 22203 (703/358–2093 or FTS 921–2093).

### National Environmental Policy Act

The 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 Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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### Author

The primary author of this final rule is Dr. Paul A. Opler, Office of Information Transfer, U.S. Fish and Wildlife Service, 1025 Pennock Place, Suite 212, Fort Collins, Colorado 80524 (303/493–8401; FTS 323–5401).

### List of Subjects in 50 CFR Part 17

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

### Regulation Promulgation

## PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

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

**§ 17.11 Endangered and threatened wildlife**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| INSECTS | | | | | | | |
| * | * | * | * | * | * | * | |
| Butterfly, Uncompahgre fritillary. | *Boloria acrocnema* | U.S.A. (CO) | NA | E | 427 | NA | NA |
| * | * | * | * | * | * | * | |

Dated: June 6, 1991.

Suzanne Mayer,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 91-14970 Filed 6-21-91; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 685

**[Docket No. 900793-1062]**

### Pelagic Fisheries of the Western Pacific Region

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

**ACTION:** Emergency interim rule; effective date extension and modification of permit criteria for Hawaii longline fishery moratorium.

**SUMMARY:** The Secretary of Commerce (Secretary) modifies and extends an emergency rule now in effect that establishes a moratorium on issuing permits for the longline fishery for pelagic management unit species around Hawaii. The eligibility criteria for limited entry permits issued during the moratorium are modified. The purpose of this extension of the emergency rule is to provide a continued period of stability necessary for the Western Pacific Fishery Management Council (Council) and NMFS to carry out a systematic, long-range fishery planning process; reduce the crisis atmosphere in the fishery; maximize fishing opportunities for fishermen; and minimize speculative sale of permits. The purpose of modifying the emergency provisions is to correct unanticipated discrepancies between the emergency and the long-term management plan. The modifications are expected to clarify ambiguities and relieve hardships on certain participants in the fishery.

**EFFECTIVE DATE:** The amendments to § 685.15 (a)(2) through (c)(4) are effective from 0000 hours local time June 19, 1991. The interim regulations published on April 12, 1991, (56 FR 14866), as amended by this document, are extended from 0000 hours local time July 12, 1991, through 2400 hours local time October 9, 1991.

**ADDRESSES:** Copies of the environmental assessment prepared for the emergency rule may be obtained from E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213) 514-6660, or Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, Honolulu, Hawaii (808) 523-1368.

**SUPPLEMENTARY INFORMATION:** Under the emergency action authority of section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency rule (56 FR 14866, April 12, 1991) temporarily amending the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) and its implementing regulations. The rule, which was made effective from 0001 hours local time April 23, 1991, establishes a moratorium on additional entry into the Hawaii longline fishery to provide a period of stability and allow for development of an amendment to the FMP providing for long-term management.

Under the moratorium, permits for the fishery are limited to persons who certify that they were: (1) Owners of vessels when those vessels made landings in Hawaii of longline-caught management unit species prior to December 5, 1990; (2) persons who were owners of vessels that had engaged in transshipments of longline-caught management unit species in the exclusive economic zone (EEZ) off Hawaii prior to December 5, 1990; (3) persons who made a substantial financial commitment or investment in gear prior to December 5, 1990, for a vessel owned by the person and located in Hawaii prior to December 5, 1990, so that the vessel could participate in the fishery; or (4) persons who by June 21, 1990, had made a substantial financial commitment or investment in the construction of a new fishing vessel for participation in the fishery and intended contemporaneously with the investment to participate in the fishery. Permits are not transferable from one owner to another during the emergency period except in cases of extreme hardship such as death or terminal illness preventing the vessel owner from participating in the fishery. The hardship determination will be made by the Regional Director in consultation with the Council. A permit holder can also replace the originally qualifying vessel with another vessel provided the Regional Director determines that the replacement vessel has comparable harvesting capacity.

At its meeting on May 16, 1991, the Council voted to request that the Secretary extend the moratorium for another 90-day period, and to institute immediately three modifications to the emergency rule: (1) Extend permit eligibility to persons who, prior to June 21, 1990, had made substantial financial commitment or investment in the refitting of a vessel for participation in the fishery in the EEZ surrounding Hawaii and who can establish intent to participate in the fishery prior to or at the time of the commitment or investment; (2) allow a permit holder to transfer a limited entry permit with the sale of the vessel one time during the combined emergency moratorium and subsequent moratorium through a regular plan amendment; and (3) clarify application of the rule to vessels owned by corporations and partnerships.

The Council requested that the proposed modifications be made effective as soon as possible.

The requested modifications will make the provisions of the emergency rule identical to the provisions agreed upon for the subsequent plan amendment. The Council would like these modifications to be effective as soon as possible because of the financial hardships that would result if they were not implemented during the emergency period. At least 12 longline vessels that will qualify for limited entry permits when the planned 3 year moratorium is implemented are otherwise prohibited from participating in the longline fishery during the emergency period. Preventing these fishing vessels from fishing during the emergency period will cause hardships not intended by the Council. The Council also recognized that if permits cannot be transferred with the sale of the vessel, fishing opportunities will be limited, with severe adverse effect on the value of the owners' vessels, which are their most significant asset. In addressing this concern by allowing the one-time transfer of permits, the Council also intended to minimize any speculative sale of permits.

The Council is proceeding with an amendment to the FMP to extend the moratorium for 3 years. The purpose of the moratorium is to allow the Council, NMFS, and industry to continue with data collection and analysis, evaluation of long-term management alternatives, including limited entry, and selection of a long-term management regime.

#### Other Matters

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. Because the circumstances in the fishery at the time of implementation of the emergency

interim rule still exist, the Secretary extends for 90 days the effective date of the rule under section 305(c)(3)(B) of the Magnuson Act.

**List of Subjects in 50 CFR Part 685**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 17, 1991.

**Michael F. Tillman,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

## PART 685—PELAGIC FISHERIES OF WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

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

2. In § 685.15, paragraphs (a)(2), (b), and (c)(1) are revised, paragraph (c)(2) is redesignated as (c)(3), and paragraphs (c)(2) and (c)(4) are added. See the **"EFFECTIVE DATE"** section in the preamble of this document.

**§ 685.15 Limited entry permits.**

(a)(1) * * *

(2) The person made a substantial financial commitment or investment by June 21, 1990, for construction of a new vessel or refitting of a vessel and intended at the time the investment was made that the vessel was to be used in the longline fishery in Hawaii or in the EEZ around Hawaii upon completion of construction or refitting of the vessel.

(b) *Duration.* Limited entry permits issued under this section are valid until they are revoked, suspended, modified under 15 CFR part 904, or until 2400 hours local time October 9, 1991, whichever comes first.

(c) *Transfer.* (1) Limited entry permits issued under this section are transferable with the sale of the vessel on one occasion in the period covered by this rule.

(2) In addition to the one-time transfer allowed by paragraph (c)(1) of this section, the Regional Director, in consultation with the Council, may allow the transfer of a limited entry permit with transfer of ownership of the vessel in cases of extreme hardship such as death or terminal illness preventing the vessel owner from participating in the fishery.

(3) * * *

(4) A limited entry permit may be held by a partnership or corporation. In such a case, if fifty percent (50%) or more of the ownership of the partnership or corporation that originally qualified for the permit changes, then the permit lapses and must be surrendered to the Regional Director.

[FR Doc. 91–14884 Filed 6–19–91; 8:45 am]

BILLING CODE 3510–22–M

# Proposed Rules

Federal Register
Vol. 56, No. 121
Monday, June 24, 1991

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Chapter I

**[Summary Notice No. PR-91-13]**

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

**AGENCY:** Federal Aviation Administration (FAA), DOT.

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

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

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 1991.

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

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

**FOR FURTHER INFORMATION CONTACT:** Ida Klepper, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9688.

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

Issued in Washington, DC, on June 19, 1991.

**Deborah E. Swank,**

*Acting Manager, Program Management Staff, Office of the Chief Counsel.*

### Petitions for Rulemaking

*Docket No.:* 26553.
*Petitioner:* West Coast Air Charter. Inc.
*Regulations Affected:* 14 CFR § 135.31.
*Description of Petition:* Petitioner would add provisions to the existing section stating that no person may advertise or otherwise offer to perform any operations subject to this part without an appropriate Operating Certificate and Operation Specifications; and no person may engage in operations as a broker unless licensed by the IATA and is a member of Association of Retail Travel Agents.
*Petitioner's Reason for the Request:* The petitioner believes that non certificate holders can and do advertise that they have all types of aircraft for charter without any assurances that they are complying with the Federal Aviation Regulations and that brokers advertise to an unsuspecting public and are virtually unnoticed by any regulating authority.
*Docket No.:* 26569.
*Petitioner:* Mr. Richard Wussler.
*Regulations Affected:* 14 CFR part 43 appendix B.
*Description of Petition:* Petitioner would align the requirements of a person or repair station making and recording a major repair or major alteration with the requirements of § 43.9.
*Petitioner's Reason for the Request:* The petitioner believes that repair stations are circumventing the requirements of § 43.9 by citing part 43 appendix B and claiming that the owner of the aircraft is being advised as to the details via a copy of the work attached to his/her invoice while the technician performing the installation has no substantial documentation to show compliance with § 43.9 as it applies to the overhauled or repaired parts he is installing.

[FR Doc. 91-14944 Filed 6-21-91; 8:45 am]
BILLING CODE 4910-13-M

### 14 CFR Parts 21 and 25

**[Docket No. NM-58; Notice No. SC-91-6-NM]**

### Special Conditions: McDonnell Douglas DC-9 Airplanes: Lightning and High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for certain McDonnell Douglas DC-9 airplanes modified by ABX Air, Inc. These airplanes are equipped with high-technology digital avionics systems that perform critical and essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). This notice proposes additional safety standards that the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

**DATES:** Comments must be received on or before August 8, 1991.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-58, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM 58. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Woody Boyce, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4046; telephone (206) 227-2137.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–58." The postcard will be date/time stamped, and returned to the commenter.

**Background**

On November 2, 1990, ABX Air Inc. of Wilmington, Ohio, applied for a supplemental type certificate to modify Douglas DC–9 –11, –12, –13, –14, –15, –21, –31, –32, –32F, –33F, –34, –34F, –41, and –51 airplanes. The DC–9 is a two-crew, two-engine, turbine airplane with a maximum takeoff weight up to 122,200 lbs. The proposed modification incorporates the installation of an Electronic Flight Information System (EFIS) and Flight Director. The equipment originally installed in these airplanes presented the required information in the form of analog displays. The information presented is both flight critical and essential. The EFIS as a digital system is vulnerable to lightning and high-intensity radiated fields external to the airplane.

**Supplemental Type Certification Basis**

Under the provisions of § 21.115, Subchapter C, of the FAR, ABX Air, Inc. must show that the modified DC–9 airplanes meet the regulations incorporated by reference in Type Certificate No. A6WE, as specified in § 21.101(a), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under §§ 21.101 (a) or (b); or (3) special conditions are prescribed by the Administrator.

Based on the provisions of §§ 21.101 (a) and (b), ABX Air, Inc. will have to show compliance with the basic type certification basis per Type Certificate Data Sheet (TCDS) No. A6WE, plus the following FAR Part 25 requirements, up to Amendment 25–72, that are deemed necessary to provide an adequate level of safety: § 25.869(a), §§ 25.1303 (a), (b), and (c); §§ 25.1309 (a) thru (g); §§ 25.1321(e); § 25.1322 (a) thru (d); §§ 25.1331 (a) and (b); §§ 25.1333 (a), (b), and (c); § 25.1335, §§ 25.1355 (a) and (c); §§ 25.1359; (a) thru (d); §§ 25.1431 (a), (b), and (c); § 25.1525; § 25.1529: and § 25.1541(a).

If the Administrator finds that the applicable airworthiness regulations (i.e., part 4b plus applicable part 25 requirements) do not contain adequate or appropriate safety standards for the Douglas DC–9 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101.

**Discussion**

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the McDonnell Douglas DC–9 that would require that the EFIS and Flight Director be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

**Lightning**

To provide a means of compliance with the proposed special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level.

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended

period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10$\mu$s, the maximum is 50$\mu$s. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t) = I_0 (e^{-at} - e^{-bt})$

where;

t = time in seconds,

i = current in amperes, and

| | | Severe Strike (Component A) | Restrike (Component D) | Multiple Stroke (½ Component D) | Multiple Burst (Component H) |
|---|---|---|---|---|---|
| $I_0$, amp | = | 218,810 | 109,405 | 54,703 | 10,572 |
| a, $sec^{-1}$ | = | 11,354 | 22,708 | 22,708 | 187,191 |
| b. $sec^{-1}$ | = | 647,265 | 1,294,530 | 1,294,530 | 19,105,100 |

This equation produces the following characteristics:

| | | | | | |
|---|---|---|---|---|---|
| $I_{peak}$ | = | 200 KA | 100 KA | 50 KA | 10 KA |

and

| | | | | | |
|---|---|---|---|---|---|
| $(di/dt)_{max}$(amp/sec) | = | $1.4 \times 10^{11}$ @t=0+sec | $1.4 \times 10^{11}$ @t=0+sec | $0.7 \times 10^{11}$ @t=0+sec | $2.0 \times 10^{11}$ @t=0+sec |
| di/dt, (amp/sec) | = | $1.0 \times 10^{11}$ @t=.5$\mu$s | $1.0 \times 10^{11}$ @t=.25$\mu$s | $0.5 \times 10^{11}$ @t=.25$\mu$s | |
| Action Integral ($amp^2$ sec) | = | $2.0 \times 10^6$ | $0.25 \times 10^6$ | $.0625 \times 10^6$ | |

**High-Intensity Radiated Fields**

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS and Flight Director, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

| Frequency | Peak (V/M) | Average (V/M) |
|---|---|---|
| 10 KHz–500 KHz | 80 | 80 |
| 500 KHz–2 MHz | 80 | 80 |
| 2 MHz–30 MHz | 200 | 200 |
| 30 MHz–100 MHz | 33 | 33 |
| 100 MHz–200 MHz | 33 | 33 |
| 200 MHz–400 MHz | 150 | 33 |
| 400 MHz–1 GHz | 8,300 | 2,000 |
| 1 GHz–2 GHz | 9,000 | 1,500 |
| 2 GHz–4 GHz | 17,000 | 1,200 |
| 4 GHz–6 GHz | 14,500 | 800 |
| 6 GHz–8 GHz | 4,000 | 666 |
| 8 GHz–12 GHz | 9,000 | 2,000 |
| 12 GHz–20 GHz | 4,000 | 509 |
| 20 GHz–40 GHz | 4,000 | 1,000 |

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

**Conclusion**

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Parts 21 and 25**

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the supplemental type certification basis for the modified McDonnell Douglas DC–9 airplanes:

*1. Lightning Protection*

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

*2. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF)*

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

*3. The following definitions apply with respect to these special conditions*

*Critical Function.* Functions whose failure could contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

*Essential Functions.* Functions whose failure could contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

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

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91–14926 Filed 6–21–91; 8:45 am]

BILLING CODE 4910–13–M

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**[14 CFR Parts 21 and 25]**

**[Docket No. NM–59; Notice No. SC–91–7–NM]**

## Special Conditions: British Aerospace (Commercial Aircraft) Ltd. Model 4100 Series Airplanes; Lightning and High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the British Aerospace (Commercial Aircraft) Ltd. Model 4100 series airplanes. These airplanes are equipped with high-technology digital avionics systems that perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). This notice proposes additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

**DATES:** Comments must be received on or before August 8, 1991.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–59, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–59. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4046; telephone (206) 227–2144.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–59." The postcard will be date/time stamped, and returned to the commenter.

**Background**

On May 24, 1989, British Aerospace (Commercial Aircraft) Ltd. applied for a type certificate for their new Model 4100 series airplanes. The Model 4100 series is a pressurized, 29-passenger plus one cabin attendant, airplane with a

maximum takeoff gross weight of 22,377 pounds, a maximum cruise speed of 250 knots, and a maximum operating altitude of 26,000 feet. It is powered by two Garrett TPE331–14GR/HR turbopropeller engines mounted one on each wing in tractor configuration. This airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, an electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), light emitting diode (LED) displays for engine parameters, and engine hydro-mechanical fuel control units coupled with integrated electronic controls (IEC's). The IEC employs digital electronics that provide numerous supervisory and trim functions including an automatic takeoff thrust control system (ATTCS), and propeller control system features such as autofeather and auto-shutdown. All such design features may be vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane. In addition to these novel or unusual design features, the Model 4100 series also incorporates other unrelated novel or unusual design features. Those features are the subject of separate notices of proposed special conditions.

**Type Certification Basis**

Under the provisions of § 21.17 of the FAR, British Aerospace (Commercial Aircraft) Ltd. must show that the Model 4100 series meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–66. In addition, compliance with the noise certification requirements of part 36 of the FAR and the engine emission requirements of part 34 of the FAR, through the latest amendments in effect at the time of awarding the type certificate, must be shown. The special conditions which may be developed as a result of this notice will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model 4100 series because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

**Discussion**

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Model 4100 series which would require that the new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), LED display for engine parameters, and supervisory digital engine control, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

**Lightning**

To provide a means of compliance with the proposed special conditions, a clarification on the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. When a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have

shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t) = I_o (e^{-at} - e^{-bt})$

where:

t = time in seconds,

i = current in amperes, and

| | Severe Strike (Component A) | Restrike (Component D) | Multiple Stroke (½ Component D) | Multiple Burst (Component H) |
|---|---|---|---|---|
| $I_o$, amp = | 218,810 | 109,405 | 54,703 | 10,572 |
| a, $sec^{-1}$ = | 11,354 | 22,708 | 22,708 | 187,191 |
| b, $sec^{-1}$ = | 647,265 | 1,294,530 | 1,294,530 | 19,105,100 |

This equation produces the following characteristics:

| | | | | |
|---|---|---|---|---|
| $I_{peak}$ = | 200 KA | 100 KA | 50 KA | 10 KA |

and

| | | | |
|---|---|---|---|
| $(di/dt)_{max}$(amp/sec) = | 1.4×10¹¹ @t=0+sec | 1.4×10¹¹ @t=0+sec | 0.7×10¹¹ @t=0+sec | 2.0×10¹¹ @t=0+sec |
| di/dt, (amp/sec) = | 1.0×10¹¹ @t=.5μs | 1.0×10¹¹ @t=.25μs | 0.5×10¹¹ @t=.25μs | |
| Action Integral ($amp^2$ sec) = | 2.0×10⁶ | 0.25×10⁶ | .0625×10⁶ | |

## High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established. It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

| Frequency | Peak (V/M) | Average (V/M) |
|---|---|---|
| 10 KHz–500 KHz | 80 | 80 |
| 500 KHz–2 MHz | 80 | 80 |
| 2 MHz–30 MHz | 200 | 200 |
| 30 MHz–100 MHz | 33 | 33 |
| 100 MHz–200 MHz | 33 | 33 |
| 200 MHz–400 MHz | 150 | 33 |
| 400 MHz–1 GHz | 8,300 | 2,000 |
| 1 GHz–2 GHz | 9,000 | 1,500 |
| 2 GHz–4 GHz | 17,000 | 1,200 |
| 4 GHz–6 GHz | 14,500 | 800 |
| 6 GHz–8 GHz | 4,000 | 666 |
| 8 GHz–12 GHz | 9,000 | 2,000 |
| 12 GHz–20 GHz | 4,000 | 509 |
| 20 GHz–40 GHz | 4,000 | 1,000 |

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

**Conclusion**

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Parts 21 and 25**

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O 11514; and 49 U.S.C. 106(g).

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the British Aerospace (Commercial Aircraft) Ltd. Model 4100 series airplanes:

*1. Lightning Protection*

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

*2. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF)*

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

*3. The following definitions apply with respect to these special conditions*

*Critical Function.* Functions whose failure could contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

*Essential Functions.* Functions whose failure could contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

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

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91–14927 Filed 6–21–91; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 91–NM–87–AD]**

## Airworthiness Directives; Airbus Industrie Models A310, A320, and A300–600 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310, A320, and A300–600 series airplanes, which would require the installation of three modified Generator Control Units (GCU) with protective covers. This proposal is prompted by reports of internal shorts in the GCU's due to foreign liquid entering the units. This condition, if not corrected, could result in loss of the GCU's and AC electrical power.

**DATES:** Comments must be received no later than August 13, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region. Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–87–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 227–2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–87–AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A310, A320, and A300–600 series airplanes. There have been recent reports of internal shorts in the Generator Control Units (GCU) due to foreign liquid entering the units. This condition, if not corrected, could result in loss of the GCU's and AC electrical power.

Airbus Industrie has issued Service Bulletins A310–24–2040, Revision 1, dated January 28, 1991; A320–24–1050, dated February 11, 1991; and A300–24–6029, Revision 1, dated February 22, 1991; which describe procedures to replace the three currently installed GCU's with three modified GCU's having protective covers. The Airbus Industrie service bulletins reference Sundstrand Corporation Service Bulletin 735226/740206/740120–24–9, dated June 15, 1989, for additional instructions. The French DGAC has classified the Airbus service bulletins as mandatory, and has issued French Airworthiness Directive 90–197–118(B) addressing this subject.

These airplane models are manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal

Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the replacement of the three currently installed GCU's with three modified GCU's having protective covers, in accordance with the service bulletins previously described.

It is estimated that 67 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost for required parts is $333 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,996.

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

**PART 39—[AMENDED]**

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

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

**§39.13 [Amended]**

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

**Airbus Industrie:** Docket No. 91-NM-87-AD.

Applicability: Model A310, A320, and A300-600 series airplanes, on which Modification 7769 has not been accomplished, certificated in any category.

Compliance: Required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent loss of the Generator Control Units (GCU) and AC electrical power, accomplish the following:

(a) Remove the three currently installed GCU's and replace them with three modified GCU's having protective covers in accordance with Airbus Industrie Service Bulletins A310-24-2040, Revision 1, dated January 28, 1991 (for Model A310); A320-24-1050, dated February 11, 1991 (for Model A320); A300-24-6029, Revision 1, dated February 22, 1991 (for Model A300-600); and Sundstrand Service Bulletin 735226/740206/740120-24-9 (for Models A310, A320, and A300-600), dated June 15, 1989 (Modification 7769).

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on June 13, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-14946 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-109-AD]**

## Airworthiness Directives; Boeing Model 747-400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which would require inspection, repair if necessary, and modification of the advanced cabin entertainment and service system (ACESS) wire bundle installation. This proposal is prompted by reports of chafed wiring resulting in short circuits which led to burned wire bundles. This condition, if not corrected, could result in smoke and fire in the passenger cabin.

**DATES:** Comments must be received no later than August 13, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 91-NM-109-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen S. Oshiro, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2793. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

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

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

proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-109-AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

One operator of Boeing Model 747-400 series airplanes has reported several incidents involving burned advanced cabin entertainment and service system (ACESS) wire bundles in the passenger cabin. Damage to the wire bundles resulted from electrical short circuits that were caused by chafing of the wire bundles at the cable raceway exits near the seat disconnects and at dado panels near the sidewall disconnects. This condition, if not corrected, could result in smoke and fire in the passenger cabin.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-23A2241, dated May 31, 1990, which describes procedures for inspection, replacement, and modification of the ACESS wire bundle installation to prevent chafing. The modification consists of installing teflon expandable sleeving over the cables and revising the cable and raceway installation at the dado panels near each sidewall disconnect.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection, repair if necessary, and modification of the ACESS wire bundle installations in accordance with the service bulletin previously described.

There are approximately 65 Model 747-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 10 airplanes of U.S. registry would be affected by this AD, that it would take approximately 150 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $82,500.

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket 91-NM-109-AD

Applicability: Model 747-400 series airplanes listed in Boeing Alert Service Bulletin 747-23A2241, dated May 31, 1990, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the occurrence of smoke and fire in the passenger cabin, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish the following on the main and upper decks:

(1) Inspect the advanced cabin entertainment and service system (ACESS) wire bundle installation at the dado panel near each sidewall disconnect for chafing and wear in accordance with Boeing Alert Service Bulletin 747-23A2241, dated May 31, 1990.

(i) If chafing or wear is found, prior to further flight, replace the ACESS cable and add teflon expandable sleeving in accordance with the service bulletin.

(ii) If no chafing or wear is found, install teflon expandable sleeving on the ACESS cable in accordance with the service bulletin.

(2) Inspect all advanced cabin entertainment and service system (ACESS) seat to seat cables for chafing and wear in accordance with Boeing Alert Service Bulletin 747-23A2241, dated May 31, 1990.

(i) If chafing or wear is found, prior to further flight, replace the seat to seat cable and ensure proper cable installation in accordance with the service bulletin.

(ii) If no chafing or wear is found, ensure proper cable installation in accordance with the service bulletin.

(3) Modify the ACESS wire bundle installation at the dado panel near each sidewall disconnect in accordance with Boeing Alert Service Bulletin 747-23A2241, dated May 31, 1990.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on June 13, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-14945 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-117-AD]**

## Airworthiness Directives; British Aerospace Viscount Model 744, 745D, and 810 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes, which would require repetitive visual inspections to detect corrosion on elevator balance weights and elevator leading edge members, and repair or replacement, if necessary. This proposal is prompted by a report of corrosion found on the elevator balance weights and elevator leading edge

member attachment. This condition, if not corrected, could result in reduced controllability of the airplane.

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

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–117–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–117–AD." The postcard will be date/time stamped and returned to the commenter.

**Discussion**

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Viscount Model 744, 745D, and 810 series airplanes. There has been one report of corrosion found on the elevator balance weights and elevator leading edge member attachment. This condition, if not corrected, could result in reduced controllability of the airplane.

British Aerospace has issued Preliminary Technical Leaflet (PTL) No. 324, Issue 1, dated February 10, 1990, applicable to Model 700 series airplanes; and PTL No. 193, Issue 1, dated February 10, 1990, applicable to Model 810 series airplanes; which describe procedures for repetitive visual inspections of the elevator balance weights and elevator leading edge members for corrosion, and repair or replacement, if necessary. The United Kingdom CAA has classified the British Aerospace PTL's as mandatory.

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

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual inspections of the elevator balance weights and elevator leading edge members for corrosion, and repair or replacement, if necessary, in accordance with the PTL's previously described.

It is estimated that 29 airplanes of U.S. registry would be affected by this AD, that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be $25 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $159,500.

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—[AMENDED]

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:

**British Aerospace:** Docket No. 91–NM–117–AD.

Applicability: All Viscount Model 744, 745D, and 810 series airplanes, certificated in any category.

Compliance: Required within 180 days after the effective date of this AD, and thereafter at intervals not to exceed 4 years.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Perform a visual inspection of the elevators to detect corrosion of the mild steel balance weights and of the forward face of the leading edge members in accordance with British Aerospace Preliminary Technical Leaflet (PTL) No. 324 (for Viscount Model 744 and 745D series airplanes), Issue 1, or PTL No. 193 (for Viscount Model 810 series airplanes), Issue 1, both dated February 10, 1990, as applicable.

(1) If corrosion is found in the mild steel balance weights, prior to further flight, repair in accordance with the applicable PTL.

(2) If corrosion is found in the forward face of the leading edge members, prior to further flight, repair in accordance with the applicable PTL. If corrosion exceeds the limits specified in the PTL, prior to further flight, replace the members in accordance with the PTL.

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

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

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

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

Issued in Renton, Washington, on June 17, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-14947 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-115-AD]**

## Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which would require replacement of all aileron, elevator, and rudder servomotors and servomounts. This proposal is prompted by extensive testing which has demonstrated that water ingress into the primary flight control servomounts and servomotors, and subsequent freezing, can lead to a servo jam. This condition, if not corrected, could result in reduced controllability of the airplane.

**DATES:** Comments must be received no later than August 19, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-115-AD, 1601 Lind Avenue S.W., Renton, Washington 98055-4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-115-AD." The post card will be date/time stamped and returned to the commenter.

### Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F-28 Mark 0100 series airplanes. Extensive testing by Collins and Fokker Aircraft has demonstrated that water ingress into the primary flight control servomotors and servomounts, and subsequent freezing, can lead to a servo jam. This condition, if not corrected, could result in reduced controllability of the airplane.

Fokker has issued Service Bulletins F100-22-015, dated November 16, 1990, and F100-22-018, Revision 1, dated January 24, 1991, which describe procedures for replacement of all aileron, elevator, and rudder servomotors and servomounts. The RLD has classified these service bulletins as mandatory.

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

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacement of all aileron, elevator, and rudder servomotors and servomounts in accordance with the service bulletins previously described.

It is estimated that 20 airplanes of U.S. registry would be affected by this AD, that it would take approximately 35 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $38,500.

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—[AMENDED]

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:

**Fokker:** Docket No. 91–NM–115–AD.

Applicability: Model F–28 Mark 0100 series airplanes; Serial Numbers 11244 through 11306, 11308, 11310, 11312, 11313, 11314, 11316, and 11318; certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD:

(1) Replace all aileron, elevator, and rudder servomotors, P/N 622–7925–302, with modified servomotors, P/N 622–7925–303, in accordance with Fokker Service Bulletin F100–22–015, dated November 16, 1990; and

(2) Replace all aileron and rudder servomounts, P/N 622–7926–302; and elevator servomounts, P/N 622–8069–302; with modified servomounts, P/N 622–7926–303 and 622–8069–303, respectively, in accordance with Fokker Service Bulletin F100–22–018, Revision 1, dated January 24, 1991.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on June 17, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91–14948 Filed 6–21–91; 8:45 am]

BILLING CODE 4910–13–M

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 200

**RIN 3220–AA90**

### General Administration

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) hereby proposes to amend section § 200.8 of its regulations in order to make it clear that the Board has the authority to prevent a Board employee from being compelled to testify in a deposition, trial, or other similar proceeding, concerning information acquired in the course of performing official duties or because of the employee's official capacity, where the provision of such testimony would interfere with the employee's official duties and where the information sought may be obtained by means other than by testimony of the employee.

**DATES:** Comments must be submitted on or before July 24, 1991.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4945 (FTS 386–4945).

**SUPPLEMENTARY INFORMATION:** The Railroad Retirement Board (Board) is charged with the administration of both the Railroad Retirement Act (RRA) (45 U.S.C. 231 *et seq.*) and the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 351 *et seq.*). More and more frequently in recent years Board employees have been requested or subpoenaed to provide testimony, in a deposition, trial, or other similar proceeding, concerning information acquired in the course of performing official duties or because of the employee's official capacity. This increase has been particularly marked in divorce proceedings after the amendment of section 14 of the RRA (45 U.S.C. 231m) in 1983 to permit certain portions of a railroad retirement annuity to be divided as part of a division of property in such proceeding. The information sought by such subpoenas, particularly an estimate of benefits payable at retirement or the amount of benefits currently being paid or a description of the types of benefits payable under the RRA, can generally be easily furnished in a letter without the necessity of a Board employee taking time from his or her official duties to testify in a proceeding involving non-Federal litigants. See § 295.4(d) of this chapter.

Moreover, because the Board is a Federal agency, its employees are restricted with respect to the disclosure of information by the RRA, the RUIA, and the Privacy Act (5 U.S.C. 552a). However, there have been cases where, due to the insistence of an attorney or to the particular hostility of the parties to the divorce proceeding, a Board employee has been forced to take time away from official duties to travel long distances to a court proceeding only to wait several hours to be released from having to testify at all or to provide testimony consisting of information which either could have been provided by letter or which may not be provided at all due to the particular circumstances. In one instance, a Board field employee was threatened with being held in contempt of court and being placed in jail due to her refusal to testify to matters which the RRA and the Privacy Act clearly prohibited her from revealing in the given circumstances.

Section 200.8(d) of the Board's regulations sets forth the procedures to be followed when a Board employee receives a subpoena. The Board proposes to amend this section by the inclusion of a policy statement as the new first paragraph of § 200.8(d) in order to make it clear that the Board has the authority to prevent its employees from testifying where the provision of such testimony would interfere with the employee's official duties. The remaining paragraphs are proposed to be appropriately renumbered.

The Board proposes to redesignate paragraphs (f), (g) and (h) and add a new paragraph (f) to § 200.8 which provides for a procedure for requesting the voluntary testimony of a Board employee. Finally, the Board proposes to add a new paragraph (j) which provides that the Board will request the assistance of the Department of Justice where such assistance is necessary in order to represent the interests of the Board and its employees. This new paragraph simply reflects what has been and currently is the practice of the Board in such matters.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act.

**List of Subjects in 20 CFR Part 200**

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 200—GENERAL ADMINISTRATION

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

**Authority:** 45 U.S.C. 231(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.8(b) is amended by adding at the end thereof the following new definition, to read as follows:

**§ 200.8 Disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.**

* * * * *

*Testify and testimony.* The terms "testify" and "testimony" include both in-person oral statements before a court or a legislative or administrative body and statements made in the form of depositions, interrogatories, declarations, affidavits or other means of formal participation in such proceedings.

3. Section 200.8 is amended by redesignating paragraphs (d) (1), (2), and (3) as (d) (2), (3), and (4), respectively, and by adding the following new Paragraph (d)(1) to read as follows:

(d) *Subpoenas—statement of policy and general rule.* (1) It is the policy of the Board to provide information, data, and records to non-Federal litigants to the same extent and in the same manner that they are available to the general public. The availability of Board employees to testify before state and local courts and administrative and legislative bodies, as well as in Federal court and administrative proceedings which involve non-Federal litigants, concerning information acquired in the course of performing their official duties or because of the employee's official capacity, is governed by the Board's policy of maintaining strict impartiality with respect to private litigants and minimizing the disruption of an employee's official duties. Thus, the Board may refuse to make an employee available for testimony under this paragraph or paragraph (e) or (f) of this section if it determines that the information sought is available other than through testimony and where making such employee available would cause disruption of agency operations. However, this paragraph does not apply to any civil or criminal proceeding where the United States, the Railroad Retirement Board, or any other Federal agency is a party; to Congressional requests or subpoenas for testimony; to consultative services and technical assistance provided by the Board or the agency in carrying out its normal program activities; to employees serving as expert witnesses in connection with professional and consultative services rendered as approved outside activities (in cases where employees are providing such outside services, they must state for the record that the testimony represents their own views and does not necessarily represent the official position of the agency); or to employees making appearances in their private capacity in legal or administrative proceedings that do not relate to the official business of the agency (such as cases arising out of traffic accidents, crimes, domestic relations, etc.) and not involving professional and consultative services as described above.

3. Section 200.8 is amended by redesignating paragraphs (f), (g), and (h), as (g), (h), and (i) and by adding new paragraph (f) and a new paragraph (j) to read as follows:

**§ 200.8 Disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.**

* * * * *

(f) *Requests for voluntary testimony.* All requests for testimony by a Board employee in his or her official capacity must be in writing and directed to the Deputy General Counsel. They shall state the nature of the requested testimony, why the information is not available by any other means, and the reasons, if any, why the testimony would be in the interest of the Board or the Federal government.

* * * * *

(j) The Deputy General Counsel or his designee will request the assistance of the Department of Justice where necessary to represent the interests of the agency and its employees under this section.

Dated: June 13, 1991.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 91–14883 Filed 6–21–91; 8:45 am]

BILLING CODE 7905–01–M

## 20 CFR Part 259

**RIN 3220–AA88**

## Initial Determinations and Appeals From Initial Determinations With Respect to Employer Status and Employee Status

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to amend part 259 of its regulations to provide that determinations with respect to employer and employee status under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA) shall be made directly by the three-member Board. Under present regulations determinations with respect to employer and employee status are delegated to the Deputy General Counsel subject to administrative review by the three-member Board. The Board proposes to remove this delegation and place original jurisdiction over such questions at the Board level. The Board believes that this proposed change will make the decision making process with respect to employer and employee status questions more efficient.

**DATES:** Comments shall be submitted on or before August 23, 1991.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4920 (FTS 386–4920).

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513).

**SUPPLEMENTARY INFORMATION:** Part 259 presently delegates authority for initial and reconsideration determinations with respect to employer and employee status under the RRA and RUIA to the Board's Deputy General Counsel. His determinations on such questions are final unless a party to a determination appeals such determination to the three-member Board.

The Board proposes to remove this delegation. Under the proposed changes to this part the Deputy General Counsel will be responsible for making initial investigations with respect to the employer and employee status of any person and will submit to the Board a recommended decision with respect to the coverage of that person under the RRA or RUIA. Upon receipt of the Deputy General Counsel's recommendation the Board shall issue a coverage determination (proposed

§ 259.1). Any party aggrieved by this determination, as defined in § 259.2, may file a request for reconsideration with the Deputy General Counsel who shall submit a recommendation to the Board thereon. The Board shall then issue a decision on reconsideration (proposed § 259.3) Such decision is final subject to judicial review as provided for in proposed § 259.5 or to a new determination under proposed § 259.6.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections imposed by these amendments.

**List of Subjects in Part 259**

Railroad employees, railroads, railroad retirement, railroad unemployment insurance.

For the reasons set out in the preamble, 20 CFR part 259 of the Board's regulations are proposed to be amended as follows:

## PART 259—INITIAL DETERMINATIONS AND APPEALS FROM INITIAL DETERMINATIONS WITH RESPECT TO EMPLOYER AND EMPLOYEE STATUS

1. The authority citation for part 259 is revised to read as follows:

**Authority:** 45 U.S.C. 231f; 45 U.S.C. 362(l).

2. Section 259.1 is revised to read as follows:

**§ 259.1 Initial determinations with respect to employer and employee status.**

The Deputy General Counsel of the Railroad Retirement Board or his or her designee shall make the initial investigations with respect to:

(a) The status of any person as an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act and the rules and regulations issued thereunder; and

(b) The status of any individual or group of individuals as an employee or employees of an employer covered under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Upon completion of this investigation the Deputy General Counsel or his or her designee, shall submit to the Board the results of the investigation together with a recommendation concerning the coverage determination. The Board shall make the initial determination with respect to the status of any person as an employer or as an employee under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. The Secretary to the Board shall promptly notify the party or parties, as defined in § 259.2 of this part, of the Board's determination.

3. Section 259.3 is revised to read as follows:

**§ 259.3 Reconsideration of initial determinations with respect to employee or employer status.**

A party to an initial decision issued under § 259.1 shall have the right to request reconsideration of that decision. A request for reconsideration shall be in writing and must be filed with the Deputy Genera1 Counsel within one year following the date on which the initial determination was issued. Where a request for reconsideration has been timely filed, the Deputy General Counsel or his or her designee shall notify all other parties to the initial determination of such request. The party who requested reconsideration and any other party shall have the right to submit briefs or written argument, as well as any documentary evidence pertinent to the issue under consideration. The Deputy General Counsel or his or her designee shall review the material furnished all parties and shall submit it to the Board with a recommendation as to the determination upon reconsideration. The Board shall then issue a determination with respect to the request for reconsideration. The Secretary to the Board shall promptly notify all parties of the determination upon reconsideration.

**§ 259.4 [Amended]**

4. Section 259.4 is amended by removing the word "rendering a determination" in the first sentence and substituting therefor "performing his or her responsibilities".

**§ 259.5 [Removed]**

5. Section 259.5 is removed.

**§ 259.6 [Redesignated as § 259.5]**

6. Section 259.6 is redesignated as § 259.5

7. Section 259.7 is redesignated as § 259.6 and is revised to read as follows:

**§ 259.6 Finality of determinations issued under this part.**

Any determination rendered by the Board at the initial or reconsideration stages shall be considered a final determination and shall be binding with respect to all parties thereto unless a timely request has been made for reconsideration, or an appeal has been filed with the appropriate United States Court of Appeals, respectively. A final determination may be challenged at the request of a party who was, or could have been, a party to the final determination when the party alleges that the law or the facts upon which the final determination was based have changed sufficiently to warrant a contrary determination. Such a request shall be submitted to the Board's Deputy General Counsel, who shall consider such request as a request for an initial determination under § 259.1.

Dated: June 13, 1991.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 91–14841 Filed 6–21–91; 8:45 am]

BILLING CODE 7905–01–M

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD1-91-004]**

## Drawbridge Operation Regulations Saugus River, MS

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of the Metropolitan District Commission (MDC) and the Massachusetts Department of Public Works (MDPW), the Coast Guard is considering changes to the regulations governing the General Edwards SR1A Bridge, mile 1.7, between Revere and Lynn, Massachusetts, the Massachusetts Bay Transit Authority (MBTA)/AMTRAK Bridge, mile 2.1, and MDPW's Belden Bly (Foxhill) Bridge, mile 2.5 both between Lynn and Saugus, Massachusetts, all over the Saugus River, by revising the hours when advance notice for an opening is required at all three bridges. This proposal is being made because of the limited number of openings requested during the proposed time periods. This action should relieve the bridge owners of the burden of having persons constantly available to open the draws and should still provide for the reasonable needs of navigation.

**DATES:** Comments must be received on or before August 8, 1991.

**ADDRESSES:** Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073. The comments and other materials referenced in this notice will be available for inspection and copying at the above address or at the John Foster Williams Building, 408 Atlantic Ave, Boston, Massachusetts. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to these addresses.

**FOR FURTHER INFORMATION CONTACT:** William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge(s), and give reasons for concurrence with or any recommended changes in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed post card or envelope. The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

**Drafting Information:**

The drafters of this notice are Mr. John McDonald, Project Officer, and Lieutenant John Gately, project attorney.

**Discussion of Proposed Regulations**

The vertical clearances for the General Edwards SR1A Bridge, the MBTA/AMTRAK Bridge, and the Rt 107, Belden Bly (Foxhill) Bridge are 27', 07' and 6' at MHW and 36', 17' and 16' at MLW, respectively. The current regulations for these drawbridges are that they open on signal at all times. The Coast Guard has received requests from the MDC and MDPW to change the operating regulations for their bridges to permit 8 hours advance notice during periods of limited use as follows: (a) The General Edwards Bridge SR1A Bridge from December 1 thru March 31; (b) The MBTA/AMTRAK Bridge from 12 a.m. to 5 a.m., daily; and Belden Bly (Foxhill) Rt 107 Bridge from May 1 thru September 30, from 12 a.m. to 5 a.m. and from October 1 thru April 30, from 9 p.m. to 5 a.m. At all other times, these bridges would be manned and open on signal. Advance notice for the General Edwards Bridge will be made to the MDC personnel on watch at the Charles River Dam. The notifications for MDPW and MBTA bridges will be to their respective 24 hour phone numbers. The proposed regulations also require that all the bridges over the Saugus River open as soon as possible for public vessels of the United States, state and local vessels used for public safety purposes and vessels in distress. The owners of these bridges are also required to maintain clearance gauges to facilitate transit of small vessels while the bridges are in the closed position.

Appendix A to 33 CFR part 117 is revised to reflect the installation of radiotelephones on these bridges to improve communications, minimize delays to marine and land traffic, and enhance marine safety.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that the regulation changes will not prevent the mariners from transiting the bridges but shall just require advance notice for openings. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**Federalism Implication Assessment**

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.618 is revised and Appendix A to part 117 is amended to add the Saugus River listings under the State of Massachusetts between the listings for Merrimack River and the Taunton River to read as follows:

**§ 117.618 Saugus River**

(a) The following requirements apply to all bridges across the Saugus River:

(1) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges with figures not less than 12 inches high designed, installed and maintained according to provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed seven minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraph (b) through (d) of this section the draws shall open on signal.

(b) The draw of the General Edwards SR1A Bridge, mile 1.7, between Revere and Lynn, Massachusetts, shall open on signal except that from December 1 through March 31 at least 8 hour advance notice shall be given by commercial and recreational vessels for an opening.

(c) The draw of the Massachusetts Bay Transportation Authority (MBTA)/ AMTRAK Bridge, mile 2.1, between Saugus and Lynn, Massachusetts, shall open on signal except that from 12 a.m. to 5 a.m. daily at least 6 hour advance notice shall be given by commercial and recreational vessels for an opening.

(d) The draw of the Route 107, Belden Bly (Foxhill) Bridge, mile 2.5, between Saugus and Lynn, Massachusetts, shall open on signal except that at least 8 hours advance notice shall be given by commercial and recreational vessels for an opening from:

(1) May 1 through September 30, from midnight to 5 a.m., and

(2) October 1 through April 30, from 9 p.m. to 5 a.m.

APPENDIX A TO PART 117—DRAWBRIDGE EQUIPPED WITH RADIOTELEPHONES

| | Waterway | Mile | Location | Bridge name and owner | Call sign | Calling channel | Working channel |
|---|---|---|---|---|---|---|---|
| | • | • | • | • | • | • | |
| Massachusetts: | | | | | | | |
| | • | • | • | • | • | • | |
| | Saugus River | 1.7 | Lynn-Revere | General Edwards SR1A. MDC | WHV 992 | 16 | 13 |

| Waterway | Mile | Location | Bridge name and owner | Call sign | Calling channel | Working channel |
|---|---|---|---|---|---|---|
| | 2.1 | Saugus-Revere | Saugus/MBTA, MBTA | KVY 568 | 16 | 13 |
| | 2.7 | Saugus-Revere | Belden Bly(Foxhill), MDPW | Pending | 16 | 13 |

Dated: June 7, 1991.

R.I. Rybacki,

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 91-14931 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

**[GEN Docket No. 91-150; FCC 91-167]**

**RIN 3060-AD68**

### Additional Frequencies for Auditory Assistance Devices

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rule would expand the frequency bands in which unlicensed auditory assistance devices are permitted to operate. This change is necessary because hearing-impaired persons using auditory assistance devices in the frequency bands currently available to them are experiencing interference from licensed radio transmitters. This change would allow hearing-impaired persons to more easily interact with the rest of society.

**DATES:** Comments must be submitted on or before September 9, 1991, and reply comments on or before October 9, 1991.

**ADDRESSES:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** David Wilson, Office of Engineering and Technology, (202) 653-8138.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making in GEN Docket No. 91-150, FCC 91-167, adopted May 24, 1991. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422.

### Summary of the Notice of Proposed Rule Making

1. The Commission proposes to amend 47 CFR part 15 of its rules by expanding the frequency bands in which auditory assistance devices are permitted to operate. This proposal addresses a petition for rule making before the Commission filed by Phonic Ear, Inc. ("Phonic Ear"), on December 12, 1989.

2. Auditory assistance devices operate on a non-licensed basis under 47 CFR part 15. An auditory assistance device is defined in 47 CFR 15.3(a) as an intentional radiator used to provide auditory assistance to a handicapped person or persons. Such devices are typically used for auricular training in an educational institution, for auditory assistance at places of public gatherings, and for auditory assistance to handicapped individuals in other locations. Auditory assistance devices currently operate in the frequency bands 72-73 MHz and 75.4-76 MHz. These frequency bands are allocated to the fixed and mobile services and are available for use under the Domestic Public Land Mobile Service (47 CFR part 22), the Private Land Mobile Service (47 CFR part 90), and the Personal Radio Service (47 CFR part 95). Under the 47 CFR part 15 conditions for operation, auditory assistance devices may not cause harmful interference to these services and must accept any interference received.

3. In its petition, Phonic Ear states that auditory assistance devices have been experiencing increasing amounts of interference due to growth in use of the 72-73 MHz and 75.4-76 MHz bands by the land mobile services. These services transmit signals at much higher levels than are permitted for auditory assistance devices under 47 CFR part 15. In particular, according to Phonic Ear, messages transmitted by paging systems often interrupt and override the voice of a teacher as heard by a hearing-impaired student using an auditory assistance device. Phonic Ear states that the number of usable frequencies is so severely limited by interference that, as a result, some large educational institutions are now unable to operate enough auditory assistance devices to cover all of their classrooms. In order to correct this situation, Phonic Ear proposes that the frequency bands which auditory assistance devices are permitted to use be expanded to include the 74.6-74.8 MHz and 75.2-75.4 MHz bands. This spectrum became available for fixed and mobile services after the two guardbands protecting aeronautical marker beacons at 75.0 MHz were narrowed from 400 kHz to 200 kHz on January 1, 1990. Phonic Ear states that auditory assistance devices would not experience significant interference on these frequencies because there is not existing use and any potential new services must be limited to operation below one watt in accordance with Footnote US 273 to the Table of Frequency Allocations.

4. Williams Sound Corporation filed comments in support of Phonic Ear's position. The Manufacturer's Radio Frequency Advisory Committee ("MRFAC") filed comments opposing Phonic Ear's petition. It points out that MRFAC has filed a separate petition for rule making requesting that the 74.6-74.8 MHz and 75.2-75.4 MHz bands be allocated to the Manufacturers Radio Service ("MRS") under 47 CFR part 90 of the Commission's rules. MRFAC wishes to use these frequencies for remote control of industrial equipment, and believes that auditory assistance devices operating in these bands would be difficult to locate and shut down should they cause harmful interference. MRFAC, therefore, believes that Phonic Ear's petition should be denied in order to prevent possible interference to remote control signals in manufacturing plants in the event that MRFAC's petition is granted.

5. Based on the argument presented in Phonic Ear's petition and the comments filed in response to that petition, it appears that auditory assistance devices are indeed experiencing significant interference problems in the bands in which they are currently permitted to operate. We believe the public interest would be served by making additional frequencies available to remedy the interference problem.

6. The frequency bands 74.6-74.8 MHz and 75.2-75.4 Mhz appear to be ideally suited as additional spectrum for auditory assistance devices. These frequencies would enable use of existing equipment designs because of the close proximity to the currently available frequencies. Therefore, we expect there would be little or no increase in the cost of the equipment, which is often a

matter of particular concern to the handicapped. Perhaps most important, auditory assistance devices are far less likely to experience interference on these frequencies since they are currently vacant. Moreover, any services that may be ultimately authorized to use these frequencies will be required to limit the transmitter output power to no more than one watt as specified in Footnote US 273 to the Table of Frequency Allocations. Thus, auditory assistance devices will not be exposed to the type of high power signals existing in the frequency bands currently being used. It is important to note that the proposed change will permit any 47 CFR part 15 device which complies with the general radiated emission limits in 47 CFR 15.209 to operate within these bands, along with auditory assistance devices. However, since the general emission limits of 47 CFR 15.209 are considerably lower than the emission limits provided for auditory assistance devices, it is not expected that other 47 CFR part 15 devices operating under this section will present any greater potential for interference.

7. We note that the Commission has made no finding on the merits of MRFAC's petition for use of the 74.6–74.8 MHz and 75.2–75.4 MHz bands by the Manufacturer's Radio Service. In any event, if we were to act favorably on MRFAC's petition we believe there would be little risk of interference from auditory training devices. The 72–73 MHz and 75.4–76 HMz bands, which auditory assistance devices have been using for nearly 20 years, are also used by the Manufacturer's Radio Service for fixed operations limited to the confines of manufacturing areas, and mobile operations limited to an output power of one watt. We are unaware of any harmful interference that has been caused to the Manufacturer's Radio Service by auditory assistance devices.

8. In light of these considerations, we are proposing to amend 47 CFR part 15 of the rules to allow auditory assistance devices to be operated in the 74.6–74.8 MHz and 75.2–75.4 MHz bands, as specified below. The administrative and technical requirements for operation in these bands are proposed to be identical to those for the existing auditory assistance devices. We invite comments regarding this proposal.

**Initial Regulatory Flexibility Analysis**

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial analysis is as follows:

I. Reason for Action: Auditory assistance devices operating in the bands available to them under part 15 of the FCC Rules appear to be experiencing a significant amount of interference from common carrier and private radio systems. In some cases, this interference renders the auditory assistance devices unusable.

II. Objective: The objective of the proposed rules is to improve the quality of life for hearing impaired individuals by affording them the opportunity to better communicate with teachers, performers, and other public speakers.

III. Legal Basis: Action is proposed in accordance with sections 4(i), 302, 303(e), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended.

IV. Description, potential impact and number of small entities affected: The proposed changes in the regulations would affect only a few small entities. An estimate of the number of such parties affected is six or less. There would be no cost to the manufacturers to comply with the proposed rules because they would not be required to make any changes to their current operations. The new rules would simply provide them with design option which they did not have before.

V. Recording, record keeping and other compliance requirements: No changes in record keeping requirements are proposed. However, there may be an increase in the number of measurements performed on each auditory assistance device in preparation for filing or an equipment authorization.

VI. Federal rules which overlap, duplicate or conflict with the proposed rule: None.

VII. Any significant alternative minimizing the impact on small entities and consistent with the stated objectives: None.

**List of Subjects in 47 CFR Part 15**

Communications equipment, Education of handicapped.

Title 47 of the Code of Federal Regulations, part 15 is proposed to be amended as follows:

## PART 15—[AMENDED]

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

**Authority:** Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.205(a) is revised to read as follows:

**§ 15.205 Restricted bands of operation.**

(a) Except as shown in paragraph (d) of this section, only spurious emissions are permitted in any of the frequency bands listed below:

| MHz | MHz | MHz | GHz |
|---|---|---|---|
| 0.090–0.110 | 156.7–156.9 | 2200–2300 | 9.0–9.2 |
| 0.49–0.51 | 162.0125–167.17 | 2310–2390 | 9.3–9.5 |
| 2.1735–2.1905 | 167.72–173.2 | 2483.5–2500 | 10.6–12.7 |
| 8.362–8.366 | 240–285 | 2655–2900 | 13.25–13.4 |
| 13.36–13.41 | 322–335.4 | 3260–3267 | 14.47–14.5 |
| 25.5–25.67 | 399.9–410 | 3332–3339 | 15.35–16.2 |
| 37.5–38.25 | 608–614 | 3345.8–3358 | 17.7–21.4 |
| 73–74.6 | 960–1240 | 3600–4400 | 22.01–23.12 |
| 74.8–75.2 | 1300–1427 | 4500–5250 | 23.6–24.0 |
| 108–121.94 | 1435–1626.5 | 5350–5460 | 31.2–31.8 |
| 123–138 | 1660–1710 | 7250–7750 | 36.43–36.5 |
| 149.9–150.05 | 1718.8–1722.2 | 8025–8500 | (1) |

[1] Above 38.6.

3. The § heading of § 15.237 is revised to read as follows:

**§ 15.237 Operation in the bands 72.0–73.0 MHz, 74.6–74.8 MHz and 75.2–76.0 MHz.**

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 91–14985 Filed 6–21–91; 8:45 am]

BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 56, No. 121
Monday, June 24, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[TB-91-011]**

### Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app.) announcement is made of the following committee meeting:

*Name:* Burley Tobacco Advisory Committee.
*Date:* July 11, 1991.
*Time:* 10:30 a.m.
*Place:* Campbell House Inn, 1375 Harrodsburg Road, Lexington, Kentucky 40405.
*Purpose:* To receive reports from subcommittees discuss new policies and procedures for the 1991 burley marketing season, review regulations pursuant to the Tobacco Inspection Act, 7 U.S.C. 511 *et seq.*, and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502, Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: June 18, 1991.

**Daniel Haley,**

*Administrator.*

[FR Doc. 91-14960 Filed 6-21-91; 8:45 am]

**BILLING CODE 3410-02-M**

### Animal and Plant Health Inspection Service

**[Docket 91-078]**

### Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that eight environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

**ADDRESSES:** Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clayton Givens, Program Assistant, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requested under the permit numbers listed below.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

| Permit No. | Applicant | Date Issued | Organism | Field Test Location |
|---|---|---|---|---|
| 91-025-03 | Ciba-Geigy Biotechnology Research | 05-10-91 | Corn plants genetically engineered to contain a gene for resistance to the antibiotic hygromycin and a marker gene encoding beta-glucuronidase. | McClean County, Illinois. |
| 91-030-01 | Monsanto Agricultural Company | 05-10-91 | Corn plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*. | Jersey County, Illinois. |

| Permit No. | Applicant | Date Issued | Organism | Field Test Location |
|---|---|---|---|---|
| 91-035-06 | Campbell Institute for Research and Technology. | 05-10-91 | Tomato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*. | Yolo County, California. |
| 91-043-01 | Louisiana State University | 05-10-91 | Rice plants genetically engineered to contain a hygromycin marker along with one of the following structural genes: a rice storage protein gene, pea storage protein gene, and a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *sotto*. | East Baton Rouge Parish, Louisiana. |
| 91-072-01 | Garst Seed Company | 05-13-91 | Corn plants genetically engineered to express genes from a non-pathogenic source organism. | Boone County, Iowa. |
| 91-011-04 | Monsanto Agricultural Company | 05-14-91 | Potato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *tenebrionis*. | Umatilla County, Oregon; Yakima County, Washington; and Waushara County, Wisconsin. |
| 91-024-01 | Monsanto Agricultural Company | 05-14-91 | Potato plants genetically engineered to contain a gene encoding the coat protein of the potato leaf roll virus. | Canyon County, Idaho; Jersey County, Illinois; and Benton County, Washington. |
| 91-030-04 | Monsanto Agricultural Company | 05-17-91 | Potato plants genetically engineered to express a carbohydrate biosynthetic enzyme. | Bingham County, Idaho. |

Done in Washington, DC, this 19th day of June 1991.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 91-14959 Filed 6-21-91; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket No. A-17-91]**

### Foreign-Trade Subzone 15E—Kawasaki Engine Plant Nodaway County, MO; Foreign-Trade Subzone 59A—Kawasaki Motorcycle, Jetski, and All-Terrain Vehicle Plant, Lincoln, NE; Request Concerning Manufacturing Authority

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ Subzone 15E, on behalf of the small engine manufacturing plant of Kawasaki Motors Manufacturing Corporation, U.S.A. (KMM), in Nodaway County, Missouri, for a determination that certain proposed manufacturing activity is within the scope of authority approved by the Board.

In December 1989, the Board authorized FTZ Subzone 15E (Board Order 454, 54 FR 50257, 12/5/89). Some of the engines produced at the plant are for vehicles made at KMM's plant in Lincoln, Nebraska, which was authorized as Subzone 59A in September 1980 (Board Order 163, 45 FR 58637, 9/4/80). The Nebraska plant produces motorcycles, jetskis/snowmobiles, and all-terrain vehicles.

Engines and transmissions are among the components that KMM is currently sourcing from abroad for the all-terrain vehicles made at the Nebraska plant. KMM is in the process of shifting production of engines and transmissions for the Nebraska-made all-terrain vehicles from Japan to its Missouri engine plant. The production of engines has already been specifically approved as part of the original subzone plan for Subzone 15E (Missouri plant).

The production of transmissions appear to be within the range of activity approved for the Nebraska plant based on the expectation that the plant would increase domestic sourcing over time. Instead of shifting production of the transmissions to the Nebraska plant, however, KMM plans to use the Missouri plant because they are assembled with the same machinery as the engines.

Based on a preliminary review, it appears that the proposed activity is consistent with the activity approved in FTZ Board Orders 163 and 454, both of which apply to the related KMM plants. Engines and transmissions for all-terrain vehicles are closely interrelated, and the transmissions made under zone procedures at the Missouri plant will be shipped exclusively for assembly of all-terrain vehicles made at the KMM Nebraska plant. The production of the transmissions at the Missouri plant will be subject to the restrictions in Board Orders 163 and 454, including the condition that requires the election of privileged foreign status on all foreign merchandise subject to antidumping or countervailing duty orders at the time of admission to the subzone. Temporary authority has been given for this activity for a six-month period ending December 16, 1991, during which time the Board would review any comments received in response to this notice.

The FTZ Staff invites comments from interested parties for consideration prior to completing its review. Comments must be submitted by July 21, 1991. They shall be addressed as follows: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: June 14, 1991.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 91-14972 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-DS-M

### International Trade Administration

**[A-583-810]**

### Postponement of Final Antidumping Duty Determination: Chrome-Plated Lug Nuts from Taiwan

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**EFFECTIVE DATE:** June 24, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mi-Yong Kim or Rick Herring, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 377-0189 or 377-3530, respectively.

**POSTPONEMENT:** On May 29, 1991, Gourmet Equipment (Taiwan) Corporation (Gourmet), a respondent in this antidumping investigation, requested that the Department extend the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act). On June 4, 1991, petitioner opposed the extension.

Under § 353.20(b) of Commerce's regulations (19 CFR 353.20(b)), the Department will extend a final determination to not later than 135 days

after a preliminary affirmative determination at the request of a respondent accounting for a significant proportion of the merchandise, unless there are compelling reasons not to do so. In this investigation, we have determined that compelling reasons exist not to grant the full extension requested. While Gourmet accounts for a large majority of the sales being investigated, it was preliminarily found to have no sales at less than fair value and, hence, its entries of merchandise are not subject to suspension of liquidation. Therefore, we are granting only a limited extension and intend to make our final determination no later than July 25, 1991.

**PUBLIC COMMENT:** In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 1, 1991, and rebuttal briefs, no later than July 8, 1991. A public hearing will be held on July 15, 1991, at 10 a.m., at the U.S. Department of Commerce, room 1410, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should contact one of the individuals named in the "For Further Information Contact" section of this notice to confirm the date and location of the hearing. In accordance with 19 CFR 353.38(b), oral presentations will be limited to the issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: June 14, 1991.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 91-14973 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-DS-M

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[C-535-001]

## Cotton Shop Towels from Pakistan; Final Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of final results of countervailing duty administrative review.

**SUMMARY:** On March 1, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton shop towels from Pakistan for the period January 1, 1989 through December 31, 1989. We have now completed that review and determine the total bounty or grant to be 7.22 percent *ad valorem*.

**EFFECTIVE DATE:** June 24, 1991.

**FOR FURTHER INFORMATION CONTACT:** Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 8743) the preliminary results of this administrative review of the countervailing duty order on cotton shop towels from Pakistan (49 FR 8974; March 9, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

### Scope of Review

Imports covered by this review are shipments of Pakistani cotton shop towels. During the review period, such merchandise was classifiable under item number 6307.10.20 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989, and five programs: (1) Export Financing Scheme; (2) Excise Tax, Sales Tax and Customs Duty Rebate programs; (3) Income Tax Reductions for Exports; (4) Import Duty Rebates; and (5) Export Credit Insurance.

### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondents, the Export Promotion Bureau of Pakistan and the exporters of cotton shop towels from Pakistan.

*Comment 1:* The respondents point out that Index Linentex exported shop towels to the United States during the review period and the Department did not include their exports in its calculation of the weighted-average country-wide rate.

*Department Position:* We agree and have revised our calculations accordingly.

*Comment 2:* Respondents contend that, in calculating the benefit from the export financing scheme, the Department failed to recognize that several companies that used this program reported all export financing outstanding during the review period rather than financing solely on exports to the United States. As a result, the amount of financing attributed to their exports of cotton shop towels to the United States greatly exceeded the value of those exports.

This is unlikely in light of the Department's own description of this program's operation, which indicates that financing exceeding export performance would incur a stiff penalty. Therefore, since the amount of financing reported by these companies cannot be tied to exports of cotton shop towels to the United States, the Department should divide the benefit from the loans by each company's total exports.

*Department's Position:* We have examined the information provided in the questionnaire response and determined that three companies reported loan amounts that exceed the value of their exports of cotton shop towels to the United States. Because respondents did not demonstrate that any of these loans were attributable to non-U.S. exports, as best information available, we divided the benefit from these loans by each company's U.S. exports. However, it is unlikely that the program provides preferential financing at an amount greater than 100 percent of the value of those exports. Therefore, we calculated the benefit to these three companies based on an amount of financing equal to the value of each company's exports of cotton shop towels to the United States. On this basis, we determine the benefit from this program to be 1.47 percent *ad valorem* during the review period.

### Final Results of Review

As a result of our review, we determine the total bounty or grant to be 7.22 percent *ad valorem* during the period January 1, 1989 through December 31, 1989.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 7.22 percent of the f.o.b. invoice price on shipments on this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties of 7.22 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 14, 1991.

Eric I. Garfinkel,

*Assistant Secretary for Import Administration.*

[FR Doc. 91-14974 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-DS-M

## United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Decision of Extraordinary Challenge Committee

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Decision of the Extraordinary Challenge Committee in review of the binational panel decision in the panel review of the affirmative determination of threat of material injury made by the U.S. International Trade Commission respecting Fresh, Chilled or Frozen Pork from Canada. Secretariat File No.: ECC-91-1904-01USA.

**SUMMARY:** On June 14, 1991, the Committee dismissed the request for an extraordinary challenge for failure to meet the standards of an extraordinary challenge set forth in FTA article 1904.13, and ordered that the Binational Panel's Memorandum Opinion and Order shall remain in effect and affirmed the Order of the Panel dated January 22, 1991. The Binational Panel Memorandum Opinion and Order remanded the U.S. International Trade Commission's affirmative determination of threat of material injury respecting Fresh, Chilled or Frozen Pork from Canada.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under article 1904.13 of the Agreement, where a Party alleges that a binational panel has seriously departed from a fundamental rule of procedure, has manifestly exceeded its powers, authority or jurisdiction or that a member of the panel has materially violated the Code of Conduct established pursuant to article 1910, and further alleges that any of these actions have materially affected the panel's decision and threaten the integrity of the binational panel review process, that Party may request that an Extraordinary Challenge Committee be established under the procedure set out in annex 1904.13 of the Agreement.

Under annex 1904.13 of the Agreement, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Extraordinary Challenge Committees ("ECC Rules"). These ECC Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53222). The ECC Rules give effect to the provisions of Chapter Nineteen of the Agreement with respect to Extraordinary Challenge Committee proceedings conducted pursuant to article 1904 of the Agreement. The ECC Rules are intended to result in decisions typically within 30 days after the establishment of the Extraordinary Challenge Committee. The Extraordinary Challenge Committee proceeding in this matter was conducted in accordance with these ECC Rules. On April 22, 1991, the Extraordinary Challenge Committee ordered that the deadline for the Committee to file its decision be extended to June 14, 1991.

### Background

On September 13, 1989, the U.S. International Trade Commission (Commission) issued its final affirmative determination of threat of material injury respecting Fresh, Chilled or Frozen Pork from Canada. Requests for Panel Review were filed as required by the article 1904 Panel Rules, and a Binational Panel was convened to review the final determination.

On August 24, 1990, the Binational Panel remanded the Commission's final determination for reconsideration because the Panel found that the Commission relied heavily throughout on statistics which the Panel found questionable and which they found colored the Commission's assessment of much of the other evidence. The Panel instructed the Commission to reconsider the evidence on the record, and more particularly the figures on Canadian pork production. The Commission was given 60 days (until October 23, 1990) to take action consistent with the Panel's decision.

On October 23, 1990, the Commission issued its Determination on Remand, again finding that the United States pork industry was threatened with material injury by reason of imports of pork from Canada.

On October 26, 1990, a Motion for Panel Review of the Commission's Determination on Remand was filed by the Complainants pursuant to rule 75, which motion was granted by the Panel on November 5, 1990. The Commission and the National Pork Producers Council filed briefs in support of the Commission's Determination on Remand while the Complainants presented briefs contesting the Commission's findings on remand.

On January 22, 1991, the Panel issued its Decision on Remand pursuant to rule 75(5). The Panel found that the Commission committed an error of law because it exceeded the scope of its own Notice when reopening the administrative record on remand. The Panel further found that the Commission's findings of a threat of imminent material injury were not supported by substantial evidence. For these reasons, the Panel again remanded the Commission's Determination on Remand for action not inconsistent with the Panel's Decision of August 24, 1990, and not inconsistent with the Panel's decision in this panel review of the Commission's Determination on Remand. The results of this further remand were ordered to be provided by the Commission to the Panel within 21 days of the date of this decision (by not later than February 12, 1991).

On February 12, 1991, the Commission filed its Redetermination on Remand pursuant to the Panel decision. The Commission found no material injury nor threat of material injury, but outlined several errors which it alleged the Panel made in its January 22, 1991, decision.

On March 29, 1991, the United States Trade Representative filed a Request for an Extraordinary Challenge Committee on behalf of the United States Government in its capacity as a Party to the United States-Canada Free-Trade Agreement with the United States Secretary of the FTA Binational Secretariat. The Request alleged that in five instances the Binational Panel seriously departed from a fundamental rule of procedure or manifestly exceeded its powers, authority or jurisdiction set forth in article 1904 and further alleged that these actions

materially affected the panel's decision and threatened the integrity of the binational panel review process. An Extraordinary Challenge Committee was convened to review these allegations.

**Decision of the Committee**

On June 14, 1991, the Committee dismissed the request for an extraordinary challenge for failure to meet the standards of an extraordinary challenge set forth in FTA article 1904.13. The Committee ordered that the Binational Panel's Memorandum Opinion and Order shall remain in effect and affirmed the Order of the Panel dated January 22, 1991.

Dated: June 19, 1991.

**Caratina L. Alston,**

*Deputy United States Secretary, FTA Binational Secretariat.*

[FR Doc. 91–14937 Filed 6–21–91; 8:45 am]

BILLING CODE 3510–GT–M

## United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Completion of Extraordinary Challenge Committee Review

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Completion of the Extaordinary Challenge Committee Review of the binational panel review of the affirmative determination of threat of material injury made by the U.S. International Trade Commission respecting Fresh, Chilled or Frozen Pork from Canada, Secretariat File No: ECC–91–1904–01USA.

**SUMMARY:** Pursuant to rule 60 of the Rules of Procedure for article 1904 extraordinary Challenge Committees, and the Extraordinary Challenge Committee Memorandum Opinion and Order dated June 14, 1991, the Extraordinary Challenge Committee Review of the binational panel review described above was completed on June 17, 1991.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

**SUPPLEMENTARY INFORMATION:** By a decision dated June 14, 1991, the Extradordinary Challenge Committee in Secretariat File No: ECC–91–1904–01USA, dismissed the request for an extraordinary challenge of the Binational Panel's January 22, 1991 Memorandum Opinion and Order for failure to meet the standards of an extraordinary challenge set forth in FTA article 1904.13. The Committee ordered that the Binational Panel's Memorandum Opinion and Order shall remain in effect and affirmed the Order of the Panel dated January 22, 1991. Pursuant to rule 61, the Committee members are discharged from their duties effective June 17, 1991, the day after the decision affirming the panel decision.

Dated: June 19, 1991.

**Caratina L. Alston,**

*Deputy United States Secretary, FTA Binational Secretariat.*

[FR Doc. 91–14938 Filed 6–21–91; 8:45 am]

BILLING CODE 3510–GT–M

## United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Completion of Panel Review

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Completion of Panel Review of the final affirmative determination of threat of material injury made by the U.S. International Trade Commission (USITC), respecting Fresh, Chilled or Frozen Pork from Canada, Secretariat File No. USA–89–1904–11.

**SUMMARY:** Pursuant to rule 84 of the Article 1904 Panel Rules ("Rules") and the Extraordinary Challenge Committee Memorandum Opinion and Order dated June 14, 1991, the Panel Review of the final determination described above was completed on June 17, 1991.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

**SUPPLEMENTARY INFORMATION:** By a decision dated June 14, 1991, the Extraordinary Challenge Committee in Secretariat File No: ECC–91–1904–01USA, dismissed the request for an extraordinary challenge of the Binational Panel's January 22, 1991 Memorandum Opinion and Order for failure to meet the standards of an extraordinary challenge set forth in FTA article 1904.13. The Committee ordered that the Binational Panel's Memorandum Opinion and Order shall remain in effect and affirmed the Order of the Panel dated January 22, 1991. Pursuant to rule 85, the panelists are discharged from their duties effective June 17, 1991.

Dated: June 19, 1991.

**Caratina L. Alston,**

*Deputy United States Secretary, FTA Binational Secretariat.*

[FR Doc. 91–14939 Filed 6–21–91; 8:45 am]

BILLING CODE 3510–GT–M

## National Oceanic and Atmospheric Administration

### Grants; Dean A. Knauss Marine Policy Fellowship, Open for Applications

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Dean John A. Knauss Marine Policy Fellowship; open for applications.

**SUMMARY:** In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The Fellowship program accepts applications once a year during the month of September. All applicants must submit an application to one of the state Sea Grant College Programs in their area.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Shephard, Director, National Sea Grant Federal Fellows Program, National Sea Grant College Program, 1335 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 427–2431 or call your nearest Sea Grant program:

University of Alaska—(907) 474–7086.
University of California—(619) 534–4440.
University of Connecticut—(203) 445–3457.
University of Delaware—(302) 451–2841.
University of Florida—(904) 392–5870.
University of Georgia—(404) 542–7671.
University of Hawaii—(808) 956–7031.
University of Illinois—(217) 333–1824.
Lousiana State University—(504) 388–6710.
University of Maine—(207) 581–1435.
University of Maryland—(301) 405–6370.
Massachusetts Institute of Technology—(617) 253–7131.
University of Michigan—(313) 763–1437.
University of Minnesota—(612) 625–2765.
Mississippi-Alabama Sea Grant Consortium—(601) 875–9341.
University of New Hampshire—(603) 862–2175.
New Jersey Marine Sciences Consortium—(908) 872–1300.
State University of New York—(516) 632–6905.
University of North Carolina—(919) 737–2454

Ohio State University—(614) 292–8949.
Oregon State University—(503) 737–3396.
University of Puerto Rico—(809) 832–3585.
Purdue University—(317) 494–3585.
University of Rhode Island—(401) 792–6800.
South Carolina Sea Grant Consortium—(803) 727–2078.
University of Southern California—(213) 740–1961.
Texas A&M University—(409) 845–3854.
Virginia Graduate Marine Science Consortium—(804) 924–5965.
University of Washington—(206) 543–6600.
University of Wisconsin—(608) 262–0905.
Woods Hole Oceanographic Institution—(508) 548–1400 x2578.

**SUPPLEMENTARY INFORMATION:** Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Federal Fellows Program, Purpose of the Fellowship Program.

In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The U.S. Congress recognized the value of this program and in 1987, Public Law 100–220 stipulated that the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows.

Announcement

Fellows program announcements are sent annually to all participating Sea Grant institutions and campuses by the state Sea Grant Director upon receipt of notice from the National Sea Grant College Program Office (NSGCPO). A brochure describing the program is also available from the NSGCPO for distribution by both that office and the state Sea Grant programs.

Eligibility

Any student who, at the time of application, is in a master's, doctoral or professional program in a marine related field from any accredited institution of higher education may apply to the NSGCPO through any state Sea Grant program.

Deadlines

• Students must submit applications to a state Sea Grant Director, who will be the applicants sponsor, by the date set by the Directors in their individual program announcement (usually early to mid-September).

• Applications are to be submitted to the NSGCPO by the sponsoring state Sea Grant Director, no later than close of business on September 30th of any given year.

• The selection process and subsequent notification will be completed by October 31st of any given year.

Stipend and Expenses

For 1992 a Fellow will receive a stipend amount of $24,000.

Application

An application will include:

• Personal and academic resume or curriculum vitae.

• Education and career goal statement from the applicant with emphasis on what the prospective Fellow expects from the experience in the way of career development. (not to exceed 2 pages)

• No more than two letters of recommendation with at least one being from the student's major professor. Thesis papers are not desired.

• A letter of endorsement from the sponsoring state Sea Grant Director.

• Copy of undergraduate and graduate student transcripts.

It is our intent that all applicants be evaluated only on their ability, therefore letters of endorsement from members of Congress, friends, relatives or others will not be considered.

Placement preference in the Executive or Legislative Branches of the Government may be stated, and will be honored to the extent possible.

Selection Criteria

The selection criteria will include:

• Strength of Academic Performance.

• Communication Skills (both written and verbal).

• Diversity of Academic Background.

• Work Experience.

• Support of Major Professor.

• Support of Sea Grant Director.

• Ability to Work with People.

Selection

Selection of finalist will be made by a panel chaired by the Director of Federal Fellowships of the NSGCPO and include representation from (1) the Council of Sea Grant Directors, (2) the Office of the Assistant Administrator for Oceanic and Atmospheric Research, and (3) the current and possibly past group of Fellows. The individuals representative of these groups will be chosen on a year by year basis according to availability, timing, and other exigencies. Selection of finalists by the panel will be done according to the criteria outlined above. After selection, the panel will group applicants into the two categories, legislative and executive, based upon the applicant's stated preference and/or the judgement of the panel based upon material submitted. The number of fellows assigned to the Congress will be limited to 10.

Dated: June 14, 1991.

**Ned A. Ostenso,**

*Assistant Administrator, Oceanic and Atmospheric Research.*

[FR Doc. 91–14941 Filed 6–21–91; 8:45 am]

BILLING CODE 3510–12–M

## New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council and its Committees will hold a public meeting on June 25–26, 1991, at the King's Grant Inn (telephone: 508–774–6800), route 128 at Trask Lane, Danvers, MA.

The Atlantic Sea Scallop Committee report is the first item scheduled on the Council meeting agenda on June 25, 1991, at 10 a.m. The report will be followed by a public hearing on the current temporary adjustments to the sea scallop meat count shell height standards. The hearing will begin at 11 a.m. The National Marine Fisheries Service Regional Director will at that time recommend a temporary adjustment of standards from 30 to 33 meats per pound (shell height from 3½ inches to 3 7/16 inches) for the period July 1, 1991, through September 30, 1991. If necessary, the Scallop Committee will continue its report after the Scallop hearing.

On the afternoon of June 26, 1991, there will be a brief report from the Habitat Committee Chairman and a review by Mr. Charles Karnella of the National Marine Fisheries Service of the proposed regime to govern interactions between marine mammals and commercial fishing operations.

On June 26, 1991, at 9 a.m., the Council Chairman, Executive Director, non-voting Council members, the Mid-Atlantic Fishery Management Council liaison and the National Marine Fisheries Services will give reports. The meetings will close with a Groundfish Committee report and discussion of any other relevant Council business.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone (617) 231–0422.

Dated: June 19, 1991.

**David S. Crestin,**

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

[FR Doc. 91-14942 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Changes in Harmonized Tariff Schedule Classification Numbers for Certain Part-Categories for Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Various Countries

June 18, 1991.

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

**ACTION:** Issuing a directive to the Commissioner of Customs amending Harmonized Tariff Schedule numbers for certain part-categories.

**EFFECTIVE DATE:** July 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

**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).

To facilitate implementation of bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after July 1, 1991, regardless of the date of export, certain HTS classification numbers for certain part-categories are being changed on all visa and certification arrangements and all import controls for countries with these part-categories. The changes contained below are being published in the first supplement to the 1991 Harmonized Tariff Schedule.

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).

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

June 18, 1991.

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

Dear Commissioner: This directive amends, but does not cancel, all import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements which include cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following part-categories, produced or manufactured in various countries and entered in the United States for consumption or withdrawn from warehouse for consumption on and after July 1, 1991, regardless of the date of export.

Also, this directive amends, but does not cancel, all directives issued to you which establish visa arrangements for the following part-categories for all countries for which visa arrangements are in place with the United States Government.

Effective on July 1, 1991, you are directed to make the changes shown below in the aforementioned directives for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after July 1, 1991, regardless of the date of export.

| Category | Obsolete number | New number |
|---|---|---|
| 339-S | 6104.29.2046 | 6104.29.2049 |
| 341-O | 6204.29.4046 | 6204.29.4070 |
| 347-T | 6113.00.0035 | 6113.00.0038 |
| | 6210.40.2030 | 6210.40.2035 |
| 348-T | 6113.00.0040 | 6113.00.0042 |
| | 6210.50.2030 | 6210.50.2035 |
| 438-W | 6104.29.2048 | 6104.29.2051 |
| 438-O | 6117.90.0024 | 6117.90.0023 |
| 641-O | 6204.29.4050 | 6204.29.4074 |
| 647-T | 6113.00.0045 | 6113.00.0044 |
| | 6210.40.1030 | 6210.40.1035 |
| 648-T | 6113.00.0050 | 6113.00.0052 |
| | 6210.50.1030 | 6210.50.1035 |
| 659-C | 6114.30.3040 | 6114.30.3044 |
| | 6114.30.3050 | 6114.30.3054 |
| 845(1) (Hong Kong only) | 6104.29.2072 | 6104.29.2079 |
| | 6117.90.0020 | 6117.90.0021 |
| 845(2) (Hong Kong only) | 6104.29.2070 | 6104.29.2077 |
| 846(1) (Hong Kong only) | 6104.29.2068 | 6104.29.2075 |
| 846(2) (Hong Kong only) | 6104.29.2064 | 6104.29.2073 |

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,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 91-14971 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-DR-F

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRTION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### FAR/FIRMR on CD-ROM Available through the Superintendent of Documents

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

**ACTION:** Notice of availability.

**SUMMARY:** The texts of the Fedeal Acquisition Regulation (FAR) and the Federal Information Resources Management Regulation (FIRMR) are available on an electronic medium—Compact Disc-Read Only Memory (CD-ROM). These texts will be updated quarterly. The disc is available for purchase from the Superintendent of Documents on an annual subscription basis for $106.

**ADDRESSES:** To order FAR/FIRMR CD-ROM, List ID GSAFF, send prepayment to: Superintendent of Documents, Department 36-JR, Washington, DC 20402-9325. To order with VISA or Master Card, phone (202) 783-3238.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Doyle Dodge, Office of Federal Acquisition Policy, GSA, 18th & F Streets, NW., room 4037, Washington, DC 20405, telephone (202) 501-2801 or FTS 8-241-2801.

**SUPPLEMENTARY INFORMATION:**

**System Requirements**

The following minimum configuration is needed to use this CD-ROM disc:

1. An IBM PC/XT/AT or compatible with 256KB RAM.
2. MS-DOS version 3.1 or later.
3. CD-ROM drive with MS-DOS extensions capable of reading ISO 9660 format.

**Benefits of CD-ROM**

Users of the FIRMR and the FAR will find the CD-ROM issuances easier to use and to maintain in an updated status than the traditional paper issuances. The CD-ROM contains built-in indexing and retrieval programs that enable users to locate information easily and quickly. If desired, small or large sections of

information can be transferred to a computer disc; however, the indexing and retrieval program cannot be transferred.

Each new quarterly disc will incorporate the latest changes reflected in the FIRMR Transmittal Circulars and FAR Federal Acquisition Circulars. This will eliminate the need to insert page changes to the basic documents. Also, it is likely that additional acquisition and property/management regulations from GSA and other Federal agencies will be included on future discs.

**Albert A. Vicchiolla,**

*Director, Office of Federal Acquisition Policy.*

[FR Doc. 91-14872 Filed 6-21-91; 8:45 am]

BILLING CODE 6820-34-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Per Diem, Travel and Transportation Allowance Committee

**AGENCY:** Per Diem, Travel and Transportation Allowance Committee.

**ACTION:** Publication of changes in per diem rates.

**SUMMARY:** The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 155. This bulletin lists change in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Marina Islands and possessions of the United States. Bulletin Number 155 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

**EFFECTIVE DATE:** June 1, 1991.

**SUPPLEMENTARY INFORMATION:** This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

| LOCALITY | MAXIMUM LODGING AMOUNT (A) | + | M&IE RATE (B) | = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|---|---|
| ALASKA: | | | | | | |
| ADAK 5/ | $ 40 | | $ 33 | | $ 73 | 06-01-91 |
| ANAKTUVUK PASS | 83 | | 57 | | 140 | 12-01-90 |
| ANCHORAGE | | | | | | |
| 05-16--09-15 | 137 | | 59 | | 196 | 06-01-91 |
| 09-16--05-15 | 79 | | 54 | | 133 | 01-01-91 |
| ATQASUK | 129 | | 86 | | 215 | 12-01-90 |
| BARROW | 86 | | 73 | | 159 | 06-01-91 |
| BETHEL | 70 | | 73 | | 143 | 12-01-90 |
| BETTLES | 65 | | 45 | | 110 | 12-01-90 |
| CANTWELL | 62 | | 46 | | 108 | 06-01-91 |
| COLD BAY | 71 | | 54 | | 125 | 12-01-90 |
| COLDFOOT | 75 | | 47 | | 122 | 12-01-90 |
| CORDOVA | 74 | | 89 | | 163 | 01-01-91 |
| CRAIG | 65 | | 35 | | 100 | 06-01-91 |
| DILLINGHAM | 76 | | 38 | | 114 | 12-01-90 |
| DUTCH HARBOR-UNALASKA | 91 | | 54 | | 145 | 12-01-90 |
| EIELSON AFB | | | | | | |
| 05-15--09-15 | 78 | | 61 | | 139 | 05-15-91 |
| 09-16--05-14 | 60 | | 59 | | 119 | 01-01-91 |
| ELMENDORF AFB | | | | | | |
| 05-16--09-15 | 137 | | 59 | | 196 | 06-01-91 |
| 09-16--05-15 | 79 | | 54 | | 133 | 01-01-91 |
| EMMONAK | 60 | | 40 | | 100 | 06-01-91 |
| FAIRBANKS | | | | | | |
| 05-15--09-15 | 78 | | 61 | | 139 | 05-15-91 |
| 09-16--05-14 | 60 | | 59 | | 119 | 01-01-91 |
| FALSE PASS | 80 | | 37 | | 117 | 06-01-91 |
| FT. RICHARDSON | | | | | | |
| 05-16--09-15 | 137 | | 59 | | 196 | 06-01-91 |
| 09-16--05-15 | 79 | | 54 | | 133 | 01-01-91 |
| FT. WAINWRIGHT | | | | | | |
| 05-15--09-15 | 78 | | 61 | | 139 | 05-15-91 |
| 09-16--05-14 | 60 | | 59 | | 119 | 01-01-91 |
| GEORGE | 100 | | 39 | | 139 | 06-01-91 |
| HOMER | 57 | | 61 | | 118 | 01-01-91 |
| JUNEAU | 96 | | 70 | | 166 | 01-01-91 |
| KATMAI NATIONAL PARK | 89 | | 59 | | 148 | 12-01-90 |
| KENAI-SOLDOTNA | | | | | | |
| 05-01--09-30 | 86 | | 70 | | 156 | 05-01-91 |
| 10-01--04-30 | 64 | | 70 | | 134 | 01-01-91 |

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) | MAXIMUM PER DIEM RATE = (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| ALASKA: (CONT'D) | | | | |
| KETCHIKAN | $ 81 | $ 75 | $156 | 01-01-91 |
| KING SALMON 3/ | 75 | 59 | 134 | 12-01-90 |
| KODIAK | 68 | 61 | 129 | 01-01-91 |
| KOTZEBUE | 133 | 58 | 191 | 06-01-91 |
| KUPARUK OILFIELD | 75 | 52 | 127 | 12-01-90 |
| METLAKATLA | 72 | 44 | 116 | 06-01-91 |
| MURPHY DOME | | | | |
| 05-15--09-15 | 78 | 61 | 139 | 05-15-91 |
| 09-16--05-14 | 60 | 59 | 119 | 01-01-91 |
| NELSON LAGOON | 102 | 39 | 141 | 06-01-91 |
| NOATAK | 77 | 66 | 143 | 12-01-90 |
| NOME | 61 | 75 | 136 | 01-01-91 |
| NOORVIK | 77 | 66 | 143 | 12-01-90 |
| PETERSBURG | 61 | 54 | 115 | 01-01-91 |
| POINT HOPE | 99 | 61 | 160 | 12-01-90 |
| POINT LAY | 106 | 73 | 179 | 12-01-90 |
| PRUDHOE BAY-DEADHORSE | 64 | 57 | 121 | 12-01-90 |
| SAND POINT | 63 | 40 | 103 | 12-01-90 |
| SELDOVIA | 59 | 35 | 94 | 06-01-91 |
| SEWARD | 52 | 50 | 102 | 12-01-90 |
| SHUNGNAK | 77 | 66 | 143 | 12-01-90 |
| SITKA-MT. EDGECOMBE | 65 | 63 | 128 | 01-01-91 |
| SKAGWAY | 81 | 75 | 156 | 01-01-91 |
| SPRUCE CAPE | 68 | 61 | 129 | 01-01-91 |
| ST. MARY'S | 60 | 40 | 100 | 12-01-90 |
| ST. PAUL ISLAND | 81 | 34 | 115 | 12-01-90 |
| TANANA | 61 | 75 | 136 | 01-01-91 |
| TOK | 59 | 59 | 118 | 01-01-91 |
| UMIAT | 97 | 63 | 160 | 12-01-90 |
| UNALAKLEET | 58 | 47 | 105 | 12-01-90 |
| VALDEZ | | | | |
| 05-01--10-31 | 116 | 66 | 182 | 05-01-91 |
| 11-01--04-30 | 85 | 63 | 148 | 01-01-91 |
| WAINWRIGHT | 90 | 75 | 165 | 12-01-90 |
| WALKER LAKE | 82 | 54 | 136 | 12-01-90 |
| WRANGELL | 81 | 75 | 156 | 01-01-91 |
| YAKUTAT | 70 | 40 | 110 | 12-01-90 |
| OTHER 3, 4/ | 42 | 47 | 89 | 01-01-91 |
| AMERICAN SAMOA | 55 | 47 | 102 | 12-01-90 |
| GUAM | 99 | 59 | 158 | 12-01-90 |

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) | MAXIMUM PER DIEM RATE = (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| HAWAII: | | | | |
| ISLAND OF HAWAII: HILO | $ 60 | $ 38 | $ 98 | 06-01-91 |
| ISLAND OF HAWAII: OTHER | 106 | 43 | 149 | 06-01-91 |
| ISLAND OF KAUAI | 112 | 48 | 160 | 06-01-91 |
| ISLAND OF KURE 1/ | | 13 | 13 | 12-01-90 |
| ISLAND OF MAUI: KIHEI | | | | |
| 04-01--12-19 | 85 | 50 | 135 | 12-01-90 |
| 12-20--03-31 | 97 | 50 | 147 | 12-20-90 |
| ISLAND OF MAUI: OTHER | 62 | 50 | 112 | 06-01-91 |
| ISLAND OF OAHU | 95 | 42 | 137 | 06-01-91 |
| OTHER | 59 | 47 | 106 | 12-01-90 |
| JOHNSTON ATOLL 2/ | 18 | 17 | 35 | 12-01-90 |
| MIDWAY ISLANDS 1/ | | 13 | 13 | 12-01-90 |
| NORTHERN MARIANA ISLANDS: | | | | |
| ROTA | 45 | 31 | 76 | 12-01-90 |
| SAIPAN | 68 | 47 | 115 | 12-01-90 |
| TINIAN | 44 | 24 | 68 | 12-01-90 |
| OTHER | 20 | 13 | 33 | 12-01-90 |
| PUERTO RICO: | | | | |
| BAYAMON | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| CAROLINA | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| FAJARDO (INCLUDING LUQUILLO) | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO) | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| MAYAGUEZ | 117 | 50 | 167 | 12-01-90 |
| PONCE | 117 | 50 | 167 | 12-01-90 |
| ROOSEVELT ROADS | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| SABANA SECA | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| SAN JUAN (INCL SAN JUAN COAST GUARD UNITS) | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) | = MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| PUERTO RICO: (CONT'D) | | | | |
| OTHER | $ 53 | $ 43 | $ 96 | 12-01-90 |
| VIRGIN ISLANDS OF THE U.S. | | | | |
| 05-01--11-30 | 95 | 63 | 158 | 05-01-91 |
| 12-01--04-30 | 128 | 66 | 194 | 12-01-90 |
| WAKE ISLAND 2/ | 4 | 17 | 21 | 12-01-90 |
| ALL OTHER LOCALITIES | 20 | 13 | 33 | 12-01-90 |

FOOTNOTES

1/ Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $25 is prescribed instead of the rate prescribed in the table.



BILLING CODE 3810-01-C

Dated: June 14, 1991.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 91–14576 Filed 6–21–91; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Navy

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Anti-Tactical Ballistic Missile Requirements in the 2010 Timeframe will meet on June 25–27, 1991. The meeting will be held at the Applied Physics Laboratory, Johns Hopkins University, Johns Hopkins Road, Laurel, Maryland. The meeting will commence at 8 a.m. and terminate at 5 p.m. on June 25, 26, and 27, 1991. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide technical briefings for the panel members pertaining to their assessment of the vulnerability of U.S. naval forces to ballistic missile attack employing conventional, chemical, and nuclear munitions; and identifying the key issues related to the Navy ATBM program and the corresponding critical technology requirements. The agenda will include briefings and discussions related to sensors and processors, surveillance and tracking, seeker and technology discrimination, guidance and control, kill mechanism, boosters and propulsion, high temperature structures; and battle management and command, control and communications options in connection with the tactical ballistic missile threat. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matter to be discussed are inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters, listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

For further information concerning this meeting contact: Commander John Hrenko, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (703) 696–4870.

Dated: June 14, 1991.

**W.T. Baucino,**

*Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.*

[FR Doc. 91–15005 Filed 6–21–91; 8:45 am]

BILLING CODE 3810–AE–M

## DEPARTMENT OF ENERGY

### Floodplain Notification for Proposed Removal Action at Properties Located in Hazelwood and Berkeley, MO

**AGENCY:** Department of Energy.

**ACTION:** Notice of floodplain involvement and opportunity for comment.

**SUMMARY:** The Department of Energy (DOE) proposes to remove radioactively contaminated material from properties in the vicinity of the Hazelwood Interim Storage Site (HISS) and to stabilize and control these materials at the HISS. The HISS is located in northern St. Louis County, approximately 3 km (2 mi) north of Lambert-St. Louis International Airport.

DOE proposes to conduct this removal action under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act and pursuant to 40 CFR 300.415(b)(2). The removal of radioactively contaminated material from residential, commercial and municipal properties would result in storage of the contaminated material at HISS. The action is necessary to remove contaminated soil that exceeds current DOE criteria for residual radioactivity established for the Formerly Utilized Sites Remedial Action Program.

DOE has determined, on the basis of a review of the National Flood Insurance Program's (Federal Emergency Management Agency) Flood Insurance Rate Maps for the area, that the proposed storage action would involve activities within the floodplain of Coldwater Creek. The proposed action, if implemented, will be carried out with the concurrence of the U.S. Environmental Protection Agency, the Army Corps of Engineers, and the Missouri Department of Health and Environment.

In accordance with DOE regulations, "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR part 1022), DOE will prepare a floodplain assessment to be incorporated in the Engineering Evaluation/Cost Analysis-Environmental Assessment and publish a statement of findings in accordance with these regulations. Further information is available from DOE at the address shown below. Public comments or suggestions regarding the proposed activities in this floodplain area are invited.

**DATES:** Any comments are due on or before July 9, 1991.

**ADDRESSES:** Send comments to: Lester K. Price, Director, Former Sites Restoration Division, U.S. Department of Energy, Oak Ridge Operations Office, Post Office Box E, Oak Ridge, Tennessee 37831, (615–576–0948), Fax comments to: (615)–576–0956.

**Leo P. Duffy,**

*Director, Office of Environmental Restoration and Waste Management.*

[FR Doc. 91–14976 Filed 6–21–91; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. CP91–2243–000, et al.]**

### Distrigas of Massachusetts Corp., et al.; Natural Gas Certificate Filings

June 14, 1991.

Take notice that the following filings have been made with the Commission:

**1. Distrigas of Massachusetts Corporation**

[Docket No. CP91–2243–000]

Take notice that on June 10, 1991, Distrigas of Massachusetts Corporation [DOMAC], a Delaware Corporation with its principal place of business at 200 State Street, Boston, Massachusetts 02109, filed in Docket No. CP91–2243–000 an abbreviated application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing DOMAC to install additional vaporization capacity and install and construct additional facilities appurtenant thereto at DOMAC's liquified natural gas (LNG) terminal in Everett, Massachusetts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

DOMAC states that the additional LNG vaporization facilities will be built wholly within the boundary of its existing Everett Marine Terminal. DOMAC proposes the installation of a single vaporization train with a nominal capacity of 75,000 Mcf/d, which is to be

delivered through the terminal's existing medium pressure send-out system. DOMAC indicates that the LNG supply line for the expansion project will tie into the existing 12-inch diameter storage tank manifold. DOMAC proposes the installation of a crossover line with a pressure reduction station from the new high pressure system to the existing medium pressure system which will allow the proposed facility to serve both as a back-up to the existing vaporizer facilities and as a source of additional gas supply. DOMAC states the metering, odorization and higher heating valve stabilization system of the existing medium pressure send-out system will be used for the proposed new facility.

DOMAC estimates that the cost of the proposed project will be approximately $8 million. DOMAC states that the project will be financed through cash on hand.

DOMAC submits that the requested facilities will be installed to meet an anticipated need for increased vaporization capacity in the fall of 1993. DOMAC states that the proposed project will have no impact on the rates charged for its sales service. DOMAC will assume 100% of the cost recovery risk related to the proposed plant improvements. DOMAC has requested waiver of the initial decision and expedited consideration of its application in order to permit engineering and construction to be completed in time to satisfy the expected need for greater send-out capacity in early 1993.

*Comment date:* July 5, 1991, in accordance with Standard Paragraph F at the end of this notice.

**2. Chevron U.S.A. Inc., et al.**

[Docket No. G-7143-001,[1] *et al.*]

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

*Comment date:* July 3, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| G-7143-001, D, 4-29-91 | Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 75253-3725. | Tennessee Gas Pipeline Company, Heyser Field, Calhoun and Victoria Counties, Texas. | Assigned 12-1-90 to McGowan Working Partners. |
| G-13299-013, D, 4-8-91 | ARCO Oil and Gas Co., Division of Atalantic Richfield Company, P.O. Box 2819, Dallas, TX 75221. | ANR Pipeline Company, Laverne Field, Beaver and Harper Counties, Oklahoma. | Assigned 1-1-90 to Cabot Petroleum Corporation. |
| CI64-106-003, D, 5-17-91 | Oryx Energy Co., P.O. Box 2880, Houston, TX 75221-2880. | Northern Natural Gas Company, Division of Enron Corp. Ozona Field, Crockett County, Texas. | Assigned 11-1-90 to Enron Oil & Gas Company. |
| CI65-1264-002, D, 5-10-91 | Union Oil Co. of california, P.O. Box 7600, Los Angeles, CA 90051. | Arkla Energy Resources, a division of Arkla, Inc. Northeast Ames Field, Major County, Oklahoma. | Assigned 10-1-90 to Universal Resources Corporation. |
| CI69-6-001, D, 5-17-91 | Oryx Energy Co. | Colorado Interstate Gas Company, Mocane-lav Gas Area Field, Beaver County, Oklahoma. | Assigned 1-1-91 to OXY USA Inc. |
| CI72-26-000, D, 4-8-91 | ARCO Oil and Gas Co., Division of Atlantic Richfield. | Arkla Energy Resources, a division of Arkla, Inc. North Drummond Field, Garfield County, Oklahoma. | Assigned 9-1-90 to General Holding Corporation. |
| CI91-68-000, (G-17493), D, 3-28-91. | Union Oil Co. of California | Natural gas Pipeline Company of America, West Cement Field, Caddo County, Oklahoma. | Assigned 10-1-90 to Amerda Hess Corporation. |
| CI91-69-000, (CI62-1412), D, 3-29-91. | Oryx Energy Co. | Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma. | Assigned 9-1-90 to Cross Timbers Oil Company, L.P. |
| CI91-72-000, (CI85-324), D, 4-12-91. | Sonat Exploration Co., P.O. Box 1513, Houston, TX 77251-1513. | Texas Gas Transmission Corporation, Bull Creek and E. Lisbon Fields, Union and Claiborne Parishes, Louisiana. | Assigned 8-1-90 to Hawkins Oil & Gas, Inc. |
| CI91-82-000, (CI73-325), D, 5-10-91. | Union Oil Co. of California | Florida Gas Transmission Corporation, Bayou Mallet Field, Arcadia Parish, Louisiana. | Assigned 9-1-89 to John W. McGowan. |
| CI91-89-000, (G-15434), D, 5-17-91. | Orys Energy Co. | K N Energy, Inc., Hugoton Field, Hamilton County, Kansas. | Assigned 9-1-90 to Draco Gas Partners, L.P. |
| CI91-90-000, (G-14288), D, 5-17-91. | Oryx Energy Co. | Northern Natural Gas Company, Division of Enron Corp., Hugoton Field, Finney County, Kansas. | Assigned 9-1-90 to Draco Gas Partners, L.P. |
| CI91-91-000, (G-18173), D, 5-17-91. | Oryx Energy Co. | Colorado Interstate Gas Company, Hugoton Field, Kearny County, Kansas. | Assigned 9-1-90 to Plains Petroleum Operating Company. |
| CI91-92-000, (G-4268), D, 5-20-91. | Oryx Energy Co. | Colorado Interstate Gas Company, Hugoton Field, Kerny County, Kansas. | Assigned 9-1-90 to Draco Gas Partners, L.P. |

*Filing Code.* A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Assignment of acreage. E—Succession. F—Partial Succession.

**3. Natural Gas Pipeline Company of America**

[Docket Nos. CP91-2201-000, CP91-2202-000, CP91-2203-000, CP91-2204-000, CP91-2205-000]

Take notice that on June 7, 1991, Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and

[2] These prior notice requests are not consolidated.

service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

*Comment date:* July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX—PAGE 1 OF 2

| Docket No. (date filed) | Applicant | Shipper name | Peak day,[1] average annual | Points of | | Start up date, rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|---|
| | | | | Receipt | Delivery | | |
| CP91-2201-000 (6-7-91) | Natural Gas Pipeline Company of America. | Vesta Energy Company. | 100,000<br>40,000<br>14,600,000 | Offshore LA&TX, AR, CO, IA, IL, KS, LA, MO, NE, MN, OK, TX. | Offshore LA&TX, OK, LA, KS, AR, TX, IL, NM, CO. | 4-1-91, ITS | CP86-582-000<br>ST91-8744-000 |
| CP91-2202-000 (6-7-91) | Natural Gas Pipeline Company of America. | Bishop Pipeline Corporation. | 50,000<br>25,000<br>9,125,000 | Offshore LA&TX, AR, CO, IA, IL, KS, LA, MO, NE, MN, OK, TX. | Offshore LA&TX, OK, LA, KS, AR, TX, IL, NM, CO. | 4-3-91, ITS | CP86-582-000<br>ST91-8564-000 |
| CP91-2203-000 (6-7-91) | Natural Gas Pipeline Company of America. | Corn Products | 5,000<br>5,000<br>1,825,000 | OK, NE, IA, KS | IL | 4-1-91, ITS | CP86-582-000<br>ST91-8746-000 |
| CP91-2204-000 (6-7-91) | Natural Gas Pipeline Company of America. | Eastex Hydrocarbons, Inc. | 50,000<br>25,000<br>9,125,000 | Offshore LA&TX, AR, CO, IA, IL, KS, LA, MO, NE, MN, OK, TX. | Offshore LA&TX, OK, LA, KS, AR, TX, IL, NM, CO. | 4-4-91, FTS | CP86-582-000<br>ST91-8565-000 |
| CP91-2205-000 (6-7-91) | Natural Gas Pipeline Company of America. | American Central Gas Companies, Inc. | 5,000<br>5,000<br>1,825,000 | AR, TX | IL | 4-1-91, FTS | CP86-582-000<br>ST91-8742-000 |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**4. Mississippi River Transmission Corporation**

[Docket Nos. CP91-2244-000, CP91-2245-000]

Take notice that Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124, (MRT) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under §§ 284.223 of the Commission's Regulations, has been provided by MRT and is summarized in the attached appendix.

*Comment date:* July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

APPENDIX—PAGE 1 OF 1

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual MMBtu | Receipt points | Delivery points | Contract date rate schedule service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2244-000 (6-10-91). | Entrade Corp. (marketer). | 50,000<br>50,000<br>18,250,000 | OK, LA, TX, IL, AR | IL, AR, MO, LA | 3-22-91, ITS, Interruptible. | ST91-8611, 4-11-91. |
| CP91-2245-000 (6-10-91). | Robert L. Templeton, et al. (producer) [1]. | 2,000<br>2,000<br>730,000 | TX | TX | 4-10-91, ITS, Interruptible. | ST91-8660, 4-15-91. |

[1] MRT indicates that the shipper is the estate of W.F. and Della James (deceased), the estate of W.H.J. Sorenson (deceased), W.H.J. Sorenson Trust, and Marchelle Daigle, William H. Johnson, Michelle Johnson and Robert L. Templeton, as individuals.

**5. Equitrans, Inc., Columbia Gulf Transmission Company**

[Docket Nos. CP91-2266-000, CP91-2267-000, CP91-2268-000, CP91-2269-000, CP91-2270-000, CP91-2271-000]

Take notice that on June 12, 1991, Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania 15275, and Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86-553-000 and Docket No. CP86-239-000, respectfully, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

APPENDIX—PAGE 1 OF 1

| Docket No. (date filed) | Shipper name (typ.) | Peak day, average day, annual MMBtu | Receipt points [1] | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-2266-000 (6-12-91). | Philadelphia Gas Company. | 9,685<br>392<br>70,560 | PA, WV | PA, WV | 5-31-91, ITS, Interruptible. | ST91-8965-000, 4-1-91. |
| CP91-2267-000 (6-12-91). | Columbia Gas Development Corp. (producer). | 250,000<br>100,000<br>36,500,000 | OLA, OTX, LA | OLA, OTX, LA, TX, TN, MS. | 1-9-89,[2] ITS-1&2, Interruptible. | ST91-8711-000, 4-29-91 |
| CP91-2268-000 (6-12-91). | LaSER Marketing Company (marketer). | 150,000<br>60,000<br>21,900,000 | LA | LA | 4-1-87,[2] ITS-2, Interruptible. | ST91-8712-000, 4-29-91. |
| CP91-2269-000 (6-12-91). | Diamond Shamrock Offshore Partners Limited Partnership (producer). | 7,000<br>2,000<br>730,000 | OLA, LA | LA | 4-1-87,[2] ITS-2, Interruptible. | ST91-8710-000, 4-29-91. |
| CP91-2270-000 (6-12-91). | Shell Gas Trading Company (producer). | 57,000<br>30,000<br>10,950,000 | OTX | TX | 12-1-90,[2] ITS-2, Interruptible. | ST91-8612-000, 4-29-91. |
| CP91-2271-000 (6-12-91). | Tejas Power Corporation (marketer). | 150,000<br>100,000<br>36,500,000 | OLA, LA | OLA, LA | 12-17-87,[2] ITS-2, Interruptible. | ST91-8709-000, 4-29-91. |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] As amended.

**6. PAR Minerals Corporation, et al.**

[Docket Nos. CS71-603,[5] *et al.*]

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the National 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 interestate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

*Comment date:* July 3, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[5] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. | Date filed | Applicant |
|---|---|---|
| CS71-603 | [1]6-3-91 | PAR Minerals Corporation American Tower, suite 200, 401 Market Street, Shreveport, LA 71101. |
| CS91-3-000 | [2]6-5-91 | David G. Di Tirro, *et al.* San Juan Resources, Inc. 1801 Broadway, suite 400, Denver, CO 80202. |

[1] By letter dated May 29, 1991, Applicant requests that the small producer certificate issued to PAR Oil Corporation, in Docket No. CS71-603 be redesignated under the name PAR Minerals Corporation. Applicant states the company underwent an organizational change.
[2] The *et al.* parties are: James M. Martin and George Taoka.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing

if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-14895 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP91-65-003]**

## Arkla Energy Resources, a Division of Arkla, Inc.; Corrections to Tariff Filing

June 18, 1991.

Take notice that on June 14, 1991, Arkla Energy Resources ("AER"), a division of Arkla, Inc., filed Substitute Second Revised Sheet No. 5 and Substitute Alternate Second Revised Sheet No. 5 to First Revised Volume No. 1-A of its FERC Gas Tariff in order to correct two clerical errors in AER's May 31, 1991 filing in Docket No. RP91-65-002. AER requests that the Commission accept Substitute Second Revised Sheet No. 5 (or alternatively, for the reasons discussed in the May 31 filing, Substitute Alternate Second Revised Sheet No. 5) for filing and grant waiver of the thirty-day notice requirement, pursuant to 18 CFR 154.22, so that it may become effective July 1, 1991.

AER states that it has (1) corrected the compressor fuel percentages included on these tariff sheets to reflect the lower percentages in its December 31, 1990 filing in Docket No. RP91-65-000, and (2) corrected the gathering only commodity rate to include the amount to be collected by AER pursuant to section 19 of AER's Transportation General Terms and Conditions and the Commission's order dated January 10, 1991 in Docket No. RP91-49-000. AER further states that these corrections are reflected in its corrected filing in Docket No. TM91-1-31-000.

AER states that a copy of its filing has been served on all jurisdictional customers and interested state commissions, and on all parties on the Commission's official service list in Docket No. RP91-65-000.

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 June 25, 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. 91-14898 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TM91-1-31-001]**

## Arkla Energy Resources, a division of Arkla, Inc.; Corrections to Tariff Filing

June 18, 1991.

Take notice that on June 14, 1991, Arkla Energy Resources ("AER"), a division of Arkla, Inc., filed Substitute Third Revised Sheet No. 5 and Substitute Alternate Third Revised Sheet No. 5 to First Revised Volume No. 1-A of its FERC Gas Tariff in order to correct two clerical errors in AER's May 31, 1991 filing in Docket No. TM91-1-31-000. AER requests that the Commission accept Substitute Third Revised Sheet No. 5 (or alternatively, for the reasons discussed in the May 31 filing, Substitute Alternate Third Revised Sheet No. 5) for filing and grant waiver of the thirty-day notice requirement, pursuant to 18 CFR § 154.22, so that it may become effective July 1, 1991.

AER states that it has (1) corrected the compressor fuel percentages included on these tariff sheets to reflect the percentages in its December 31, 1990 filing in Docket No. RP91-65-000, and (2) corrected the gathering only commodity rate to include the amount to be collected by AER pursuant to section 19 of AER's Transportation General Terms and Conditions and the Commission's order dated January 10, 1991 in Docket No. RP91-49-000. AER further states that it is correcting its motion rates filing in Docket No. RP91-65-002 accordingly.

AER states that a copy of its filing has been served on all jurisdictional customers and interested State commissions, and on all parties on the Commission's official service list in Docket No.RP91-49-000.

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 June 25, 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. 91-14889 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TM91-4-51-000]**

## Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

June 18, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on June 13, 1991 tendered for filing the following tariff sheets to its FERC Gas Tariff:

*Original Volume No. 2*

Fourth Revised Sheet No. 3-A
Fourth Revised Sheet No. 53-G

*Original Volume No. 3*

First Revised Third Revised Sheet No. 2
First Revised Third Revised Sheet No. 3

The tariff sheets were filed to reflect the updated Transporter's Use percentages effective July 1, 1991 pursuant to the provisions of its FERC Gas Tariff.

Great Lakes requested waiver of the notice requirements so as to permit the

tariff sheets to become effective July 1, 1991, as described, in order to implement the Transporter's Use percentages as prescribed by its FERC Gas Tariff.

Any person desiring to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 25, 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 in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-14900 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP91-174-000]**

## Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

June 18, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on June 13, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff proposed to be effective August 1, 1991:

*First Revised Volume No. 1*

Sixth Revised Sheet No. 3

*Original Volume No. 2*

Tenth Revised Sheet No. 3
Fifth Revised Sheet No. 3-A
Fifth Revised Sheet No. 53-G

*Original Volume No. 3*

Second Revised Sheet No. 1B
Second Revised Third Revised Sheet No. 2
Second Revised Third Revised Sheet No. 3
Second Revised Sheet No. 6
Second Revised Sheet No. 25
Second Revised Sheet No. 26
Second Revised Sheet No. 27
Second Revised Sheet No. 30
Second Revised Sheet No. 31
Second Revised Sheet No. 32
Second Revised Sheet No. 35
Second Revised Sheet No. 36
Second Revised Sheet No. 38
Second Revised Sheet No. 46
Second Revised Sheet No. 53

Great Lakes states that the above tariff sheets reflect changes, other than in rate level, related to rate schedules FT and IT for transportation service provided under part 284 of the Commission's Regulations to implement certain changes required for the efficient administration of Great Lakes' open access tariff. The need for these changes has become evident during the first seven months of open access operation.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 25, 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 in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-14901 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ91-6-59-001]**

## Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 17, 1991.

Take notice that Northern Natural Gas Company, (Northern), on June 12, 1991, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to correct its tariff sheets to reflect a new Demand rate component of $4.778 per MMBtu. This rate will be effective July 1, 1991 through September 30, 1991. Northern also advises that the original filing of Docket No. TQ91-6-59-000 contained a provision to waive the PGA surcharge for the period July 1 through September 30, 1991. The original notice did not address such provision.

Copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Northern states that copies of the filing are being served on Northern's jurisdictional sales 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 rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 24, 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. 91-14896 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP91-126-000]**

## United Gas Pipe Line Co.; Notice

June 18, 1991.

In accordance with the order of the Commission issued April 30, 1991 in this proceeding,[1] a technical conference was held on June 11 and 12, 1991 to discuss the proposed revisions to United's tariff. At the conclusion of the technical conference, the parties agreed that written comments on the matters discussed may be submitted as follows:

July 1, 1991—United will submit initial comments and proposed tariff revisions.

July 12, 1991—Parties may submit comments in light of United's submission.

July 25, 1991—All parties may submit reply comments.

It was further agreed that the parties will deliver their comments, on the dates listed above, to the representative designated on the service list of each party represented at the technical conference. Other parties on the service list in this proceeding will be served by mail.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-14902 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

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[1] 55 FERC 61,152 (1991).

## Office of Fossil Energy

[FE Docket No. 91-10-LNG]

## Phillips 66 Natural Gas Company and Marathon Oil Company; Order Amending Authorization To Export Liquefied Natural Gas to Japan

**AGENCY:** Office of Fossil Energy; Department of Energy.

**ACTION:** Notice of an order amending authorization to export liquefied natural gas to Japan.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order to Phillips 66 Natural Gas Company (Phillips 66) and Marathan Oil Company (Marathan) amending the pricing provisions of their existing long-term authorization under DOE/ERA Opinion and Order No. 261 to export liquefied natural gas to Japan.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 18, 1991.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 91-14977 Filed 6-21-91; 8:45 am]

BILLING CODE 6450-01-M

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[FE Docket No. 91-31-NG]

## Utrade Gas Co. Application to Export Natural Gas to Mexico

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of application for blanket authorization to export natural gas to Mexico.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 6, 1991, of an application filed by Utrade Gas Company (UTRADE) requesting blanket authorization to export from the United States to Mexico up to 146 Bcf of natural gas on a short-term or spot market basis over a two-year period beginning with the date of first delivery. UTRADE states that it will advise the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 24, 1991.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S.Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

Diane Stubbs, Office of Assistant General Counsel, for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** UTRADE is a Delaware corporation with its principal place of business in Houston, Texas. According to UTRADE, the gas to be exported would be purchased from U.S. producers on the spot market and would be surplus to domestic need. The requested authority would be used primarily for sales to Petroleos Mexicanos (Pemex), Mexico's national oil company, for local distribution to industrial, commercial and residential users. All sales would result from arms-length negotiations and prices would be determined by market conditions. UTRADE intends to use existing pipelines facilities to export this gas.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notices of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures by provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is

necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of UTRADE's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 7, 1991.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 91–14978 Filed 6–21–91; 8:45 am]

BILLING CODE 6450–01–M

## FEDERAL MARITIME COMMISSION

### L.A. Cruise Ship Terminals, Inc./ Metropolitan Stevedore Co. 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.:* 224–200129–002.

*Title:* L.A. Cruise Ship Terminals, Inc./Metropolitan Stevedore Company Terminal Agreement.

*Parties:*

L.A. Cruise Ship Terminals, Inc.

Metropolitan Stevedore Company.

*Synopsis:* The Agreement extends the term of the basic agreement to April 30, 1992.

*Agreement No.:* 224–200532.

*Title:* Manchester Terminal Corporation/Gulf Stream Marine, Inc. Marine Terminal Agreement.

*Parties:*

Manchester Terminal Corporation (MTC)

Gulf Stream Marine, Inc. (GSM).

*Synopsis:* The Agreement, filed June 14, 1991, allows GSM to provide cargo and container loading/unloading and handling at MTC's facilities. The initial term of the Agreement is for one year with a year to year renewal option.

*Agreement No.:* 224–200520–001.

*Title:* Georgia Ports Authority/Pan American Independent Line Terminal Agreement.

*Parties:*

Georgia Ports Authority

Pan American Independent Line (PAIL).

*Synopsis:* The Agreement, filed June 14, 1991 amends page 2, Article 1, Item 3 of the parties' basic agreement to read "Moving and Grounding" rather than "Mounting and Grounding".

*Agreement No.:* 224–200482–001.

*Title:* Georgia Ports Authority/ Companhia Maritima Nacional Terminal Agreement.

*Parties:*

Georgia Ports Authority

Companhia Maritima Nacional.

*Synopsis:* The Agreement, filed June 14, 1991, amends page 2, Article 1, Item 3 of the parties' basic agreement to read "Moving and Grounding" rather than "Mounting and Grounding".

Dated: June 18, 1991.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91–14864 Filed 6–21–91; 8:45 am]

BILLING CODE 6730–01–M

### Port of Seattle/Samson Tug and Barge Co., Inc; Notice of 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 Commission, 1100 L Street, NW., room 10220. Interested 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.:* 224–200531.

*Title:* Port of Seattle/Samson Tug and Barge Company, Inc. Terminal Agreement.

*Parties:*

Port of Seattle

Samson Tug and Barge Company, Inc.

*Filing Party:* Mr. Michael LaTorre, Director, Marine Services, Port of Seattle, P.O. Box 1209, Seattle, WA 98111.

*Synopsis:* The Agreement, filed June 14, 1991, provides a month to month agreement for the use of approximately 43,560 square feet of open storage yard area at the southwest corner of Terminal 115.

Dated: June 18, 1991.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91–14866 Filed 6–21–91; 8:45 am]

BILLING CODE 6730–01–M

**[Petition No. P3–91]**

### Trailer Marine Transport Corp. Application for Section 35 Exemption Puerto Rico and Virgin Island Trades

Notice is hereby given that Trailer Marine Transport Corporation ("TMT") has applied for an exemption pursuant to section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a. Specifically, TMT seeks an order from the Federal Maritime Commission to enlarge existing rate reduction exemptions from section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, in the Puerto Rico and Virgin Islands trade, to allow publication on one day's notice of all individual carrier actions resulting in cost reductions to shippers.

In order for the Commission to make a thorough evaluation of the application for exemption, interested persons are requested to submit views or arguments on the application no later than July 22, 1991. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001 in an original and 15 copies. Responses shall also be served on William H. Fort, Esq., Fort & Schlefer, 1401 New York Avenue, NW., Suite 1200, Washington, DC 20005.

Copies of the application are available for examination at the Washington, DC office of the Commission, 1100 L Street, NW., room 11101.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91–14865 Filed 6–2–91; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Alpha Financial Group, 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 July 15, 1991.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Alpha Financial Group, Inc.*, Minonk, Illinois; to acquire 67.9 percent of the voting shares of Washburn Bancshares, Inc., Washburn, Illinois, and thereby indirectly acquire The Washburn Bank, Washburn, Illinois.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. The Merchants Holding Company*, Winona, Minnesota; to acquire 28.72 percent of the voting shares of Bank of Melrose, Melrose, Wisconsin.

**C. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Lawrence Financial Corporation*, Lawrence, Kansas; to become a bank holding company by acquiring University National Bank, Lawrence, Kansas, successor to The Savings Bank of Lawrence F.S.B., Lawrence, Kansas.

Board of Governors of the Federal Reserve System, June 18, 1991.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 91-14915 Filed 6-21-91; 8:45 am]

BILLING CODE 6210-01-F

### Jan Schultz, 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 July 15, 1991.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Jan Schultz*, Margaret Schultz and John DiGiovanni of La Grange Park, Illinois; Frederick Brooks of St. Charles, Illinois; Michael Colbert of Schaumburg, Illinois; Anthony Kesman, Jr. of Lake Forest, Illinois; Jeannie Schultz of Olathe, Kansas; and William Handley of Bradenton, Florida; to acquire at least 26.6 percent of the voting shares of 1st Brookfield, Inc., Brookfield, Illinois, for a total of 31.0 percent, and thereby indirectly acquire First National Bank of Brookfield, Brookfield, Illinois.

Board of Governors of the Federal Reserve System, June 18, 1991.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 91-14916 Filed 6-21-91; 8:45 am]

BILLING CODE 6210-01-F

### United Security Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 15, 1991.

**A. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. United Security Bancorporation*, Chewelah, Washington; to retain ownership of the assets of JLM Insurance Agency, Colville, Washington, and Ron Lee Insurance Agency, Chewelah, Washington, and thereby engage in insurance agency activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Colville, Washington, and Chewelah, Washington.

Board of Governors of the Federal Reserve System, June 18, 1991.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 91-14917 Filed 6-21-91; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

[ATSDR-36]

### Quarterly Health Assessments Completed and Health Assessments to be Conducted in Response to Requests From the Public

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Pubic Health Service (PHS), Department of Health and Human Services (DHHS).

**ACTION:** Notice.

**SUMMARY:** This notice contains the following: (1) A list of sites for which ATSDR has completed a health assessment, or issued an addendum to a previously completed health assessment, during the period January–March 1991. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL). (2) A list of sites for which ATSDR, during the same period, has accepted a request from the public to conduct a health assessment (petitioned health assessment). Acceptance of a request for the conduct of a health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a health assessment at the site.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Williams, P.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–0610, FTS 236–0610.

**SUPPLEMENTARY INFORMATION:** A list of completed health assessments, health assessments with addenda, and petitioned health assessments which were accepted by ATSDR during October–December 1990 was published in the Federal Register on Friday, March 22, 1991 (56 FR 12204). The quarterly announcement is the responsibility of ATSDR under the regulation, Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). The rule sets forth ATSDR's procedures for the conduct of health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9604(i)) and appeared in the Federal Register on February 13, 1990 (55 FR 5136).

#### Availability

The completed health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 31, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed health assessments are now available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. There is a charge determined by NTIS for these health assessments. The NTIS order numbers are listed in parentheses after the site name.

*1. Health Assessments or Addenda Completed or Issued for NPL Sites*

Between January 1, 1991, and March 31, 1991, health assessments or addenda to health assessments were issued for the NPL sites listed below:

California

CTS Printex, Inc.—Mountain View (PB91–173534)

Connecticut

Gallup's Quarry Site—Plainfield (PB91–173492)

Idaho

Bunker Hill Mining and Metallurgical Complex—Kellogg (PB91–173104)

Iowa

Chemplex Company—Clinton (PB91–173153)

E.I. DuPont (County Road X–23), James Baier Farm Site and McCarl Farm Site—West Point (PB91–173526)

Kentucky

Green River Disposal, Inc.—Maceo (PB91–173146)

Massachusetts

Sullivan's Ledge—New Bedford (PB91–173500)

New Hampshire

Kearsarge Metallurgical Corporation—Conway (PB91–176545)

New York

Action Anodizing, Plating, and Polishing Corporation—Copiague (PB91–173757)

C&J Disposal Leasing Company Dump—Eaton (PB91–173138)

Circuitron Corporation—Farmingdale (PB91–173112)

Niagara Mohawk Power Corporation (Saratoga Springs Plant)—Saratoga Springs (PB91–173096)

North Dakota

Old Minot Landfill—Minot (PB91–173120)

Pennsylvania

AMP, Inc. (Glen Rock Facility)—Glen Rock (PB91–173518)

East Mount Zion—Springettsbury Township (PB91–173633)

Vermont

Tansitor Electronics, Inc.—Bennington (PB91–173658)

Virginia

Arrowhead Associates, Inc./Scoville Corporation—Montross (PB91–173880)

Suffolk City Landfill—Suffolk (PB91–173666)

*2. Petitions for Health Assessments Accepted*

Between January 1, 1991, and March 31, 1991, ATSDR determined that there was a reasonable basis to conduct a health assessment for the sites or facilities listed below in response to requests from the public. As of March 31, 1991, ATSDR has initiated a health assessment at these sites.

Kentucky

National Coil Electric—Dayhoit

Mississippi

Country Club Lakes Estates—Hattiesburg

Dated: June 17, 1991.

William L. Roper,

*Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 91–14918 Filed 6–21–91; 8:45 am]

BILLING CODE 4160-70-M

### Centers for Disease Control

### Hanford Thyroid Morbidity Study Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following committee meeting.

*Name:* Hanford Thyroid Morbidity Study Advisory Committee.

*Time and Date:* 8:30 a.m.–5:15 p.m., July 9, 1991, 7:30 p.m.–9 p.m., July 9, 1991, 8:30 a.m.–2 p.m., July 10, 1991.

*Place:* Fred Hutchinson Cancer Research Center, 9th Floor Conference Room, 1124 Columbia Street, Seattle, Washington 98104.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study.

*Matters to be Discussed:* This is the second meeting of the Hanford Thyroid Morbidity Study Advisory Committee and the first to be held in the northwest. The Committee will listen to presentations by a number of interest groups and will comment on the status of various components of the Hanford Thyroid Morbidity Study. Specifically, the discussions will focus on scientific rationale, tribal activities and plans, and clinical detection of thyroid disease. On July 9 at 7:30 p.m., the meeting will continue in order to allow more time for public input and comment not addressed during the morning and afternoon sessions.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Mike Sage, Committee Manager, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., (F-28), Atlanta, Georgia 30333, telephone 404/488-4613 or FTS 236-4613.

Dated: June 18, 1991.

**Robert L. Foster,**

*Assistant Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 91-14919 Filed 6-21-91; 8:45 am]

BILLING CODE 4160-18-M

## Food and Drug Administration

**[Docket No. 91E-0106]**

## Determination of Regulatory Review Period for Purposes of Patent Extension; Bepadin® and Vascor®

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Bepadin® and Vascor® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims these human drug products.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Richard Klein, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently simultaneously approved for marketing the human drug products Bepadin® and Vascor®. Both Bepadin® and Vascor® (bepridil hydrochloride) are indicated in chronic stable angina. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Bepadin® and Vascor® (U.S. Patent No. RE. 30,577) from Riom Laboratories C.E.R.M., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated April 12, 1991, advised the Patent and Trademark Office that these human drug products had undergone a regulatory review period and that the approval of the active ingredient, bepridil hydrochloride, represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine these products' regulatory review period.

FDA has determined that the applicable regulatory review period for Bepadin® is 4,658 days. Of this time, 2,108 days occurred during the testing phase of the regulatory review period, while 2,550 days occurred during the approval phase. These periods of time were derived from the following dates:

**1. The Date an Exemption Under Section 505(i) of the Federal Food, Drug, and Cosmetic Act Became Effective**

March 30, 1978. The applicant claims March 24, 1977, as the date the investigational new drug (IND) application for Bepadin® became effective. However, FDA records indicate that IND became effective on March 30, 1978.

**2. The Date the Application Was Initially Submitted With Respect to the Human Drug Product Under Section 505(b) of the Federal Food, Drug, and Cosmetic Act**

January 5, 1984. The applicant claims December 28, 1983, as the date the new drug application (NDA) for Bepadin® (NDA 19-001) was initially submitted. However, FDA records indicate that the application was received on January 5, 1984.

**3. The Date the Application was Approved**

December 28, 1990. FDA has verified the applicant's claim that NDA 19-001 was approved on December 28, 1990.

FDA has determined that the applicable regulatory review period for Vascor® is 3,207 days. Of this time, 649 days occurred during the testing phase of the regulatory review period, while 2,558 days occurred during the approval phase. These periods of time were derived from the following dates:

**1. The Date an Exemption Under Section 505(i) of the Federal Food, Drug, and Cosmetic Act Became Effective**

March 20, 1982. The applicant claims March 17, 1982, as the date the investigational new drug (IND) application for Vascor® became effective. However, FDA records indicate that the IND became effective on March 20, 1982.

**2. The Date the Application was Initially Submitted With Respect to the Human Drug Product Under Section 505(b) of the Federal Food, Drug, and Cosmetic Act**

FDA has verified the applicant's claim that NDA 19-002 was received on December 28, 1983.

**3. The Date the Application was Approved**

December 28, 1990. FDA has verified the applicant's claim that NDA 19–002 was approved on December 28, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 23, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before December 23, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 17, 1991.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 91–14934 Filed 6–21–91; 8:45 am]

BILLING CODE 4160–01–M

## Health Care Financing Administration

## Privacy Act of 1974; Systems of Records

**AGENCY:** Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

**ACTION:** Notice of proposed new routine use for two existing systems of records.

**SUMMARY:** HCFA is proposing to add a new routine use to two existing systems of records: the "Municipal Health Services Program," HHS/HCFA/ORD No. 09–70–0022, and the "Person-Level Medicaid Data System," HHS/HCFA/ORD No. 09–70–0033. In addition, we are taking this opportunity to make minor editorial changes to the "Municipal Health Services Program." We invite comments on these changes.

**EFFECTIVE DATES:** The proposed changes shall take effect July 24, 1991, unless comments received on or before that date would warrant modification to the notice.

**ADDRESSES:** The public should address comments to: Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, room 108 Security Office Park Building, 7008 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

**FOR FURTHER INFORMATION CONTACT:** Sydney P. Galloway, Office of Operations Support, Office of Research and Demonstrations, Health Care Financing Administration, room 2226 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966–6645.

**SUPPLEMENTARY INFORMATION:** The notice for the "Municipal Health Services Program," HHS/HCFA/ORD No. 09–70–0022, was most recently published in the Privacy Act Issuances, 1989 Compilation, Volume 1, Page 380. This system consists of bills and records submitted by clinics in the Municipal Health Services Program demonstrations to claim Federal reimbursement for services provided to Medicare beneficiaries.

The notice for the "Person-Level Medicaid Data System," HHS/HCFA/ORD No. 09–70–0033, was most recently published in the Privacy Act Issuances, 1989 Compilation, Volume I, Page 387. This system consists of unit record data files on all Medicaid enrollment, providers, and claims for hospital, physician, nursing home, prescription drug, and other Medicaid covered services in selected States beginning in 1980. This information contained in the records is obtained from existing State Medicaid Management Information Systems. The purpose of this system of records is to study Medicaid use and expenditures for basic research/information purposes and policy analysis.

HCFA's research routine use is normally included in all of HCFA's program system notices. We are proposing to add this routine use which was inadvertently left out of each of these systems of records. This will modify the system notice to permit HCFA to release data to research contractors and awardees and to contractors and awardees of other Federal agencies. These releases will be for research and evaluation projects that are determined by HCFA to be significant and which do not violate the agreements under which these data were voluntarily supplied by individual States and for which there is reasonable probability that the project will accomplish its objectives. Strict protection of the data by the requestor is required.

This routine use is similar in nature to the standard routine use that permits disclosure to a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in a system or for developing, modifying and/or manipulating ADP software.

To comply with the requirements of the Privacy Act, we are proposing to establish the routine use below, adding to previously published uses.

To an individual or organization for research or evaluation, if HCFA:

a. Determines that the proposed use does not violate the legal limitations under which the record was provided, collected, or obtained;

b. Determines that the proposed use does not violate the understandings with the States that voluntarily supplied the data;

c. Determines that the purpose for which the proposed use is to be made:

(i) Cannot be reasonably accomplished unless the record is provided in an individually identifiable form, and

(ii) Is of sufficient importance to warrant the effect on and/or risk to the privacy of the individual that additional exposure of the record might bring, and

(iii) There is a reasonable probability that the objective of the use would be accomplished;

d. Requires the recipient of the information to:

(i) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(ii) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and receives written authorization from HCFA that it is justified based on research objectives for retaining such information, and

(iii) Make no further use of the record except:

(a) Under emergency circumstances affecting the health or safety of any individual,

(b) For use in another research project, following written authorization of HCFA,

(c) For disclosure to an identified person approved by HCFA for the purpose of auditing the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

e. Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

This new routine use is compatible with the purposes for which the information is collected because each system was established, in large part, to permit research (or evaluation) to be conducted. Addition of this new routine use can be accomplished with no reduction in Medicare beneficiary or Medicaid enrollee privacy because HCFA will impose requirements on the recipient of the data who must agree in writing to protect the data from unauthorized access and from being disclosed in a form that permits identification of individuals.

We are also taking this opportunity to make minor changes to the system notice for the "Municipal Health Services Program," HHS/HCFA/ORD No. 09–70–0022. These include extending the expiration date, changing the name of the evaluator and the location of the system, and updating the list of the clinics.

This action does not require a report of altered system under 5 U.S.C. 552a(o). For the convenience of the reader, the complete system notices are reprinted below.

Dated: June 18, 1991.

**Gail R. Wilensky,**

*Administrator, Health Care Financing Administration.*

**09–70–0022**

**SYSTEM NAME:**

Municipal Health Services Program.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Health Care Financing Administration (Primary Location), Office of Operations Support, Office of Research and Demonstrations (ORD), Division of Research and Demonstrations Systems Support, 6325 Security Boulevard, Baltimore, Maryland 21207; and Mathematica Policy Research, Inc., PO Box 2393, Princeton, New Jersey 08543–2393

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Medicare beneficiaries who obtain health care services at any of the clinics being funded under the Municipal Health Services Program (MHSP).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Bills and records submitted by MHSP clinics to claim Federal reimbursement for services provided to Medicare beneficiaries.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 402(a) of the Social Security Amendments of 1967, as amended by section 222(b)(1) of Public Law 92–603, and section 6135 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239.

**PURPOSE(S):**

To provide billing data necessary to permit reimbursement and evaluation of the clinics participating in the MHSP.

**ROUTINES USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made to:

1. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

2. The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components);

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. To contractors for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system.

4. To an individual or organization for a research, demonstration, evaluation, or epidemiologic project related to the prevention of disease or disability or the restoration or maintenance of health if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished.

c. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the researching project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Makes no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with the written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the recipient's

understanding of a willingness to abide by these provisions.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

ORD will store data of hardcopy billing forms and machine readable media in secure storage areas.

**RETRIEVABILITY:**

ORD retrieves the data by beneficiary name, date of service, and clinic name. ORD will use the data to determine the appropriate level of reimbursement to be made to MHSP clinics.

**SAFEGUARDS:**

ORD will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. ORD will store hardcopies of forms in the file cabinets in a locked office. For computerized records, HCFA will initiate ADP systems security procedures with reference to the guidelines contained in the HHS Information Resource Management Manual, Part 6, ADP System Security (e.g., HHS will store machine readable media in locked cabinets in a locked room accessible only to authorized personnel).

**RETENTION AND DISPOSAL:**

ORD will retain hardcopy bills and machine readable media tapes with identifiers in secure storage areas. HCFA waivers permitting reimbursement to MHSP clinics will be effective through December 1993. Therefore HCFA will retain all hardcopy and magnetic tape of disc data until December 1994. At that time, HCFA will destroy all hardcopy and strip all machine readable media of all identifying names and numbers by degaussing.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

**NOTIFICATION PROCEDURE:**

Individuals should address inquiries and requests concerning system records to the system manager, named above, specifying name, date of service, and clinic.

**RECORD ACCESS PROCEDURE:**

Any beneficiary who participates in the MHSP may request his or her data record in writing. Access procedure is the same as notification procedure. Requestor should also reasonably specify the record contents being sought. These procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2)).

**CONTESTING RECORD PROCEDURES:**

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

**RECORD SOURCE CATEGORIES:**

The information contained in this record system originates at MHSP clinics, specified in Appendix A to this notice, whenever a Medicare beneficiary obtains clinic services. Clinics in three of the cities, specified in Appendix B to this notice, will store hardcopies or machine readable media copies of the bills in their city health departments.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**Appendix A—Participating Centers and Clinics**

*Baltimore*

Albert Witzke Medical Center, 3411 Bank Street, Baltimore, MD 21224
Brehms Lane Medical Center, 3400 Brehms Lane, Baltimore, MD 21213
Hollander Ridge Health Center, 2000 Odell Avenue, Baltimore, MD 21237
Matilda Koval Medical Center, 2323 Orleans Street, Baltimore, MD 21224
Washington Village Community Health Center, 700 Washington Boulevard, Baltimore, MD 21230

*San Jose*

Chaboya Clinic, 2410 Senter Road, San Jose, CA 95111
Family Health Foundation of Alviso, Inc., Alviso Health Center, 1621 Gold Street, Alviso, CA 95002
Gardner Health Center, Inc., 195 East Virginia Street, San Jose, CA 95112
St. James Health Center, 55 Julian Street, San Jose, CA 95102
Santa Clara Valley Medical Center, East Valley Clinic, 1993 McKee Road, San Jose, CA 95116

*Cincinnati*

Braxton Cann Memorial Health Center, 5919 Madison Road, Cincinnati, OH 45227
Northside Health Center, 3917 Spring Grove Avenue, Cincinnati, OH 45223
Winton Hills Medical and Health Center, 5275 Winneste Avenue, Cincinnati, OH 45232

*Milwaukee*

Capitol Drive Community Health Center, 2411 W. Capital Drive, Milwaukee, WI 53206
Isaac Coggs Community Health Center, 2770 North Fifth Street, Milwaukee, WI 53212
Johnston Community Health Center, 1230 W. Grant Street, Milwaukee, WI 53215

**Appendix B—City Health Departments Where Records Will be Stored**

Cincinnati Department of Health, 3101 Burnet Avenue, Cincinnati, OH 45229
Milwaukee Department of Health, 841 N. Broadway, Milwaukee, WI 53202
Baltimore City Department of Health, 303 East Fayette Street, Baltimore, MD 21202

**09-70-0033**

**SYSTEM NAME:**

Person-Level Medicaid Data System, HHS/HCFA/ORD.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Office of Research, ORD, HCFA, 6325 Security Boulevard, Baltimore, Maryland 21207.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons who are enrolled in the Medicaid program under either Federal or State provisions.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Data from 5 State Medicaid agencies (California, Georgia, Michigan, New York, and Tennessee) showing the demographic characteristics of the enrolled population, claims submitted for covered medical services, and provider characteristics.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 1902(a)(6) of the Social Security Act (42 U.S.C. 1396(a)(6)).

**PURPOSE(S):**

To study Medicaid use and expenditures in order to increase HCFA's understanding of the Medicaid and Medicare programs and to improve HCFA's ability to conduct program evaluation, strengthen program management, evaluate policy alternatives, conduct and evaluate demonstration projects, and advise States in the area of Medicaid financing. The proposed system will be used for purposes of research and statistics only.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made.

(1) To a Congressional office from the records of an individual in response to

an inquiry from the Congressional office made at the request of that individual.

(2) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system.

(3) To a State Medicaid agency of a State participating in the Person-Level Medicaid Data System project. Disclosure may be made to a State only of data on eligibles in that State and only for purposes of research and statistics.

(4) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

To an individual or organization for research or evaluation, if HCFA:

a. Determines that the proposed use does not violate the legal limitations under which the record was provided, collected, or obtained:

b. Determines tht the proposed use does not violate the understandings with the States that voluntarily supplied the data;

c. Determines that the purpose for which the proposed use is to be made:

(i) Cannot be reasonably accomplished unless the record is provided in an individually identifiable form, and,

(ii) Is of sufficient importance to warrant the effect on and/or risk to the privacy of the individual that additional exposure of the record might bring, and

(iii) There is a reasonable probability that the objective of the use would be accomplished;

d. Requires the recipient of the information to:

(i) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(ii) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and receives written authorization from HCFA that it is justified based on research objectives for retaining such information, and

(iii) Make no further use of the record except:

(a) Under emergency circumstances affecting the health or safety of any individual,

(b) For use in another research project, following written authorization of HCFA,

(c) For disclosure to an identified person approved by HCFA for the purpose of auditing the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

c. Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

All records are stored on magnetic tape and computer disk.

**RETRIEVABILITY:**

Enrollment records are retrieved by Medicaid and Medicare identification numbers. Provider records are retrieved by Medicaid and Medicare provider identification numbers. Claims records contain both enrollee and provider identification numbers.

**SAFEGUARDS:**

For computerized records, safeguards established in accordance with guidelines in the DHHS ADP Systems Manual, Part 6, "ADP Systems Security," (e.g., security codes, use of passwords) will be used, limiting access to authorized personnel.

**RETENTION AND DISPOSAL:**

Records are maintained in a secure storage area with identifiers as long as needed for program research. Records will be disposed 3 years after research is completed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

**NOTIFICATION PROCEDURE:**

To determine if a record exists, write to the System Manager at the address shown above and give: (1) Name of system, (2) Medicaid identification number, (3) person's name, (maiden name, if applicable), (4) social security number (provision of social security number is voluntary), (5) address, (6) date of birth, and (7) sex. To ascertain whether the individual had utilization, give date of service and type of Medicaid service (i.e., outpatient, physician, dental, prescription, long-term care, home health, inpatient acute care, etc.).

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requesters should also reasonably specify the record contents.

**CONTESTING RECORD PROCEDURES:**

Contact the System Manager named above, and reasonably identify the record and specify the information being contested. State the reason for contesting the records procedure with supporting justification, (e.g., why it is inaccurate, irrelevant, incomplete or not current).

**RECORD SOURCE CATEGORIES:**

Medicaid and Medicare enrollment, claims, and provider records.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 91-14940 Filed 6-21-91; 8:45 am]
BILLING CODE 4120-03-M

## Health Resources and Services Administration

### Availability of Funds for Demonstration Grants to States for Community Scholarship Programs

**AGENCY:** Health Resources and Services Administration.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that approximately $500,000 is available in fiscal year (FY) 1991 for demonstration grants to states for Community Scholarship Programs (CSP), as authorized under Section 338L of the Public Health Service Act.

Grants will be awarded to States for the purpose of increasing the availability of primary health care in urban and rural health professional shortage areas (HPSA) by assisting community organizations in rural and urban areas to provide scholarships for the education of individuals to serve as health professionals in these areas.

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 for setting priority areas. This grant program is related to the following priority area: To increase the availability of primary health care in urban and rural HPSAs by assisting community organizations located in HPSAs in providing scholarships for the education of individuals to serve as primary care health professionals in these areas. 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 number 202–783–3238).

**DUE DATES:** To receive consideration, grant applications must be received by the Grants Management Office indicated below by July 25, 1991. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Applications received after the announced closing date will not be considered for funding and will be returned to the applicant.

**ADDRESSES:** An application kit (Form PHS 5161–1 as approved by the OMB under control number 0937–0189) may be requested by calling (301) 443–5887 or writing, to: Mrs. Harriet Green, Grants Management Branch (GMB), Bureau of Health Care Delivery and Assistance, 12100 Parklawn Drive, Rockville, Maryland 20857. Completed applications must be mailed to the same address. The GMB can also provide assistance on business management issues.

**FOR FURTHER INFORMATION CONTACT:** For further program information and technical assistance please contact Ms.Cheryl A. LaPointe, M.P.H., National Health Service Corps, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, 5600 Fishers Lane, room 7A–29, Rockville, Maryland 29857, (301) 443–1470.

**SUPPLEMENTARY INFORMATION:** Under this program, States will enter into agreements with public or private nonprofit community organizations located in HPSAs which will recruit qualified residents of their communities and provide scholarships to them to become physicians, certified nurse practitioners, certified nurse midwives, or physician assistants based on the needs of the communities.

This demonstration grant program is intended to be consistent with the efforts of the National Health Service Corps (NHSC) Scholarship and Loan Repayment Programs to meet the needs of underserved populations within HPSAs through the placement of primary care practitioners.

Grants averaging $45,000 will be made to up to 15 States, and only one grant will be made to each State annually. All awards will be for one year with project periods of up to three years. The number of grants will depend on the number of scholarships and types of practitioner training requested by the States. In an effort to assist the States and their communities in recruiting primary care practitioners, the Federal portion of the grant will provide for 40 percent of the costs of each scholarship. The States and local communities will be responsible for the remainder of the costs of the CSP. The Secretary is required by statute (Section 338L(1)(3) of the PHS Act) to ensure that, to the extent practicable, not less than 50 percent of the amount appropriated will be in the aggregate expended for making grants to community organizations that are located in rural HPSAs. In carrying out this requirement, however, the Secretary may not deny grants to States in which no rural HPSAs are located.

In order for a State to receive a grant under this program, the State must:

1. Have received funding for at least one grant, cooperative agreement, or contract under any provision of the Public Health Service Act other than section 338L, for the fiscal year for which the State is applying;

2. Agree that the grant program carried out by the State will be administered directly by a single State agency;

3. Agree to make grants to community organizations located in HPSAs in order to assist those community organizations in providing scholarships to individuals enrolled or accepted for enrollment as full-time students in health professions schools (see definition of "primary health care");

4. Agree that forty percent of the total costs of the scholarship will be paid from the Federal grant made to the State;

5. Agree that sixty percent of the total costs of the scholarship will be paid from non-Federal contributions made in cash by both the State and the community organization through which the scholarship is provided.

a. The State must make available through these cash contributions not less than 15 percent nor more than 25 percent of the scholarship costs.

b. The community organization must make available through these cash contributions not less than 35 percent nor more than 45 percent of the scholarship costs.

Non-Federal contributions provided in cash by the State and community organization (as in a and b above) may not include any amounts currently provided by the Federal Government to the State, or community organization involved, or to any other entity.

Non-Federal contributions required may be provided directly by the State and community organization involved, and may be provided through donations from public and private entities.

The Secretary will not award a grant unless the State involved agrees to carry out the purpose of the CSP grant program by operating a program through which the State makes grants to community organizations located in HPSAs in order to assist the organizations with the costs of entering into contracts under which—

1. Each community organization agrees to provide scholarships to individuals for attendance at health professional schools;

2. Each individual who is to receive a scholarship agrees to provide primary health care in a HPSA in which a community organization is located for:

a. A number of years equal to the number of years for which the scholarship is provided, or for a period of 2 years, whichever period is greater; or

b. Such greater period of time as the individual and the community organization may agree.

For purposes of this program, the term "primary health care" means health

services regarding family medicine, internal medicine, pediatrics, or obstetrics and gynecology, that are provided by physicians, certified nurse practitioners, certified nurse midwives, or physician assistants.

*Scholarship Contracts*

To receive a grant, the State must agree that it will award a grant to a community organization for scholarships only if:

1. The individual who is to receive the scholarship under a contract is a resident of the HPSA in which the community organization is located.

2. The individual is enrolled or accepted for enrollment as a full-time student in a health professions school that is accredited by a body or bodies recognized for accreditation purposes by the Secretary of Education.

3. The individual agrees to maintain a level of academic standing at the school at which a full-time student retains eligibility to continue in attendance in school under the school's standards and practices.

4. The individual and the community organization agree that the scholarship:

a. Will be expended only for tuition expenses, other reasonable educational expenses, reasonable living expenses incurred while in attendance at the school, and for payment to the individual of a monthly stipend not more than the amout authorized for NHSC scholarship recipients under section 338A(g)(1)(B) of the PHS Act; and

b. Will not, for any year of such attendance for which the scholarship is provided, be in an amount exceeding the total amount required for the year for the purposes indicated in paragraph (a) above.

5. The individual agrees to meet the educational, certification, and licensure requirements necessary to become a physician, nurse practitioner, midwife, or physician assistant in the State in which the individual is to practice under the contract.

6. The individual agrees that, in providing primary health care pursuant to the scholarship, the individual (a) will not, in the case of an individual seeking care, discriminate on the basis of the ability of the individual to pay for such care or on the basis that payment for such care will be made pursuant to the program established in title XVIII of the Social Security Act (Medicare) or pursuant to the program established in title XIX of such Act (Medicaid), and (b) will accept assignment under section 1842(b)(3)(B), 1842(b)(3)(B)(ii) of the Social Security Act for all services for which payment may be made under part B of title XVIII of such Act, and will enter into an appropriate agreement with the State agency that administers the State plan for medical assistance under title XIX of such Act to provide service to individuals entitled to medical assistance under the plan.

*Evaluaton Criteria*

Applications for grants will be reviewed and evaluated according to the following criteria

(a) The extent to which the application describes a mechanism to determine the appropriateness of a community organization's participation in the CSP;

(b) The strength of the applicant's plan to monitor and evaluate a CSP;

(c) The ability of the applicant to administer a CSP, i.e., the administrative and managerial capability and staff experience;

(d) The extent to which the application justifies and documents the number and type of primary care providers the State proposes to support through this program relative to the needs of the community;

(e) The level of community commitment and involvement with the program including coordination with other Federal, State, and community programs for meeting health professional needs;

(f) The extent to which the applicant's and community's recruitment plans are consistent with long-term plans for meeting the needs of the community's primary care system; and

(g) The extent to which the application provides estimates of the amounts of the grant funds that will be expended on primary care for rural HPSAs and a similar estimate for urban HPSAs.

*Other Grant Information*

The CSP demonstration grant program is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package for this program will include a list of States with review systems and the single point of contact (SPOC) in each State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their State 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. The due date for State process recommendations is 60 days after the application deadline. The Bureau of Health Care Delivery and Assistance does not guarantee that it will accommodate or explain its response to State process recommendations received after that date.

Grants will be administered in accordance with HHS regulations in 45 CFR part 92.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.

Dated: May 13, 1991.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 91–14936 Filed 6–21–91; 8:45 am]

BILLING CODE 4160–15–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–010–91–4130–09–2519]**

### Availability of Final Environmental Impact Statement and Record of Decision on the Betze Mining Plan-of-Development in Northeastern Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of the final environmental impact statement and record of decision on the Betze Mining Plan-of-Development in Northeastern Nevada.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior has prepared, by a third party contractor, a final environmental inpact statement (EIS) on the Betze plan-of-development in Northeastern Nevada, and has made copies of the document available for public review.

In addition, the BLM has released simultaneously with the FEIS, the Record of Decision (ROD) for the Betze Project. This project cannot begin until at least the public has had at least thirty days to review the FEIS.

The final EIS analyzes the environmental impacts that would result from the expansion of an existing open pit mining operation and the alternatives to that project.

**DATES:** Written comments on the final EIS and ROD will be accepted until July 22, 1991.

**ADDRESSES:** A copy of the final EIS and ROD can be obtained from: District Manager, Bureau of Land Management, ATTN: Betze Coordinator, P.O. Box 831, Elko, NV 89801.

The final EIS is available for inspection at the following locations: BLM State Office (Reno), Carson City, Ely, and Elko County Libraries, and the University of Nevada libraries in Reno and Las Vegas.

Written responses may be sent to the above address on or before close of business on July 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** For additional information, write to the above address or call Nick Rieger at (702) 753–0200.

Dated: June 11, 1991.

Rodney Harris,

*District Manager.*

[FR Doc. 91–14876 Filed 6–21–91; 8:45 am]

BILLING CODE 4310–HC–M

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[CO–010–01–4320–02]

## Craig Colorado Advisory Council; Meeting

*Time and date:* July 10, 1991 10 a.m.

*Place:* BLM—Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

*Status:* Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

**Matters to be Considered**

1. Status Report on Resolutions.
2. Status of Occidental C–b.
3. Colorado Division of Wildlife's Harvest Statistics.
4. Colorado Division of Wildlife's Deer, Elk, and Antelope Program Issues.
5. Habitat Partnership Program Update.
6. Recreation 2000.
7. Election of Officers.

*Contact Person for More Information:* Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, phone (303) 824–8261.

Dated: June 14, 1991.

Jerry L. Kidd,

*Associate District Manager.*

[FR Doc. 91–14877 Filed 6–21–91; 8:45 am]

BILLING CODE 4310–JB–M

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[UT–060–01–4320–02]

## Moab District Grazing Advisory Board Meeting

June 14, 1991.

**AGENCY:** Bureau of Land Management, Moab, Interior.

**ACTION:** Moab District Grazing Advisory Board Meeting.

**SUMMARY:** Notice is hereby given in accordance with Public Law 92–463 that a meeting of the Moab District Grazing Advisory Board will be held on July 23, 1991. The meeting will be conducted during a field tour of the Comb Wash Coordinated Resource Management (CRMP) Planning Area west of Blanding, Utah. Participants in the tour will meet at the San Juan Resources Area office, 435 North Main, Monticello, Utah at 10 a.m. on July 23, 1991. The public will need to provide their own transportation for the tour, some of the roads which are on the tour route may require four-wheel drive. The tour site is approximately 50 miles southwest of Monticello, Utah.

Agenda items which will be discussed during the tour include:

1. Description/briefing on the Comb Wash CRMP;
2. Update on Range Valley Mountain CRMP/Habitat Management Plan;
3. Update on San Rafael and San Juan Final Resource Management Plans;
4. Update on Drought problems and concerns;
5. Briefing on Nature Conservancy's Acquisition of the Cunningham Ranch.

The meeting and tour is open to the public. Interested persons may make oral statements to the Board or file written statements for the Board's consideration. Anyone wishing to make an oral statement must submit a written summary of their statement to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532 by July 19, 1991. Written statements submitted for the Board's consideration must be received at the above address on or before July 19, 1991. Summary minutes of the Board meeting will be maintained in the District office and will be available within thirty (30) days following the meeting.

Gene Nodine,

*District Manager.*

[FR Doc. 91–14839 Filed 6–21–91; 8:45 am]

BILLING CODE 4310–DQ–M

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[NM–060–4320–10–605]

## Roswell District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Roswell District Grazing Advisory Board, Meeting.

**SUMMARY:** This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

**DATES:** Tuesday, July 23, 1991, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

**LOCATION:** BLM Roswell District Office, 1717 West Second St., Roswell, New Mexico 88201.

**FOR FURTHER INFORMATION CONTACT:** David L. Mari, Associate District Manager, Bureau of Land Management, P.O. Box 1397, Rosewell, NM 88202–1397.

**SUPPLEMENTARY INFORMATION:** The agenda will consist of review and discussion of FY 92 Range Improvement Projects, and as time permits, updates on land exchanges, Resource Management Plans, Archeological Studies-land exchanges, quarterly billings, monitoring studies, and GAO visit to Carslbad Resource Area. The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by July 16, 1991. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours, within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: June 14, 1991.

Francis R. Cherry, Jr.,

*District Manager.*

[FR Doc. 91–14879 Filed 6–21–91; 8:45 am]

BILLING CODE 4310–FB–M

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## Bureau of Reclamation

## Fish and Wildlife Service

## Truckee River Operating Agreement, California and Nevada

**AGENCY:** Bureau of Reclamation (Interior) and U.S. Fish and Wildlife Service (Interior).

**ACTION:** Notice of intent to prepare a draft environmental impact statement/draft environmental impact report and notice of public scoping meetings.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and section 21002 of the California Environmental Quality Act, the Bureau of Reclamation (Reclamation), the U.S. Fish and Wildlife Service, and the California Department of Water Resources will prepare a joint draft environmental impact statement/draft environmental impact reprot (DEIS/DEIR) for an operating agreement for the Truckee River reservoirs in California and Nevada. The purpose of this project is to

modify the current method of river regulation and coordinate the operation of the Truckee River reservoirs to improve the management of instream flows in the Truckee River basin, provide a municipal water supply during drought periods for the Reno-Sparks area, and enhance spawning flows for the endangered cui-ui and threatened Lahontan cutthroat trout in the lower Truckee River.

**DATES/ADDRESSES:** Five public meetings have been scheduled to solicit public input to determine alternatives to the proposed action and the scope of the DEIS/DEIR and to identify significant issues related to the proposed action:

- July 22, 1991, 7 p.m., Tahoe-Truckee Sanitation Agency, Joerger Drive, Truckee, California (Highway 267 to Joerger Drive, next to Teichert Aggregate);
- July 23, 1991, 7 p.m., City of South Lake Tahoe Council Chambers, 1990 Lake Tahoe Boulevard, South Lake Tahoe, California;
- July 24, 1991, 1 p.m., City of Reno Council Chambers, 490 South Center, Reno, Nevada;
- July 24, 1991, 7 p.m., Pyramid Lake Paiute Indian Tribal Council Chambers, Nixon, Nevada; and
- July 25, 1991, 7 p.m., Fallon Community Center, 100 Campus Way, Fallon, Nevada.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Olson, Bureau of Reclamation, Lahontan Basin Projects Office, 705 N. Plaza St., P.O. Box 640, Carson City, Nevada 89702, Telephone: (702) 882–3436; Mr. Tom Strekal, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Reno, Nevada 89502, Telephone: (702) 784–5227; or Ms. Sandra Maxwell, California Department of Water Resources, Central District, 3251 "S" Street, Sacramento, California 95816, Telephone: (916) 445–2592.

**SUPPLEMENTARY INFORMATION:** The Truckee River Operating Agreement is authorized in section 205 of title II (known as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act") of Public Law 101–618 (Pub. L. 101–618). The major purposes of title II are to ratify and implement a settlement involving the Pyramid Lake Paiute Tribe, the Sierra Pacific Power Company, the States of California and Nevada, the Federal Government, and other parties regarding apportioning Truckee River, Carson River, and Lake Tahoe waters, enhancing threatened and endangered species, and preserving wetlands.

Certain provisions of Pub. L. 101–618 will not take effect until several agreements, including the Truckee River Operating Agreement, are signed. The lakes and reservoirs affected by the operating agreement include both Federal (Lake Tahoe and Prosser Creek, Stampede, and Boca Reservoirs) and private facilities (Donner and Independence Lakes). The operating agreement does not require constructing any new water supply facilities. However, mitigation measures implemented as part of the agreement could include modifying existing facilities, such as installing stream gauges.

Alternatives being considered involve various changes to the existing streamflow requirements (known as Floriston rates or reduced Floriston rates, as established by Federal District Court decree) for the Truckee River at certain times of the year. Other alternatives may include altering some current procedures regarding reservoir storage and release for the affected reservoirs. These changes would be accomplished by negotiations among the settlement parties and related water rights holders; no third-party water rights would be affected. Other existing requirements, such as flood control criteria of the U.S. Army Corps of Engineers, would also remain unchanged. A no-action alternative will be included in the DEIS/DEIR.

The DEIS/DEIR will be completed and available for review and comment in 1994. Impacts that will be evaluated in the document include the effects of changes in reservoir levels and instream flows on littoral and riparian plants and fish and wildlife resources, water supply and water quality, recreation, and urban development. Other impacts discussed in the document will include those identified in the upcoming scoping process.

Anyone may participate in the scoping process by attending any of the scheduled public meetings. Interested parties may also submit written comments to Reclamation, the Fish and Wildlife Service, or the State of California postmarked no later than Tuesday, September 3, 1991. Anyone interested in more information concerning the propsoed project or who has other significant environmental issues should contact Messrs. Olson or Strekal or Ms. Maxwell at the addresses shown above.

*Acting Regional Director,*
*U.S. Fish and Wildlife Service.*

Dated: June 13, 1991.

**Terry P. Lynott,**

*Director, Program Services Division, U.S. Bureau of Reclamation.*

June, 11, 1991.

[FR Doc. 91–14880 Filed 6–21–91; 8:45 am]

BILLING CODE 4310–09–M

## Fish and Wildlife Service

### Availability of a Draft Recovery Plan for the Speckled Pocketbook (Lampsilis streckeri) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the speckled pocketbook mussel (*Lampsilis streckeri*). This species occurs in the Middle Fork of the Little Red River, Arkansas. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before August 23, 1991, to receive consideration by the Service .

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jim Stewart at the above address (601/965–4900).

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that a public notice and

an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the speckled pocketbook mussel, *Lampsilis streckeri*. The area of emphasis for recovery actions is the headwater streams of the Little Red River, Arkansas. The historic range within this system has been adversely impacted by impoundment, water pollution and channel modification. Habitat restoration and protection, reestablishing populations and management are major objectives of this recovery plan.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 12, 1991.

**Robert Bowker,**

*Complex Field Supervisor.*

[FR Doc. 91–14874 Filed 6–21–91; 8:45 am]

BILLING CODE 4310–55–M

## Minerals Management Service

### Outer Continental Shelf Advisory Board Gulf of Mexico Regional Technical Working Group; Meeting

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of Gulf of Mexico Regional Working Group (RTWG) Meeting.

**SUMMARY:** Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463). The Gulf of Mexico RTWG meeting will be held July 23–24, 1991, 9 a.m. to 4 p.m., at the Holiday Inn Beachfront, Highway 90, Gulfport, Mississippi

The RTWG business meeting will be held July 24, 1991, and tentative agenda items are as follows:

- Roundtable Discussion
- Update on the MIRG Model
- Information Base Review
- Coordination of Coastal Natural Resources Information

**FOR FURTHER INFORMATION:** This meeting is open to the public. Individuals wishing to make oral presentations to the committee concerning agenda items should contact Ann Hanks of the Gulf of Mexico OCS Regional Office at (504) 736–2589 by July 10, 1991. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123.

A transcript and complete summary minutes of the meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Dated: June 13, 1991.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 91–14897 Filed 6–21–91; 8:45 am]

BILLING CODE 4310–MR–M

## DEPARTMENT OF JUSTICE

## Federal Prison Industries, Inc.

### UNICOR Independent Market Study Briefing

**AGENCY:** Federal Prison Industries, Inc., Bureau of Prisons, Justice.

**ACTION:** Notice.

**SUMMARY:** Efforts are underway to complete an independent market study of UNICOR, based on the objectives set forth in Public Law 101–515 and the statement of work included in the contract awarded to conduct the study (contract # 1PI–C–0009–91). A final public briefing, conducted by Deloitte & Touche, has been scheduled to highlight study findings, conclusions and recommendations. The final study report is due to Congress on August 5, 1991.

**DATES:** The briefing is scheduled for Thursday, July 25, 1991, from 10 a.m. to 12 noon.

**ADDRESSES:** The briefing will be held in the Rayburn House Office Building, room 2359A, Independence Avenue, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John Foreman, (202) 955–4194.

Dated: June 18, 1991.

**James Hagerty,**

*Manager, Market Research, Federal Prison Industries, Inc.*

[FR Doc. 91–14986 Filed 6–21–91; 8:45 am]

BILLING CODE 4410–05–M

## Office of Special Counsel for Immigration Related Unfair Employment Practices

### Immigration Related Employment Discrimination Public Education Grants

**AGENCY:** Office of Special Counsel for Immigration Related Unfair Employment Practices, Department of Justice.

**ACTION:** Notice of availability of funds and solicitation for grant applications.

**SUMMARY:** The Office of Special Counsel for Immigration Related Unfair Employment Practices ("OSC") announces the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provision of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration-related employment discrimination. Grants will range in size from $40,000 to $150,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualifies them to educate employers about the antidiscrimination provision of IRCA. Accordingly, OSC will accept proposals from diverse sources, such as not-for-profit community-based organizations, qualified designated entities (QDEs), and local ethnic and immigrants' rights advocacy organizations which serve potential victims of discrimination. OSC also welcomes proposals from trade associations, industry groups, professional organizations, and other not-for-profit entities providing information services to employers.

**APPLICATION DEADLINE DATE:** August 8,1991.

**FOR FURTHER INFORMATION CONTACT:** Juan Maldonado, Senior Trial Attorney

or Patita McEvoy, Public Affairs Specialist, Office of Special Counsel for Immigration Related Unfair Employment Practices, 1100 Connecticut Ave., NW., suite 800, P.O. Box 65490, Washington, DC 20035–5490. Tels. (202) 653–8121, 1–800–255–7688 (toll-free), (202) 296–0168 (TDD for the hearing impaired), or 1–800–237–2515 (toll-free TDD for the hearing impaired.

**SUPPLEMENTARY INFORMATION:** The Office of Special Counsel for Immigration Related Unfair Employment Practices of the Department of Justice ("DOJ") announces the availability of funds to conduct public education programs concerning the antidiscrimination provision of the Immigration Reform and Control Act of 1986 ("IRCA"), 8 U.S.C. 1324b. Funds will be awarded to selected applicants who propose innovative and effective ways of disseminating information to employers and members of the protected class or to those who can fill a particular need not currently being met.

**Background**

On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986, Public Law No. 99–603. IRCA makes hiring aliens without work authorization unlawful, and it requires that employers verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions including fines and criminal prosecution.

During congressional debate of IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals simply because they looked or sounded foreign. Consequently, Congress enacted section 102 of IRCA, an antidiscrimination provision. Section 102 prohibits employers from discriminating against citizens and work authorized aliens who are protected individuals in hiring, firing, recruitment or referral for a fee. Protected non-citizens include permanent residents, temporary residents under the amnesty, the Special Agricultural Workers (SAWs) or the Replenishment Agricultural Workers (RAWs), refugees and asylees who apply for naturalization within six months of being eligible to do so. National origin discrimination against *any* work authorized individual is also prohibited. This prohibition applies to employers with four to fourteen employees. National origin discrimination complaints against employers with fifteen or more employees remain under the jurisdiction of the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.

Congress created the OSC to enforce section 102. OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with a specially designated administrative tribunal. OSC also initiates independent investigations of possible section 102 violations.

While OSC has established a record of vigorous enforcement, studies by the U.S. General Accounting Office and others have shown that there is an extensive lack of knowledge on the part of protected individuals and employers about the antidiscrimination provision. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of their responsibilities.

**Purpose**

OSC seeks to educate both potential victims of discrimination about their rights and employers about their responsibilities under the antidiscrimination provision of IRCA.

**Program Description**

The program is designed to develop and implement innovative and cost effective approaches to disseminating information regarding IRCA's antidiscrimination provision. The campaign should focus on educating potential victims of employment discrimination about their rights and educating employers about their responsibilities under IRCA. Applications may propose to educate potential victims only, employers only, or both in a single campaign. Proposals should outline the following key elements of the program:

*Part I: Targeted Population*

The educational efforts under the grant should be directed to (1) work authorized aliens who are protected individuals, since this group is especially vulnerable to employment discrimination, and/or to (2) employers. The proposals should define the characteristics of the work authorized alien population or the employer group(s) targeted for the educational campaign.

The proposals should also detail the reasons for targeting each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign targets and supporting the reasons for the selection, applicants may use studies or surveys conducted in the area, or any other sources of information of generally accepted reliability.

*Part II: Campaign Strategy*

We encourage applicants to devise innovative, creative and effective means of public education and information dissemination that are specifically designed to reach the campaign targets. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of public communication may be less than optimal for disseminating information to members of national or linguistic groups that have limited community-based support and communication networks.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of innovative and cost effective dissemination of correct information to protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

A key element of the campaign is the accuracy of information disseminated about the OSC and its mission. Accordingly, any outreach and educational materials developed by a grantee must be reviewed by OSC for legal accuracy and proper emphasis prior to production. All information distributed should also include mention of the OSC as a source of assistance, information and action and the correct address and telephone numbers of the OSC (including the toll-free and TDD toll-free numbers for the hearing impaired)

*Part III: Evaluation of the Strategy*

One of the central goals of this program is determining what public education strategies are most effective in dispersing information about the antidiscrimination provision. To be effective in planning future public education efforts, OSC needs to know what works and what does not. Measuring the effectiveness of the campaign, therefore, is crucial, and the methods of measurement and their results must be detailed.

Full evaluation of a project's effectiveness should be performed at the midpoint and conclusion of the campaign. The midpoint report, due thirty days after the end of the second quarter of implementation, is intended to encourage productive alternations to

a campaign, when necessary, based on experience and knowledge gained in the first half of the project. Applicants are encouraged to discuss in their proposal the means they will use to devise alternate campaign strategies, if needed.

**Selection Criteria**

The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices after careful evaluation of each proposal by a panel of specialists within DOJ. The panel's results are advisory in nature and not binding on the Special Counsel. Each panelist will evaluate the proposals for effectiveness and efficiency with emphasis on the various factors enumerated below. Letters of support, endorsement, or recommendation will not be accepted or considered.

OSC anticipates seeking assistance from sources with specialized knowledge in evaluating proposals, including the agencies that are members of the IRCA Antidiscrimination Outreach Task Force: The Department of Labor, the Equal Employment Opportunity Commission, the Small Business Administration and the Immigration and Naturalization Service.

Applicants should be aware that some states are currently conducting IRCA antidiscrimination outreach and education programs with funds made available under the Immigrant Nurses Relief Act of 1989, Public Law 101–238. Unnecessary duplication of specific efforts under those programs should be avoided. OSC will take steps to coordinate these efforts but expects that, to the extent practicable, grantees will do so as well.

In determining which applications to fund, OSC will consider the following (based on a one-hundred and ten point scale):

*1. Program Design (60 points)*

Sound program design and innovative, cost effective strategies for dissemination of information to the targeted population are imperative. Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (10 points)

b. The applicant's selection and definition of the target population(s) for the campaign, and the factors, including special needs, that support the selection. (15 points)

c. An innovative, cost effective campaign strategy for disseminating information to employers and/or members of the protected class, and justification for the choice of strategy. (20 points)

d. The methods proposed by the applicant to measure the effectiveness of the campaign and their precision in indicating to what degree the campaign succeeds in meeting its goals. (15 points)

*2. Administrative Capability (15 points)*

Proposals will be rated in terms of the capability of the applicant to implement the targeting, public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided. (5 points)

*3. Staff Capability (15 points)*

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (10 points)

*4. Previous Experience (20 points)*

The applications will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

**Eligible Applicants**

This grant competition is open to not-for-profit community-based organizations, qualified designated entities (QDEs), local ethnic and immigrants' rights advocacy organizations which serve potential victims of discrimination, trade associations, industry groups, professional organizations, and other entities providing information services to employers.

**Grant Period and Award Amount**

It is anticipated that several grants will be awarded and will range in size from $40,000 to $150,000. Publication of this announcement does not require the Office of Special Counsel to award any specific number of grants, to obligate the entire amount of funds available, or to obligate any part thereof. The period of performance will be twelve months from the date of the grant award. Those grantees who successfully achieve their goals may be considered for supplementary funding for a second year based on the availability of funds.

**Application Deadline**

All applications must be received by the close of business (5 p.m. e.d.t.) on Thursday, August 8, 1991, at the Office of Special Counsel for Immigration Related Unfair Employment Practices, 1100 Connecticut Ave., NW.—suite 800, P.O. Box 65490, Washington, DC 20035–5490.

**Application Requirements**

Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424) and Budget Information (Standard Form 424A).

2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).

3. An abstract of the full proposal, not to exceed one page.

4. A program narrative of not more than twenty (20) double-spaced typed pages which include the following:

a. A clear statement which describes the approach and strategy to be utilized to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion;

c. The proposed staffing plan;

d. Description of the proposed program design; and

e. Description of how the project will be evaluated.

5. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the Federal cognizant agency must accompany the budget.

6. Copies of resumes for the professional staff proposed in the budget.

**Note:** If the grant project manager is to be hired later as part of the grant, hiring is subject to review and approval by OSC at that time.

8. Detailed technical materials that support or supplement the description of the proposed effort should be included in the appendix.

In order to facilitate handling, please do not use covers, binders or tabs.

Application forms may be obtained by writing or telephoning: Office of Special Counsel for Immigration Related Unfair Employment Practices, 1100 Connecticut Ave., NW.—suite 800, P.O. Box 65490, Washington, DC 20035–5490. Tels. (202) 653–8121, 1–800–255–7688 (toll-free), (202) 296-0168 (TDD for the hearing impaired), or 1–800–237–2515 (toll-free TDD for the hearing impaired.

Dated: June 18, 1991.

Approved.

**Andrew M. Strojny,**

*Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.*

[FR Doc. 91–14883 Filed 6–21–91; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–7870, et al.]**

### Proposed Exemptions; Equitable Life Assurance Society of the United States

**AGENCY:** Pension and Welfare Benefits Administration.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addresed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemption were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### Equitable Life Assurance Society of the United States (Equitable) Located in New York, NY

[Application No. D–7870]

### Proposed Exemption

#### Section I. Covered Transactions

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the sale, on December 16, 1988, of a 40 percent joint venture interest (the Joint Venture Interest) in the D/E Hawaii Joint Venture (the Joint Venture) by Equitable's General Account (the General Account) to Equitable-managed Separate Account No. 16–IV (the Separate Account) in which two pension plans covered by the Act invest pursuant to the terms of a group annuity contract (the Group Annuity Contract).

In addition, the restrictions of section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of a one-time performance fee (the Performance Fee) and a one-time disposition fee (the Disposition Fee) to Equitable by the Separate Account in connection with certain investment management services rendered by Equitable to the Separate Account if the conditions set forth in section II are met.

#### Section II. General Conditions

(1) The investment of plan assets in the Separate Account, including the terms of the Performance Fee and the Disposition Fee, was approved by a plan fiduciary independent of Equitable.

(2) Each participating plan (the Plan) investing in the Separate Account had total assets that were in excess of $50 million and no such Plan invested more than 10 percent of its assets in the Separate Account.

(3) At the time the transactions were entered into, the terms of the transactions were at least as favorable to the Separate Account as those obtainable in arm's length transactions between unrelated parties.

(4) Prior to making an investment in the Separate Account, each plan fiduciary received offering materials which disclosed all material facts concerning the purpose, structure and operation of the Separate Account and the investment in the Joint Venture.

(5) The total fees paid to Equitable constitute no more than reasonable compensation.

(6) The Performance Fee shall be payable only after achievement of the pre-established average annual returns set forth in the Group Annuity Contract. Two-thirds of the Disposition Fee should

be payable only after the Plans receive a 100 percent return of capital plus a preferred return of 10 percent.

(7) Each Plan shall receive the following from Equitable with respect to its participation in the Separate Account:

(a) Audited financial statements, prepared by independent qualified public accountants, of the Separate Account and the Joint Venture, on an annual basis.

(b) Quarterly reports relating to the overall financial position and operating results of the Separate Account, which include all fees paid by the Separate Account and by the Joint Venture in which the Separate Account participates as well as dollar-weighted and time-weighted rates of return.

(c) Property updates and outlook reports for Separate Account-held properties.

(8) Except in the case of an enforced disposition under the terms of the Joint Venture Agreement (the Joint Venture Agreement), Equitable is precluded from recommending the disposition of the Separate Account during the first eight years of the Separate Account's initial term.

(9) No disposition of the Separate Account shall occur during years eight to ten of the Separate Account's initial term unless Equitable gives advance notice of such disposition to each participating Plan and it receives approval from those Plans holding a majority of interests in the Separate Account.

(10) Each extension of the Separate Account term shall be approved by those participating Plans holding a majority of interests in the Separate Account. In the event of such extension, the Performance Fee shall be payable during the tenth year of the Separate Account based upon an independent appraisal of the Joint Venture Interest as of the date of the vote to extend.

(11) Equitable shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (12) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Equitable and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than Equitable shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (12) below.

(12)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (11) of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(4) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraphs (2)–(4) of this paragraph (12) shall be authorized to examine the trade secrets of Equitable or commercial or financial information which is privileged or confidential.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material fact which are the subject of this exemption.

*Effective Date:* This proposed exemption, if granted, will be effective December 16, 1988.

*Summary of Facts and Representations*

1. Equitable is a mutual life insurance company organized under the laws of the State of New York and subject to the supervision and examination by the Superintendent of Insurance of the State of New York. The firm is one of the largest life insurance companies in the United States. Among the wide variety of insurance products and services it offers, Equitable provides funding, asset management and other services for several thousand employee benefit plans subject to the provisions of Title I of the Act.

Equitable maintains several pooled separate accounts in which pension, profit sharing the thrift plans participate. Equitable also has several single customer accounts and investment management accounts pursuant to which it manages all or a portion of the assets of a number of large plans. Equitable's real estate investment management subsidiary, Equitable Real Estate Investment Management, Inc. provides real estate investment advisory services to Equitable and other clients and property management services with respect to certain properties owned by Equitable accounts.

Equitable has substantial experience in managing real estate investments. Of the $50,301,568,564 in total assets held by Equitable at year-end 1990, Equitable's General Account held $10,822,148,596 in real estate mortgage loans and $2,144,225,868 in equity investments in real property. Additionally, the total assets that Equitable has allocated to real estate investments in its real estate separate accounts were $4,289,685,660.

2. In 1982, Equitable and Daiei Hawaii Investments, Inc. (DHI), an unrelated party, formed a real estate joint venture in Honolulu, Hawaii for the purposes of acquiring, owning, developing, constructing, leasing, operating and managing certain commercial real property referred to herein as "the Ala Moana Complex" (the Ala Moana Complex). The Ala Moana Complex is the sole asset of the Joint Venture. At the time of formation, DHI, a subsidiary of The Daiei, Inc., a Japanese corporation, held (and continues to hold) a 60 percent interest in the Joint Venture. Equitable's General Account held a 40 percent interest in the Joint Venture.

3. Under the provisions of the Joint Venture Agreement, Equitable is the managing co-venturer responsible for conducting the business of the Joint Venture. Overall control of the Joint Venture is, however, shared by the co-ventures through equal representation of both co-venturers on a management committee (the Management Committee) comprised of one representative of Equitable and one representative of DHI. The Management Committee is authorized to make major decisions on behalf of the Joint Venture as specifically enumerated in the Joint Venture Agreement. For example, the Management Committee must approve the selection of a property manager as well as any sale involving the Ala Moana Complex. The decisions of the Management Committee must be unanimous.

4. The Ala Monana Complex consists of a 1.5 million-square foot shopping mall, a shopping plaza, two adjacent office buildings and three adjoining parcels of commercially-zoned land suitable for future development. Located in the Kapiolani Business District of Honolulu, Hawaii, the Ala Monana Complex is bounded by Ala Monana Boulevard, Kapiolani Boulevard, Piikoi Street and Atkinson Drive. The Joint Venture acquired the properties

comprising the Ala Moana Complex from unrelated parties between 1982 and 1985 for an aggregate purchase price of approximately $270 million and it subsequently expanded and improved such properties.[1]

The Ala Moana Complex was appraised in April 1988 by John Child and Company, Inc. and by Hastings, Martin, Conboy, Braig and Associates, Ltd. (the Appraisers), independent real estate appraisal firms also located in Honolulu, Hawaii. The Appraisers determined that the aggregate fair market value of a fee simple interest in the Ala Moana Complex would be $702,850,000 as of January 1, 1989.[2]

5. On December 16, 1988, Equitable formed the Separate Account which is also known as the "Hawaii Properties Fund." The Separate Account is a closed-end, pooled real estate separate account maintained by Equitable in accordance with the laws of the State of New York. The Separate Account has three investment objectives: (a) To provide current income of at least 6.25 percent for its duration; (b) to increase income through the use of successful asset management strategies, including remerchandising (i.e., bringing in more successful tenants) and expansion of the Ala Moana Complex; and (c) to increase the value of the entire Ala Moana Complex through expansion and development. These objectives are consistent with those of the Joint Venture. Seven pension plans participate in the Separate Account. No one Plan may hold more than a 40 percent interest in the Separate Account nor may a Plan's participation in the Separate Account represent more than 10 percent of that Plan's total assets. The minimum investment for each subscribing Plan was $20 million. The decision by each of the Plans to invest in the Separate Account was made by a Plan fiduciary who was independent of Equitable.

6. Of the seven Plans participating in the Separate Account, five Plans are state governmental plans which have invested a total of $220 million in the Separate Account. These Plans and the amount of their investments are as follows: The California State Teachers Retirement System ($100 million); the Colorado Public Employees Retirement Association ($40 million); the Illionis Municipal Retirement Fund ($40 million); the School Employees Retirement System of Ohio ($20 million); and the Utah State Retirement System ($20 million).

The two remaining Plans investing in the Separate Account are corporate pension plans covered by the Act. These Plans are the Ameritech Information Technologies Corporation Pension Trust (the Ameritech Trust) sponsored by the Ameritech Information Technologies Corporation and the Chevron Corporation Master Trust (the Chevron Trust) which is sponsored by the Chevron Corporation.[3] The Ameritech Trust and the Chevron Trust have invested $30 million and $40 million, respectively, in the Separate Account. Equitable represents that both of these Plans are substantial, sophisticated investors with in-house pension staffs that thoroughly assess this type of investment opportunity. In addition, Equitable states that both Plans have engaged their own counsel to represent them in these negotiations and on an ongoing basis with respect to investment in the Separate Account. As noted above, Equitable did not provide investment advice to these Plans in connection with the decision to invest in the Separate Account.

7. It is anticipated that the Separate Account will have a duration of ten years from the date of its inception on December 16, 1988. Prior to the eighth anniversary of the closing date, Equitable is generally precluded from recommending the liquidation of the Separate Account's interests. The one exception is in the case of an enforced disposition resulting from either the activation of a buy/sell mechanism of the Joint Venture by the co-venturer, DHI, or due to circumstances beyond the control of Equitable, such as a default by DHI under the Joint Venture Agreement. During years eight to ten of the Separate Account's initial term, Equitable can recommend a disposition of the Separate Account's assets. However, such a disposition can only occur upon notice to the Plans and if approval of such disposition is received from the holders of a majority of the interests in the Separate Account. In the absence of such approval, Equitable may not unilaterally dispose of the Separate Account's Joint Venture Interest.

By a similar majority vote, the Plans may decide to continue the Separate Account beyond its initial term for a maximum of five, five year extension periods. At any time during an extension period, Equitable can recommend the disposition of the Separate Account's assets. However, no disposition can occur without a vote of the majority of the holders of interests in the Separate Account.

Even if the holders of a majority of the interests in the Separate Account approve liquidation, Equitable is still not free to conclude the disposition unilaterally. Instead, Equitable represents that the Joint Venture Agreement accords DHI a significant role which will vary depending upon the type of disposition being considered by Equitable. For example, if Equitable were to offer the Separate Account's Joint Venture Interest to a third party who accepted this offer, no disposition could occur without the written consent of DHI regardless of the fact that the holders of a majority of interests in the Separate Account had approved liquidation. Or, where Equitable receives a bona fide offer from a third party for the Joint Venture Interest and it wishes to accept that offer, the Joint Venture Agreement provides DHI with a right of first refusal to purchase the Joint Venture Interest for the amount that the Separate Account would have received had the third party offer been accepted. DHI has 45 days from the receipt of the third party offer in which to exercise the right of first refusal.[4]

8. Concurrent with the establishment of the Separate Account, on December 16, 1988, Equitable transferred the 40 percent Joint Venture Interest held by its General Account to the Separate Account. Equitable also notified DHI of the contemplated transaction and in the absence of receiving any objection, Equitable and the Plans consummated the sale. On the date of closing, each participating Plan entered into an Investment Allocation Agreement and a

[1] In this regard, the Joint Venture implemented a remerchandising strategy shortly after its acquistion of the shopping mall portion of the Ala Moana Complex. This resulted in a reorganization and consolidation of existing stores in the mall, the addition of new specialty shops and a food court, and the renovation of the mall's center court. In addition, the Joint Venture had a convenience center constructed on the site of the shopping plaza and an office building on the site of previously vacant land.

[2] Equitable attributes the increase in fair market value of the Ala Moana Complex to economic and market forces existing in Hawaii in the mid-1980's as well as to the successful management of the Joint Venture.

[3] The Ameritech Trust holds the assets of the Ameritech Pension Plan and the Ameritech Management Pension Plan. As of December 31, 1990, the Ameritech Trust had 50,150 participants and total assets of $12 billion of which 10 percent was allocated to various real estate investments. The Chevron Trust holds the commingled assets of several small pension plans and the Chevron Retirement Plan. As of December 31, 1990, the Chevron Trust had 78,000 participants and total assets of $3.7 billion of which 11.5 percent was allocated to real estate investments.

[4] In contrast, it should be noted that DHI's approval is not required for each extension of the Separate Account beyond its initial term. Equitable explains that for insurance purposes, it is treated as the legal owner of the Joint Venture regardless of the fact that the Joint Venture Interest has been allocated to the Separate Account.

Group Annuity Contract with Equitable. The Group Annuity Contract provided that of the $290 million invested, $281.2 million would serve as the consideration for the sale of the Joint Venture Interest (the exact value of such Interest having been based upon the third party appraisals) and $5.86 million would reflect consideration paid to Equitable for providing funding up to a cap of $13,560,000 during the first three years of the Separate Account in order to guarantee a 6.25 percent cash yield on the Plans' investment. After this consideration was paid to Equitable, $3 million was retained by the Separate Account for expenses associated with the development of the Ala Moana Complex. No real estate fees or commissions were paid by the Plans in connection with the sale.[5]

9. Equitable believes that the sale of the Joint Venture Interest by the General Account to the Separate Account may have resulted in the commission of a prohibited transaction in violation of the Act. In this regard, Equitable is requesting exemptive relief from the Department in connection with the sale transaction. Equitable represents that it is a party in interest with respect to the Ameritech Trust and the Chevron Trust because independent investment managers for these Plans have ocasionally used an Equitable affiliate, Donaldson, Lufkin and Jenrette, Inc. (DLJ) to execute securities brokerage transactions and to conduct research on behalf of these Plans.[6] Moreover, Equitable notes that the Ameritech Trust and the Chevron Trust have confirmed that they have had no direct dealings with DLJ and they have not entered into directed brokerage arrangements with DLJ. Rather, Equitable explains that the appointed investment managers for these Plans, which are independent of the Plan sponsors, appear to have utilized DLJ no more than they have used any broker. According to Equitable, the Ameritech Trust and the Chevron Trust have assured Equitable that their investment managers were unaware of the sale transaction discussed herein.

10. After the sale of the Joint Venture Interest, Equitable began serving as the investment manager for the Separate Account. For services rendered to the Separate Account, Equitable is entitled to receive certain fees from the participating Plans based upon a multi-part fee structure that has been established for the Separate Account and approved by the investing Plans. Equitable represents that the payment of fees by the participating Plans, with the exception of the two fees described below, conforms to the requirements of section 408(b)(2) of the Act.[7]

a. *The Performance Fee* is a one-time fee payable to Equitable that is calculated based upon the following formula: "10 percent of the amount by which the cumulative average annual return [8] exceeds 12.5 percent up to and including 14 percent, plus 20 percent of any amount by which the average annual return exceeds 14 percent". The Performance Fee is payable at the time of the disposition of the Separate Account, or earlier, if the Joint Venture Interest is sold prior to the end to the initial ten year term of the Separate Account. Should Equitable recommend the disposition of the Separate Account during the eighth or ninth years that the Separate Account is in effect, the investing Plans, by majority vote, and DHI must approve such disposition and, in doing so, the payment of the Performance Fee. In addition, if a majority of the holders of interests in the Separate Account vote to extend the life of the Separate Account beyond its initial ten year term, the Performance Fee is payable at the end of the ten year term. In this situation, a three member appraisal panel (comprised of independent appraisers selected by Equitable, the Plans (as a group) and jointly by the two Equitable/Plans' designees) will value the Joint Venture Interest as of the date of the vote to extend and the Performance Fee will be calculated as if the Joint Venture Interest had been sold. At least two of the three appraisers on the panel must concur with the valuation determined. In the event of a deadlock (i.e., if each of the three appraisers is unable to agree with any of the other appraisers), the appraisers will settle their dispute through binding arbitration.

b. *The Disposition Fee* payable to Equitable is equal to .75 percent of the Separate Account's interest in the gross disposition price of the real estate assets of the Joint Venture, or the Joint Venture Interest. One-third of the fee is payable at the time of disposition and the remaining two-thirds portion of the Disposition Fee is payable only after the participating Plans receive a 100 percent return of capital plus a 10 percent average annual return as defined in the above footnote. If Equitable recommends a disposition of the Separate Account during its eighth or ninth year, once again, a majority of the interests held by the Plans in the Separate Account and DHI must approve the diposition.

Equitable believes that an exemption is appropriate in connection with its receipt of the Performance and the Disposition Fees. In this regard, Equitable represents that it, Institutional Property Consultants, Inc. (IPC), an independent real estate advisory firm, and other representatives of the Plans have negotiated the fees at arm's length and that such fees have been approved by the Plans. Equitable represents that the following extensive safeguards are present and inherent to the arrangement itself: (a) A system of internal checks and balances that are contained in the multi-part fee structure which are designed to prevent the possibility of abuse [9], (b) a fee structure that reflects

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[5] Equitable represents that the Joint Venture will function as a "real estate operating company" (REOC) within the meaning of 29 CFR 2510.3-101(e). Accordingly, Equitable explains that transactions involving the assets of the Joint Venture will not be deemed to involve plan assets and will not be subject to the prohibited transaction provisions of the Act. In this regard, the Department is providing no opinion or exemptive relief herein with respect to the provision of services and any fees that are received by Equitable as managing venturer of the Joint Venture. Further, the Department notes that in making the decision to invest in a REOC, plan fiduciaries should consider, among other factors, that the fiduciary responsibility provisions of the Act do not apply to the operation of the REOC.

[6] To the best of its knowledge, Equitable asserts that it has no other ongoing dealings with the Ameritech Trust. In the case of the Chevron Trust, Equitable represents that it has issued a group annuity contract valued at $1,416,323 to a plan participating in the Chevron Trust.

[7] The other components of the fee structure include a quarterly asset management fee, an investment fee on any additional contributions (above the $290 million aggregate initial investment made by the participating Plans in the Separate Account) to acquire additional assets and a development fee on any new contributions that are made to expand or improve the Joint Venture properties. In this regard, the Department notes that the relief provided by this proposed exemption, if granted, is limited solely to the Performance and Disposition Fees described herein.

[8] The term "average annual return" as used herein is defined as the sum of (a) total income payments to a participating Plan (less all fees payable by such Plan) plus (b) the net proceeds of any disposition distributable to the Plan (after deduction of the Disposition Fee), less the Plan's total contributed capital, divided by the Plan's contributed capital adjusted to reflect the amount of time the Plan's contributions have been invested in the Separate Account, divided by the actual term of the Separate Account expressed as a number of full and partial years.

[9] In this regard, Equitable notes that the mechanism of internal checks and balances contained in the fee structure for the Separate Account permits increases in certain component fees to be offset by corresponding decreases in other fees. Equitable beleives that such a mechanism is designed to ensure that it does not receive more than reasonable compensation from the Separate Account.

In addition, the mechanism of internal checks and balances is demonstrated by the performance benchmarks that the Separate Account must achieve in order for Equitable to be paid the Performance Fee as well as by the return of capital and the preferred return provisions of the Disposition Fee. Equitable explains that these

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the product of arm's length negotiation and which has been approved by IPC, an independent fiduciary acting on behalf of the participating Plans; (c) the absence of unilateral authority on the part of Equitable to cause the payment of such fees and Equitable's limited ability to recommend the liquidation of the Separate Account; (d) a level of investor sophistication in the Ameritech and Chevrom Trusts which enables each Plan to engage in on-going and independent monitoring of Equitable; (e) continued monitoring of the exempted transactions on behalf of the public Plans participating in the Separate Account by IPC; and (f) the reporting and disclosure of financial and other information to the Plans with respect to their participation in the Separate Account and Joint Venture as detailed in paragraph 11 below. Equitable believes that these safeguards will prevent the possibility of any abuse. However, Equitable also recognizes that, as part of its management of the Separate Account, it has the discretionary authority to affect the timing and/or amount of the Performance and Disposition Fees. Therefore, Equitable has requested exemptive relief from sections 406(b)(1) and (b)(2) of the Act with respect to these fees.

11. Equitable represents that it is providing various oral and written reports to the participating Plans on a quarterly, semi-annual and annual basis. In this regard, Equitable states that it is required under the Group Annuity Contract to provide all participating Plans with audited financial statements of both the Separate Account and the Joint Venture. In addition, Equitable represents that it provides each investing Plan with quarterly financial reports of such Plan's investment in the Separate Account, including dollar-weighted and time-weighted rates of return. Moreover, Equitable explains that it periodically provices that portfolio manager for the Separate Account with written property updates and outlook reports for each of the properties in the Ala Moana Complex as of the current reporting period. Further, Equitale states that at the inception of the Separate Account, it established a committee of representatives of the participating plans. Equitable explains that it meets with this committee at least annually to review the activity and performance of the Separate Account.

12. For purposes of participating in the Separate Account as well as evaluating the terms of the sale and the receipt of fees by Equitable for its services as investment manager to the Separate Account, the Chevron Trust, the Ameritech Trust and the five public Plans decided to retain IPC, an independent real estate advisory firm which is principally located in Atlanta, Georgia and San Diego, California. IPC has substantial experience in providing consulting advice and valuations to U.S.-domiciled tax-exempt institutional clients having assets exceeding $200 billion. Clients of IPC include large public and corporate pension plans. The firm is also the largest real estate pension consultant in the United States and has capital allocated to real estate of approximately $20 billion. IPC is totally unaffiliated with Equitable and Equitable had no part in negotiating the tems of IPC's fee arrangements with each Plan participating in the Separate Account. The investing Plans appointed IPC as real estate advisor and consultant for purposes of analyzing the transaction described herein.

The five public Plans are retainer clients of IPC. These Plans compensate IPC on a flat fee basis. The Chevron Trust and the Ameritech Trust, which are not on-going retainer clients of IPC, appointed IPC to provide an analysis of the transactions similar to that provided to the public Plan investors. The Chevron and Ameritech Plans have also compensated IPC on a flat fee basis.

Pursuant to their respective arrangements, IPC furnished each Plan with a report evaluating the Ala Moana Complex, reviewing the price and other terms of Equitable's proposal, identifying certain conditions to be fulfilled before closing and recommending whether and on what basis each Plan should proceed with the investment. Prior to the date of closing, IPC issued a letter to each Plan discussing certain conditions precedent to the sale and recommending that the Plans move forward with the funding of the Separate Account. In turn, the Plans relied upon IPC's recommendation by investing in the Separate Account.

In examining all aspects of the sale transaction, IPC conducted its own financial analysis which included reviews of ten year cash flow pro forma statements developed by Equitable Real Estate Investment Management, Inc. (EREIM), a wholly owned subsidiary of Equitable that acts as investment advisor to Equitable for the Separate Account, as well as the appraisal reports that had been prepared of the Ala Moana Complex by the Appraisers. IPC represents that it agreed with the assumptions and valuation methodologies utilized by EREIM and the Appraisers in their reports. IPC also states that although it reviewed information regarding the Ala Moana Complex that had been furnished to it by Equitale and EREIM, it conducted an independent analysis of such data and drew its own conclusions with regard to the investment independently of any Equitable influence. IPC further asserts that it performed on site inspections of the Ala Moana Complex and found such properties to be well-managed and in good condition. With regard to the position of the Ala Moana Complex in its surrounding market, IPC represents that it analyzed competing shopping centers and office complexes and it concluded that the Ala Moana Complex would continue to dominate the regional shopping market in terms of location, merchandising selection and probable revenues. IPC also concluded that the two office buildings which from part of the Ala Moana Complex are Class "A" office buildings that hold a visual as well as an economic command of the market area and, as such, are positioned for long-term profitability. In addition to these analyses and investigations, IPC indicated that it would develop guidelines for a long-term asset management program established for the Separate Account. IPC said that such guidelines would addrss asset and portfolio management matters as well as considerations that were germane to the Ala Moana Complex.

IPC represents that it also reviewed the fees that were to be paid by the Separate Account and it determined such fees to be reasonable and competitive both in specific part and as a whole. In this regard, IPC recommended that certain changes be made to the Performance Fee in order to provide the Plans with a preferred return of capital. These changes were subsequently incorporated into the Group Annuity Contract that was provided by Equitable to each investing Plan.

As a result of its independent analysis, IPC recommended that the Plans make their respective investments in the Separate Account. Each Plan then executed a Group Annuity Contract with Equitable on December 16, 1988 and the sale was entered into in the manner described above.

13. Since the date of closing, IPC has monitored the economic performance and general operations of the Separate Account and it has provided quarterly performance reports to each of its retainer clients. Such reports contain the following information: (a) The current investment value of individual assets

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internal checks and balances essentially guarantee that it will receive such fees only after the participating Plans have realized an adequate return on their investment in the Separate Account.

and the value of the portfolio; (b) the economic performance of individual assets and the portfolio in terms of yields and returns; (c) reporting variances; (d) a portfolio composition characteristics summary and a comparison of IPC benchmark indices; and (e) a summary information sheet on individual assets. Although not required to do so, IPC represents that it has advised representatives for the Ameritech and Chevron Trusts on a periodic, but informal basis regarding said operations for no compensation.

In the event of a discrepancy between the kinds of information that is supplied to the participating Plans by IPC and by Equitable, Equitable states that it will confer with IPC at the annual meeting of participating Plans to ensure that any misinformation is corrected. Also, Equitable represents that it will afford IPC and all participating Plans the right to inspect Equitable's books and records to verify the accuracy of information that has been disseminated.

14. In summary, it is represented that the transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act, among other things, because: (a) The decision by each of the Plans to invest in the Separate Account was made by Plan fiduciaries who are totally unrelated to Equitable; (b) each Plan investing in the Separate Account is a large, well-funded plan with substantial real estate assets and experienced in-house investment staff who are familiar with real estate investments and the types of incentive fees paid with respect to these investments; (c) the participating Plans retained an independent consultant, IPC, to review, negotiate and approve each Plan's investment in the Separate Account as well as the sale of the Joint Venture Interest by the General Account to the Separate Account and the multi-part fee structure; (d) the participating Plans will receive periodic reporting and disclosure regarding the Separate Account and the Joint Venture; (e) IPC will continue to monitor the interests of the public Plans investing in the Separate Account while independent Plan fiduciaries for the Ameritech Trust and the Chevron Trust will monitor their respective Plan's investments; and (f) the sale of the Joint Venture Interest by the General Account to the Separate Account involved a lump sum cash payment that was based upon the independently appraised value of the Joint Venture Interest and it did not involve the payment of any real estate fees or commissions by any of the investing Plans.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be the subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of June, 1991.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 91–14922 Filed 6–21–91; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** Office of Records Administration, National Archives and Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as requred by 44 USC 3303a(a).

**DATES:** Request for copies must be received in writing on or before August 8, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESSES:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or

a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

**Schedules Pending**

1. Department of the Air Force (N1–AFU–91–27). Career information and counseling records.

2. Department of the Air Force (N1–AFU–91–28). Equipment receipt lists.

3. Department of the Air Force (N1–AFU–91–30). Fixed communications-computer systems supply records.

4. Department of the Air Force (N1–AFU–91–32). Reports of payments to individuals required by IRS.

5. Department of the Air Force (N1–AFU–91–33). Records authorizing on-base day care providers.

6. Department of the Air Force (N1–AFU–91–34). Routine training materials.

7. Department of the Air Force (N1–AFU–91–35). Applications for Thrift Savings Plan participation.

8. Defense Logistics Agency (N1–361–91–10). Routine and facilitative records relating to distribution.

9. Defense Logistics Agency (N1–361–91–11). Routine and facilitative records relating to small business programs.

10. ACTION, Office of Management and Budget (N1–362–91–2). Routine administrative records relating to recruitment and finance.

11. ACTION, Office of Management and Budget (N1–362–91–3). Working files related to grant projects and records relating to the deferment of student loans for VISTA volunteers.

12. ACTION, Office of Management and Budget (N1–362–91–4). Agreements made with other agencies for routine administrative and housekeeping functions.

13. Department of Agriculture, Forest Service (N1–95–91–1). Administrative, local and unreadable electronic records that will not be converted to a new system.

14. Department of Agriculture, Forest Service (N1–95–91–2). Routine records concerning the administration of telecommunication activities.

15. Department of Agriculture, World Agricultural Outlook Board (N1–355–91–1). Routine administrative records concerning emergency preparedness, the distribution of information and inquiries from other federal agencies.

16. Commodity Futures Trading Commission (N1–180–81–1). Dockets of cases heard before the Department of Agriculture under the Commodity Exchange Act, 1947–1964.

17. Department of Energy (N1–434–91–3). Visitor tour records of the Stanford Linear Accelerator Center.

18. Federal Communications Commission, Common Carrier Bureau (N1–173–91–3). Statistical summaries, price lists, and other compliance-related records relating to telephone and telegraph carriers, 1923–55.

19. Federal Deposit Insurance Corporation, Office of Legislative Affairs (N1–34–91–3). Proposed legislation, Congressional correspondence, and hearing records.

20. Federal Deposit Insurance Corporation, Office of Corporate Communication (N1–34–91–6). Public relations and special events records.

21. General Accounting Office (N1–411–91–1). Fraud Hotline case files and related records.

22. Department of Health and Human Services, Centers for Disease Control (N1–442–91–3). Electronic data, input forms and printouts for the Vessel Sanitation and Medical Examiner/Coroner Information Sharing Programs; inputs to and special outputs from the Sudden Unexplained Death Syndrome Database.

23. Department of Justice, Federal Bureau of Investigation (N1–65–86–13). Program records of the National Center for the Analysis of Violent Crime.

24. National Aeronautics and Space Administration, Marshall Space Flight Center (N1–255–91–2). External tank research and development reference reports, 1978–1985.

25. National Aeronautics and Space Administration, Marshall Space Flight Center (N1–255–91–5). Research and development program briefing files.

26. National Aeronautics and Space Administration, Marshall Space Flight Center (N1–255–91–11). Experimenter data tapes for International Satellite for Ionospheric Studies (ISIS–2), 1971–1978.

27. National Archives and Records Administration, Office of the National Archives, Textual Projects Division (N2–38–91–1). Accessioned records consisting of the Department of the Navy, Naval Historical Center. Copies of manuscripts submitted to the Office of Public Relations and miscellaneous books and periodicals, 1940–45.

28. Panama Canal Commission (N1–185–91–1). Records relating to the publication of rules in the Federal Register and Code of Federal Regulations.

29. Office of Price Stabilization (N1–295–91–1). Protest case files, subject files, price surveys and other documentation relating to routine operations (permanently valuable records are scheduled for immediate transfer to the National Archives).

30. Department of State, Bureau of International Scientific and Technological Affairs (N1–59–91–2). Routine and facilitative files.

31. Department of State, Bureau of Educational and Cultural Affairs (N1–59–91–15, –21, and –22). Routine, facilitative, and grant files.

32. Tennessee Valley Authority, Resource Development (N1–142–90–17). Comprehensive records schedule for Land Between the Lakes recreation area.

33. Department of the Treasury, Bureau of Public Debt (N1–53–91–1). Files dealing with the issuance of government securities.

Dated:

**Don W. Wilson,**

*Archivist of the United States.*

[FR Doc. 91–14943 Filed 6–21–91; 8:45 am]

BILLING CODE 7515–01–M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 11–13, 1991, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the Federal Register on May 23, 1991.

**Thursday, July 11, 1991**

*8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

*8:45 a.m.–10:15 a.m.: Proposed Schedule for Review of Evolutionary and Advanced Nuclear Power Plant Designs* (Open)—The Committee will review the schedule proposed by the

NRC staff for review of evolutionary and advanced nuclear power plant designs, the EPRI Advanced LWR Requirements Document, and the effort to revise regulatory guidance and the NRC standard review plan (SECY-91-161). Representatives of the NRC staff and DOE will participate in this session, and representatives of the nuclear industry may participate, as appropriate.

*10:30 a.m.-11:a.m.: Proposed Actions for Improving Guidance for Performing Regulatory Analyses* (Open)—The Committee will hear a briefing by and hold discussions with members of the NRC staff regarding proposed actions to improve guidance for the performance of regulatory analyses (SECY-91-114).

*11:30 a.m.-12:15 p.m.: Activities of ACRS Subcommittees and Members* (Open)—The Committee will hear reports and hold discussions regarding recent ACRS subcommittee meetings and related members' activities, including the May 30, 1991 Advanced BWRs Subcommittee meeting, June 18-19, 1991 Regional Programs Subcommittee meeting, a visit to the Vermont Yankee nuclear plant, and an NRC staff seminar on nuclear power plant aging.

*1:15 p.m.-3:15 p.m.: NUMARC/EPRI Fire Vulnerabilities Evaluation Methodology* (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of NUMARC/EPRI and the NRC staff regarding the NUMARC/EPRI fire vulnerabilities evaluation (FIVE) methodology and the draft NRC staff position on this matter.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

*3:30 p.m.-5:30 p.m.: Meeting with Director, NRC Officew for Analysis and Evaluation of Operational Data* (Open)—The Committee will hear a briefing and hold discussions regarding items of mutual interest, including the status and general use of the NRC performance indicator program, the role/impact of AEOD activities on the regulatory process, and the use of PRA by the Committee to Review Generic Requirements in its decisionmaking process.

*5:30 p.m.-6:30 p.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss the proposed report to NRC regarding the use of PRA in the regulatory process.

**Friday, July 12, 1991**

*8:30 a.m.-12 noon: General Electric Company SBWR* (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the General Electric Company and the NRC staff, as appropriate, regarding the standard BWR nuclear powr plant design.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this project.

*1 p.m.-2:30 p.m.: Fitness for Duty* (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding incidents at nuclear power plants that have involved fitness for duty considerations. Representatives of the nuclear industry may participate, as appropriate, in those limited portions of this session where they have specific information to contribute.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

*2:45 p.m.-4:15 p.m.: Reactor Operating Experience* (Open)—The Committee will hear briefings by and hold discussions with members of the NRC staff regarding recent incidents and events at nuclear power plants, including a loss of off-site power event at the Vermont Yankee nuclear station and a transformer failure/generator fire at the Maine Yankee nuclear plant.

*4:15 p.m.-5 p.m.—Future ACRS Activities* (Open)—The members will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

*5 p.m.-6:30 p.m.: Preparation of ARS Reports to the NRC* (Open)—The Committee will discuss proposed ACRS reports to the NRC regarding items that were not completed at previous meetings, various technical issues, and matters considered during this meeting, including use of PRA in the regulatory process; proposed resolution of GI-130, Essential Service Water System Failures at Multi-Unit Sites; the scope and nature of the General Electric ABWR review; and the NRC staff assessment of risk during low power and shutdown operations at nuclear power plants.

**Saturday, July 13, 1991**

*8:30 a.m.-11:30 a.m.: Preparation of ACRS Reports to NRC* (Open/Closed)—The Committee will discuss proposed ACRS reports to the NRC regarding items noted above and items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matter being considered and information the release of which would represent a clearly unwarranted invasion of personal privacy.

*11:30 a.m.-12:30 p.m.: NRC Safety Research Program* (Open)—The Committee will discuss the scope and nature of the proposed ACRS report to the NRC regarding the NRC safety research program.

*1:30 p.m.-2:30 p.m.: Key Technical Issues for Future Nuclear Plants* (Open)—The Committee will discuss a proposed list of key technical issues in need of early resolution for evolutionary and advanced nuclear power plants.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1990 (55 FR 40249). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statments should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Exective Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetins may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such re-scheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to discuss Properietary Information applicable to the matter being considered (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8 a.m. and 4:30 p.m.

Dated: June 19, 1991.

**John C. Hoyle,**

*Advisory, Committee Managment Officer.*

[FR Doc. 91-14980 Filed 6-21-91; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Cost Accounting Standards Board; Thresholds for Cost Accounting Standards Coverage

**ACTION:** Notice.

**SUMMARY:** The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comment concerning a Staff Discussion Paper on the topic of revised thresholds for Cost Accounting Standards coverage, and Disclosure Statement requirements.

**DATES:** Requests for copies of the Staff Discussion Paper, and any comments upon its contents, should be received by August 23, 1991.

**ADDRESSES:** Requests for a copy of the Staff Discussion Paper, or comments upon its contents, should be addressed to Mr. Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. Attn: CASB Docket 91-04.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202-395-3254).

**SUPPLEMENTARY INFORMATION:** The Office of Federal Procurement Policy, Cost Accounting Standards Board, is releasing a Staff Discussion Paper concerning revised thresholds for application of the Cost Accounting Standards (CAS) to negotiated Government contracts. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standard, to consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard. The Board is considering action on this topic in order to adjust CAS applicability thresholds to levels reflecting experience with price inflation since the last quarter of 1977. In the intervening fourteen years, CAS applicability thresholds, last promulgated by the previous Board on September 12, 1977, under the authority of Public Law 91-379, have not been adjusted to reflect this inflation experience.

For the purpose of the Discussion Paper, the staff is proposing a modified CAS coverage threshold of $20 million (actual inflation experience rounded to the nearest five million dollar increment). This represents a doubling of the present threshold, and is consistent with inflation experience as measured by the consumer price index from the last quarter of calendar year 1977 through the first quarter of 1991.

The Board is also considering an adjustment in the so-called "trigger contract" threshold. This is the dollar threshold associated with the initiation of CAS coverage, in a segment or business unit, based on the award of a single negotiated Government contract. The present trigger contract threshold is a single negotiated national defense contract exceeding $500,000. Once awarded a negotiated national defense contract of at least this dollar amount in a single cost accounting period, government contractors are subject to some form of CAS coverage (either full or modified) for all subsequently awarded negotiated national defense contracts exceeding $100,000. Public Law 100-679 raised the threshold for individual CAS contract coverage to $500,000 (see proposed CAS recodification, 56 FR 26968), but did not address the issue of an increased threshold for the initial CAS trigger contract. Without such an adjustment, the minimum individual CAS contract threshold, and the initiating CAS "trigger contract" threshold will be one and the same. In light of the Board's consideration of the extension of CAS coverage to many of the negotiated contracts of the civilian procuring agencies (see 56 FR 12571), the staff believes that an adjustment in the trigger contract threshold for the initiation of CAS coverage may be appropriate. The staff proposal is for a doubling of the "trigger contract" dollar threshold applicable to initiation of CAS coverage from $500,000 to $1 million.

The purpose of the Staff Discussion Paper is to solicit public comment with respect to the Board's consideration of the topic of various thresholds applicable to CAS coverage. It reflects research accomplished to date by the staff in the respective subject area, and as such has not been formally approved by the Board.

Dated: June 18, 1991.

**Allan V. Burman,**

*Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.*

[FR Doc. 91-14861 Filed 6-21-91; 8:45 am]

BILLING CODE 3110-01-M

## POSTAL RATE COMMISSION

**[Order No. 888]**

### Order Granting Motion for Extension and Explaining Procedural Matters

Issued June 18, 1991.

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W. H. "Trey" LeBlanc, III; Patti Birge Tyson.

In the Matter of San Francisco Main Post Office, California 94101 (Paul A. Lovinger, et al., Petitioners).

On June 17, 1991, the Commission received a motion for an extension of time in which to respond to the Postal Service's motion to dismiss this appeal. The Petitioners request one-week extensions for the filing of their response to the motion and for the filing of their Participant Statement or Initial Brief. We are granting that motion, as well as adjusting the other procedural dates. We believe we can provide this additional time to the Petitioners without jeopardizing our ability to issue a decision by the procedural deadline of September 18, 1991. The revised Procedural Schedule is attached to this order.

The Commission has received a number of intervention notices in this appeal. As is the Commission's practice, these interventions will be consolidated into the docket established for the consideration of this appeal, Docket No. A91-4. A number of intervenors have requested that a hearing be held in San Francisco, California. The only "hearing" that could be held in a post office closing appeal case is an oral argument. As explained at 39 CFR 3001.116, oral argument will only be held on those unusual cases where it is a necessary addition to the written arguments presented by the parties. The Commission's experience is that written presentations are adequate. That section of our rules of practice and procedure also points out that oral arguments will be held in Washington, DC.

*The Commission orders:*

(A) The Petitioners' motion for an extension of time is granted.

(B) The Procedural Schedule attached to this order is adopted in Docket No. A91–1.

Charles L. Clapp,

*Secretary.*

San Francisco Main Post Office, California 94101

| | |
|---|---|
| May 21, 1991 | Filing of Petition |
| May 30, 1991 | Notice and Order of Filing of Appeal |
| June 17, 1991 | Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]. |
| July 2, 1991 | Petitioners' Participant Statement or Initial Brief [see 39 CFR 3001.115(a) and (b)]. |
| July 23, 1991 | Postal Service Answering Brief [see 39 CFR 3001.115(c)]. |
| August 7, 1991 | Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)]. |
| August 4, 1991 | Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]. |
| September 18, 1991. | Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]. |

[FR Doc 91–14921 Filed 6–21–91; 8:45 am]

BILLING CODE 7710–FW–M

## Cancellation of Commission Visits

Notice is hereby given that the visits of Chairman Haley, Commissioner LeBlanc and other members of the Advisory Staff previously scheduled for June 18 and June 19, 1991 to Scan-Code, East Hartford, Connecticut and ADVO-System, Windsor, Connecticut, appearing in the Federal Register of June 7, 1991 at page 26446 (FR Doc. 91–13493), are cancelled.

Charles L. Clapp,

*Secretary.*

[FR Doc. 91–14870 Filed 6–21–91; 8:45 am]

BILLING CODE 7710–FW–01

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

*Agency Clearance Officer:* Kenneth A. Fogash, (202) 272–2141.

*Upon Written Request Copy Available From:* Securities and Exchange Commission Office of Filings, Information and Consumer Services, Washington, DC 20549.

**Extension**

File No. 270–48, Form 10–K
File No. 270–51, Form 10
File No. 270–64, Form S–11
File No. 270–55, Form 8–B
File No. 270–61, Form S–3

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 extension of the following: Form 10–K; Form 10; Form S–11; Form 8–B; Form S–3. The forms and rule provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly traded securities provide investors and the marketplace with adequate information. Form 10–K affects 9,486 filers for a total of 16,135,687 burden hours; Form 10 affects 170 filers for a total of 19,210 burden hours; Form S–11 affects 359 filers for a total of 308,740 burden hours; Form 8–B affects 59 filers for a total of 472 burden hours; and Form S–3 affects 1,730 filers for a total of 724,870 burden hours. The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey of the cost of the Commission's 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 the Securities and Exchange Commission rules and forms to Kenneth A . Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0063, 0064, 0067, 0068, 0073), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 1, 1991.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91–14886 Filed 6–21–91; 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.

**Rescission**

File No. 270–303—Rule 6c–9 and Form N–6C9

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 (the "Commission") has submitted for OMB approval the rescission of Rule 6c–9 and Form N–6C9 under the Investment Company Act of 1940 (the "Act"). The rule permits a foreign bank or the bank's finance subsidiary to offer or sell its debt securities or non-voting preferred stock in the United States without registering as an investment company under the Act. The form is filed by foreign entities seeking to rely on the rule. The Commission's adoption of Rule 3a–6 and related rule changes, which except foreign banks and foreign insurance companies from the Act's definition of "investment company," has made the exemption provided by the rule unnecessary.

Each of the estimated one hundred respondents annually has incurred an average estimated one burden hour to comply with the requirement to file the form, which will now no longer be incurred. This 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 representative survey or study of the cost 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, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: June 3, 1991.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91–14887 Filed 6–21–91; 8:45 am]

BILLING CODE 8010–01–M

### Forms Under Review by Office of Management and Budget

*Agency Clearance Officer:* Kenneth Fogash, (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission Office of Filings, Information and Consumer Services Washington, DC 20549.

New, Form F–11, File No. 270–353
New, Form F–12, File No. 270–354
New, Form 13E4H, File No. 270–355
New, Form 14D1C, File No. 270–356

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44

U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval new forms under the Securities Act of 1933 (1933 Act), and the Securities Exchange Act of 1934 (1934 Act) to be adopted pursuant to the Commission's rulemaking authority. The proposed forms are as follows:

Form F–11, registration pertaining to equity rights offerings by foreign issuers, (1933 Act),
Form F–12, registration of securities to be issued in an exchange offer, (1933 Act),
Form 14D1C, third party tender offer form (1934 Act), and
Form 13E4H, issuer tender offer form, (1934 Act).

The staff estimates that up to approximately 107 foreign companies may avail themselves of the new forms per year at an estimated average burden of two hours per response per form. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed 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, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 12, 1991.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91–14888 Filed 6–21–91; 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.

June 18, 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:

Societe National Elf Aquitane
American Depository Shares each representing ½ and ordinary share, FF 50 Nominal Value (File No. 7–6998)

This security is 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 July 10, 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.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 91–14890 Filed 6–21–91; 8:45 am]

BILLING CODE 8010–01–M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 18, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Club Med, Inc.
American Depositary Receipts (File No. 7–6962)
Coles Myer Ltd.
American Depositary Receipts (File No. 7–6963)
Curragh Resources, Inc.
American Depositary Receipts (File No. 7–6964)
Dickenson Mines Ltd.
Class A American Depositary Receipts (File No. 7–6965)
Domtar, Inc.
American Depositary Receipts (File No. 7–6966)
Electrochemical Industries
American Depositary Receipts (File No. 7–6967)
Elscint Ltd.
American Depositary Receipts (File No. 7–6968)
Emerging Germany Fund
Common Stock, $.01 Par Value (File No. 7–6969)
Emerging Mexico Fund
Common Stock, $.01 Par Value (File No. 7–6970)
ETZ Lavud, Ltd.
American Depositary Receipts (File No. 7–6971)
Europe Fund
Common Stock, $.01 Par Value (File No. 7–6972)
FAI Insurances Ltd.
American Depositary Receipts (File No. 7–6973)
Global Ocean Carriers, Ltd.
American Depositary Receipts (File No. 7–6974)
Huntington International Holdings
American Depositary Receipts (File No. 7–6975)
Indonesia Fund
Common Stock, $.01 Par Value (File No. 7–6976)
Inter City Products Corp.
American Depositary Receipts (File No. 7–6977)
Intertan, Inc.
American Depositary Receipts (File No. 7–6978)
Irish Investment Fund
Common Stock, $.01 Par Value (File No. 7–6979)
Italy Fund
Common Stock, $.01 Par Value (File No. 7–6980)
Jakarta Growth Fund
Common Stock, $.01 Par Value (File No. 7–6981)
Kubota Ltd.
American Depositary Receipts (File No. 7–6982)
Laser Industries, Ltd.
American Depositary Receipts (File No. 7–6983)
Luxottica Groupt SPA
American Depositary Receipts (File No. 7–6984)
Malartic Hygrade Gold Mines
American Depositary Receipts (File No. 7–6985)
MC Shipping, Inc.
American Depositary Receipts (File No. 7–6986)
Mitsubishi Bank Ltd.
American Depositary Receipts (File No. 7–6987)
Montecatini Edison SPA
American Depositary Receipts (File No. 7–6988)
NFC, PLC
American Depositary Receipts (File No. 7–6989)
National Australia Bank
American Depositary Receipts (File No. 7–6990)
National Westminster Bank
American Depositary Receipts (File No. 7–6991)
North American Vaccine
American Depositary Receipts (File No. 7–6992)
North Canadian Oils, Ltd.
American Depositary Receipts (File No. 7–6993)
Northgate Exploration, Ltd.
American Depositary Receipts (File No. 7–6994)

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 July 10, 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 5th 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 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.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 91-14891 Filed 6-21-91; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-29311; File No. SR-PTC-91-08]**

## Self-Regulatory Organizations; Participants Trust Company; Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Elimination of Prorated Charges to Participants for Principal and Interest Advances

June 14, 1991.

### I. Introduction

On June 4, 1991, the Participants Trust Company ("PTC") filed a proposed rule change (File No. SR-PTC-91-08)[1] with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] The Commission is publishing this notice to solicit comments from interested persons. As discussed below, this order also approves the proposal on an accelerated basis.

[1] The proposed rule change was filed originally on October 23, 1990 (File No. SR-PTC-90-07) and was approved temporarily through April 15, 1991. See Securities Exchange Act Release No. 28789 (January 16, 1991), 56 FR 2787. On April 4, 1991, the proposed rule change was refiled (File No. SR-PTC-91-05) and approved temporarily through June 14, 1991. See Securities Exchange Act Release No. 29073 (April 12, 1991), 56 16145.

[2] 15 U.S.C. 78s(b)(1).

### II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article III, rule 2, section 2(f) of the rules of PTC, providing for the proration among benefited participants of the cost of financing principal and interest ("P&I") advances, is deleted and current section 2(g) is renumbered 2(f).

### III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, PTC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item V below. PTC 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*

PTC has determined that the cost of financing principal and interest advances can be adequately covered by investing collected principal and interest payments upon receipt; the purpose of the proposed rule change to reduce fees and costs to participants.

The basis for this proposed rule change under the Act is the requirement under section 17A(b)(3)(D) that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PTC does not perceive that the proposed rule change imposes any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from members or other interested parties.

### IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

PTC has requested accelerated effectiveness. PTC believes that there is good cause to approve the proposal prior to the thirtieth day after publication in the **Federal Register** because it will allow PTC to continue covering the cost of borrowing P&I advances with interest from investing P&I receipts and because there will, accordingly, not be a lapse in effectiveness when the temporary approval for SR-PTC-91-05 expires on June 14, 1991. In addition the Commission has noticed the proposal and approved it on a temporary basis. No comments were received.

### V. 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 persons, 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 PTC. All submissions should refer to File No. SR-PTC-91-08 and should be submitted by July 15, 1991.

### VI. Discussion

Section 17A(b)(3)(D) of the Act[3] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.[4] The proposal would eliminate the pro rata charge to participants for the borrowing cost relating to P&I advances. As discussed below, the Commission believes that the proposal is consistent with the Act and in particular section 17A(b)(3)(D).

Because of delays in collecting P&I and the lack of historical data concerning borrowing cost and interest income from investing P&I, PTC has

[3] 15 U.S.C. 78q-1(b)(3)(D).

[4] This proposal is not intended to have any effect on the Commission's directive in PTC's temporary registration order that requires PTC to modify its P&I collection and payment procedures to allow for voluntary instead of mandatory advances of P&I. See Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

charged participants who receive P&I advances pro rata for PTC's external borrowing costs, while at the same time earning interest income by investing P&I received prior to Distribution Date (the day after payment date). In effect, prior to the current temporary approval of this proposal, PTC was duplicating revenue associated with its P&I payment service by not offsetting borrowing costs with earned interest income. Due to PTC's efforts to encourage paying agents to make P&I payments available to PTC by payment date, PTC now believes that income from investing P&I received prior to Distribution Date is more than sufficient to satisfy anticipated borrowing cost. Thus, the proposal eliminates this inefficiency by applying P&I interest income towards the cost of financing P&I and eliminating the existing pro rata charge to participants for such cost.

Since PTC's inception as a clearing agency, the Commission has expressed concern that PTC retain sufficient funds and credit sources to adequately meet its payment obligations. The Commission is particularly concerned about the possible effects of the proposal on operating income and credit sources in the event interest earned on P&I receipts does not meet the cost of financing P&I advances. Because of this concern, the Commission requested that PTC monitor, on a monthly basis, the amount of funds borrowed for P&I advances, the cost of financing P&I advances, and the amount of interest earned on the investment of P&I receipts.[5] PTC's consequent monitoring of P&I receipts and disbursements disclosed that the income that the income generated from investing P&I receipts exceeded the cost of financing for P&I advances by 2:1 on an annualized basis.[6] Additionally, during the period of January, 1991, through March, 1991, the excess earnings from invested P&I receipts was over $2 million, substantially greater than the 2:1 ratio.

Because of the substantial income derived from the investment of P&I receipts, the Commission is concerned that PTC's Board of Directors establish policies concerning the use of P&I investment proceeds and that PTC's accounting controls adequately track P&I investment income and the use of that income. Accordingly, PTC has agreed to identify and track separately interest earned from P&I receipts and the cost of financing P&I advances and report to its Board of Directors ("Board") the amount of gross income earned on P&I payments invested, the cost of borrowing to meet P&I advances, and the net income earned from investing P&I receipts after offsetting the cost of borrowing for P&I advances on a monthly basis. PTC's management also has agreed to seek a policy statement from the Board within six months of the release of this order addressing the use of excess earnings from invested P&I receipts.[7]

The Commission believes that there is good cause for approving the proposal prior to the thirtieth day after publication in the **Federal Register**. The Commission has noticed for comment in the **Federal Register** and approved, on a temporary basis though June 14, 1991, two prior rule filings identical to the present filing. No comments regarding the proposal were received.[8] By accelerating the effective date of this filing, PTC can continue to cover the cost of borrowing for P&I advances with interest earned on investing P&I receipts, instead of reverting back to its previous policy of charging participants the cost of borrowing.

## VII. Conclusion

For the reasons stated above, the Commission finds that PTC's proposal is consistent with Section 17A of the Act. The Commission also finds good cause for approving the proposal prior to the thirtieth day after publication in the **Federal Register**.[9]

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[10] that PTC's proposed rule change (SR–PTC–91–08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91–14889 Filed 6–21–91; 8:45 am]

BILLING CODE 8010–01–M

[5] This request was made in the temporary approval order for File No. SR–PTC–91–05. See supra note 1.

[6] Letter from Alison Hoffman, Assistant Counsel, PTC, to Scott Wallner, Staff Attorney, Division of Market Regulation, Commission (March 22, 1991).

[7] Letter from Leopold S. Rassnick, Vice President and General Counsel, PTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (May 23, 1991).

[8] See supra note 1.

[9] Pursuant to section 19(b)(4)(A) of the Act, 15 U.S.C. 78s(b)(4)(A), the Commission contacted the Federal Reserve Board of Governors ("Federal Reserve Board"), PTC's appropriate regulatory agency, regarding the proposed rule change. Don Vinnedge, Manager, Trust Activities Program, Federal Reserve Board, stated that the staff of the Federal Reserve Board believes that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of PTC or for which it is responsible. Telephone conversation between Don R. Vinnedge, Manager, Trust Activities Program, Federal Reserve Board, and Scott Wallner, Staff Attorney, Division of Market Regulation, Commission (June 4, 1991).

[10] 15 U.S.C. 78s(b)(2).

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

June 18, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Sbarro Incorporated
Common Stock, $0.01 Par Value (File No. 7–6995)
Sensormatic Electronics Corporation
Common Stock, $.01 Par Value (File No. 7–6996)
Transatlantic Holdings, Inc.
Common Stock, $1 Par Value (File No. 7–6997)

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 July 10, 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 5th 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 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.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 91–14892 Filed 6–21–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC-18202; 812-7622]

## Equitable Life Funding Corporation; Application

June 17, 1991.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Equitable Life Funding Corporation.

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) that would exempt applicant from all provisions of the Act.

**SUMMARY OF APPLICATION:** Applicant requests an order that would permit it to sell certain debt instruments and use the proceeds to finance the business activities of its parent company, Equitable Life Assurance Society of the United States ("Equitable"), and certain companies controlled by Equitable.

**FILING DATE:** The application was filed on November 7, 1990, and amended on February 20, 1991 and May 28, 1991.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 15, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 787 Seventh Avenue, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant was incorporated in Delaware in November of 1990. All of applicant's outstanding shares are owned either by The Equitable Life Assurance Society of the United States ("Equitable"), a New York mutual life insurance company, or by a holding company subsidiary of Equitable formed for the purpose of holding the stock of various Equitable subsidiaries. Equitable, directly and through its subsidiaries, issues a variety of life insurance and investment products, provides investment advisory services to individuals, businesses, and institutional investors, and manages its own portfolio of investments that support its obligations.

2. Applicant was organized to engage in financing activities to provide funds for use in the business operations of Equitable and its subsidiaries. Applicant proposes to borrow funds through the sale of debt securities in the United States and in overseas markets, and to lend the proceeds to Equitable and Equitable's direct and indirect subsidiaries.

3. Due to the nature of the debt markets, applicant may, from time to time, borrow amounts in excess of the amounts immediately required by Equitable and its subsidiaries. However, at least 85% of the cash or cash equivalents raised by applicant through the sale of debt securities will be loaned to Equitable or its subsidiaries as soon as practicable, but in no event later than six months after applicant's receipt of such cash or cash equivalents. Any cash that is not loaned to Equitable or its subsidiaries will be invested in government securities, securities of Equitable or a company controlled by Equitable (or in the case of a partnership or joint venture, the securities of the partners or participants in the joint venture), or debt securities which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act.

4. Before applicant begins issuing debt securities, Equitable will enter into a master guarantee agreement (the "Guarantee Agreement") with applicant under which Equitable will unconditionally guarantee the payment of principal, interest, and premium, if any, on debt securities issued by applicant. The Guaranty Agreement will give each holder of debt securities issued by applicant a direct right of action against Equitable to enforce Equitable's obligations under the Guaranty Agreement without first proceeding against applicant.

### Applicant's Legal Analysis

1. Rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parents companies. The rationale underlying the rule is expressed in the SEC release in which the rule was adopted.[1] The release stated that a finance subsidiary of a non-investment company parent, through technically an investment companies itself, is essentially a conduit for its parent. Therefore, the release reasoned, if the parent can issue debt securities directly, there is no reason to impose the requirements of the Act on the subsidiary.

2. Rule 3a–5(b)(2)(i) defines "parent company" to be a corporation, partnership or joint venture that, *inter alia*, is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a). Equitable is not technically a "parent company" within the meaning of rule 3a–5(b)(2)(i) because it meets the definition of investment company in section 3(a) of the Act and is excepted from such definition by section 3(c)(3) of the Act.

3. The release adopting rule 3a–5 stated that relief similar to that granted under rule 3a–5 may be appropriate for a finance subsidiary of a parent company that derives its non-investment company status from section 3(c) of the Act. The release stated, however, that such requests should be examined on a case by case basis. According to the adopting release, the concern was that a company could be considered a non-investment company for the purposes of the Act under section 3(c) of the Act and still be engaged primarily investment company activities. To illustrate the concern, the release pointed to section 3(c)(1) of the Act, which provides an exemption from the Act for investment companies whose shares are beneficially owned by not more than one hundred persons which is not making and does not propose to make a public offering of its securities. Applicant argues that such concerns do not apply to Equitable because Equitable, unlike a section 3(c)(1) investment company, does not engage primarily in investment company activities. Instead, Equitable is an insurance company and is excluded from the definition of investment company under section 3(c)(3) of the Act.

4. Rule 3a–5(b)(3)(i) defines a "company controlled by the parent company" to be a corporation, partnership or joint venture that, *inter*

[1] Investment Company Act Release No. 14275 (December 14, 1984).

*alia*, is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a). Certain of Equitable's subsidiaries do not fit within the technical definition of "companies controlled by the parent company." These subsidiaries, like Equitable, derive their non-investment company status from section 3(c) of the Act. Also like Equitable, non of the subsidiaries derives its non-investment company status from section 3(c)(1) of the Act and none is primarily engaged investment company activities. Instead, the subsidiaries derive their non-investment status 3(c)(2), 3(c)(3), 3(c)(4), and 3(c)(6) of the Act, except that is a subsidiary is exempted under section 3(c)(6) of the Act, it will not be primarily engaged, directly or through majority owned subsidiaries, in one or more of the businesses described in section 3(c)(5) of the Act.

5. Section 6(c) of the Act empowers the SEC to grant an exemption from the provisions of the Act when such exemption is necessary to appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. On the basis of the forgoing, applicant submits that its request for exemptive relief meets the standards set out in section 6(c) of the Act and therefore should be granted.

**Applicant's Condition**

Applicant will comply with all of the provisions of rule 3a–5 under the Act except: (a) Equitable will not meet the portion of the definition of "parent company" in rule 3A–5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(3) of the Act; and (b) applicant will be permitted to invest in or make loans to corporations, partnerships, and joint ventures that do not meet the portion of the definition of "company controlled by the parent company" in rule 3a–5(b)(3)(i) solely because they are excluded from the definition of investment company by sections 3(c)(2), 3(c)(3), 3(e)(4), or 3(c)(6) of the Act; provided that any such entity excluded from the definition of investment company under section 3(c)(6) of the Act will not be engaged primarily, directly or through majority-owned subsidiaries, in one or more of the businesses described in section 3(c)(5) of the Act.

For the commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91–14893 Filed 6–21–91; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 35–25332]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 14, 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 July 9, 1991, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant application(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.

**Lehigh Utilities, Inc. (31–855)**

Lehigh Utilities Inc. ("Lehigh"), 500 Construction Lane, Lehigh Acres, Florida, 33936–4848, a Florida corporation, has filed an application for an order under section 2(a)(4) of the Act declaring that it is not a "gas utility company" because it is primarily engaged in businesses other than that of a gas utility company, and it distributes at retail only small amounts of liquified petroleum ("LP") gas.

Lehigh is a wholly owned subsidiary of Lehigh Corporation, a real estate development company which originally developed the community in Lehigh Acres, Florida that Lehigh serves. Lehigh Corporation is primarily engaged, directly and through its subsidiaries, in the marketing and sale of homesites, timeshare units and residential dwelling units, as well as the operation of a motel and two golf courses, in Lee County, Florida. Lehigh Corporation is a wholly-owned subsidiary of Land Resources Corporation ("Land Resources"), a real estate holding company which is, in turn, a wholly owned subsidiary of Security Savings and Loan Association ("Security"), Scottsdale, Arizona, an institution under the receivership of the Resolution Trust Corporation ("RTC").

The RTC is pursuing the sale of all or part of Land Resources and its subsidiaries. As receiver for Security, the RTC has approved the sale of all of the common stock of Lehigh to Seminole Utility Company ("Seminole"), an indirect nonutility subsidiary, presently inactive, of Minnesota Power & Light Company, a holding company exempt from registration under section 3(a)(2) of the Act pursuant to rule 2.

Lehigh provides water, sewer, gas and garbage collection services to the town of Lehigh Acres. Lehigh's gas system is comprised of 160 buried 1,000 gallon tanks located throughout its service area. Distribution lines run from the tanks throughout portions of Lehigh Acres, and gas is piped to approximately 1,700 customers within Lehigh Acres, substantially all of which are residential customers. Lehigh's LP gas operations do not constitute a utility service under Florida law, and its rates for LP gas service are not subject to regulation by the Florida Public Service Commission.

Lehigh's operating revenues derived from sales of LP gas for the fiscal year ended September 30, 1990, were $463,609, approximately 9.1% of Lehigh's total fiscal 1990 operating revenues of $5,085,030. At September 30, 1990, Lehigh had total assets of $15,931,981, of which approximately $800,000, or 5%, constituted LP gas system properties.

Lehigh states that it is primarily engaged in businesses other than the business of a gas utility company, with revenues from such other businesses constituting approximately 91% of its total fiscal 1990 revenues. Lehigh further notes that its $463,609 revenues from retail sales of LP gas in fiscal year 1990 are small, both in absolute terms and as a percentage of Lehigh's total revenues. Lehigh thus asserts that it is not necessary in the public interest or for the protection of investors or consumers that it be considered a "gas utility company" under the Act.

**Enerop Corporation (70–7201)**

Enerop Corporation ("Enerop"), 10 Lafayette Square, Buffalo, New York 14203, a wholly owned subsidiary of National Fuel Gas Company ("National"), a registered holding company, has filed a post-effective amendment under sections 9(a) and 10 of the Act to the application-declaration which was filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45.

By orders dated May 1, 1986, and March 18, 1988 (HCAR Nos. 24081 and 24604, respectively), the Commission authorized, in relevant part: (1) National to loan $200,000 to Metscan, Inc. ("Metscan"), a New York corporation that has developed an electronic meter reading system ("Metscan System"), and to receive an option to convert the note ("Note") evidencing the loan into 80,000 shares of Metscan's preferred stock, at a price of $2.50 per share; (2) National to assign the Note and option from Metscan to Enerop; (3) National to provide Enerop $442,500 as a contribution to capital, which funds Enerop was authorized to invest, together with third parties, in Metscan Technology Partners ("Partnership"), a New York partnership formed by Metscan, after which Enerop would own approximately 9.96% of the Partnership; and (4) the Partnership and Metscan to be reorganized as a corporation before the end of 1989, and Enerop to acquire approximately 7.23% of the common stock of the new corporation.

The March 18, 1988 order contained a reservation of jurisdiction over this reorganization which was released by order dated April 27, 1989 (HCAR No. 24874). The reorganization occurred on May 17, 1989, and the new corporation was called Metscan Acquisition Corporation ("MAC"). Pursuant to the reorganization, the Note and Enerop's Partnership interest attributable to the $442,500 investment were converted into 80,000 shares and 177,00 shares of MAC common stock, respectively, at a conversion rate of $2.50 per share. MAC subsequently changed its name to Metscan, Inc., and the 257,000 shares that Enerop then owned represented 6.0% of the total shares of Metscan common stock outstanding, and 5.1% of that total if shares subject to outstanding warrants and employees' options were included.

By order dated September 7, 1990 (HCAR No. 25143), the Commission authorized Enerop to acquire an additional 143,000 shares of Metscan common stock for $357,500 ($2.50 per share), and 39,500 shares of Metscan preferred stock for $158,000 ($4 per share). The preferred stock pays a cumulative annual 7% dividend, and is convertible by the stockholders to Metscan common stock on a 1:1 basis, through July of 1995. Enerop now owns 9.4% of Metscan's common stock and 7.1% of Metscan's preferred stock, or 7.9% of such common stock if the preferred stock is converted into common stock, and if all warrants and other rights are exercised.

Enerop now proposes to purchase 17,000 additional shares of Metscan preferred stock for $68,000 ($4 per share). Once the proposed acquisition has been consummated, Enerop will own 9.8% of Metscan's preferred stock and 9.4% of Metscan's common stock, or about 8.2% of the actual and potential equity investment in Metscan. Enerop's total investment in Metscan will then total $1,226,000.

**OLS Energy-Chino, et al. (70–7725)**

OLS Energy-Chino ("Chino"), OLS Energy-Berkeley ("Berkeley") and OLS Energy-Camarillo ("Camarillo"), all located at One Gatehall Drive, 3rd Floor, Parsippany, New Jersey 07054, indirect subsidiary companies of General Public Utilities Corporation ("GPU"), a registered holding company, have filed a post-effective amendment to their declaration under sections 6(a) and 7 of the Act.

By orders dated May 10, 1989 and August 1, 1989 (HCAR Nos. 24885 and 24931, respectively), the Commission, among other things, authorized Energy Initiatives, Incorporated, a wholly owned indirect subsidiary company of GPU, to acquire through a newly formed, wholly owned subsidiary, Camchino Energy Corporation, general and limited partnership interests, aggregating a 50% interest, in OLS Power Limited Partnership ("Partnership"). The Partnership was authorized to acquire, directly or indirectly, all of the outstanding common stock of Chino, Berkeley and Camarillo.

Each of Chino, Berkeley and Camarillo is the lessee (collectively, "Lessees") of a qualifying cogeneration facility ("Facility") located in California. Prior to the acquisition, each of the Lessees had entered into a revolving credit agreement ("Credit Agreement") with General Electric Capital Corporation ("GECC"), the owner of the Facilities, to provide for the short-term working capital requirements of its Facility.

By orders dated February 9, 1990 and December 26, 1990 (HCAR Nos. 25038 and 25230, respectively), the Commission authorized Chino, Berkeley and Camarillo to enter into amendments to their Credit Agreements to, among other things: (a) Increase the aggregate amount of the notes which may be outstanding thereunder at any time from $1,000,000 to $1,250,000; (b) extend the time during which notes may be outstanding thereunder to June 30, 1991; and (c) reduce the rate of interest payable on any notes outstanding to 3% from 5% over the Prime Rate, as defined therein. In addition, Chino and Camarillo were authorized to arrange for the issuance of letters of credit ("LOCs") by GECC in favor of Southern California Gas Company as security for their respective obligations to pay for natural gas supplied to their Facilities. GECC has issued LOCs in the amount of $800,000 for Camarillo and $700,000 for Chino, and the maximum amounts of borrowings which Chino and Camarillo may make under their Credit Agreements have been reduced by the respective face amount of the LOCs.

Camarillo, Chino and Berkeley now seek authorization to borrow under their respective Credit Agreements to December 31, 1991. In addition, Chino and Camarillo propose that their respective LOCs be outstanding to December 31, 1991. All borrowings and LOC arrangements will not exceed the aggregate principal amount under each Credit Agreement of $1.25 million.

The Lessees would use the proceeds from such borrowings for working capital and general corporate purposes or, in the case of Chino and Camarillo, to repay GECC any amounts paid by GECC under the LOCs.

**The Southern Company, et al. (70–7846)**

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and Southern Nuclear Operating Company, Inc. ("SONOPCO"), 40 Inverness Center Parkway, Birmingham, Alabama 35204, its wholly owned subsidiary company, have filed an application-declaration under section 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45 thereunder.

SONOPCO proposes through March 31, 1993 to borrow from Southern or lenders other than Southern in an aggregate principal amount not to exceed $10 million (such $10 million includes the $5 million currently outstanding in open account advances from Southern previously authorized by order dated December 14, 1990 (HCAR No. 25212) ("December 1990 Order")). Borrowings from Southern will accrue interest at a rate not to exceed the prime rate in effect at a bank to be designated by Southern. Loans obtained from lenders other than Southern will have maturities not to exceed 10 years and will accrue interest at a rate not to

exceed the prime rate plus 2% for variable rate loans and the prime rate at the time of borrowing plus 3% for fixed rate loans. Such loans may be secured or unsecured and may be guaranteed by Southern.

Southern proposes through March 31, 1993 to make up to $5 million in open account advances to SONOPCO from time to time which, at the option of Southern, may be converted into capital contributions or additional shares of common stock of SONOPCO. Such advances would be in addition to the $5 million currently outstanding under the December 1990 Order. To the extent any such advances are converted to equity, the borrowing authority sought herein shall be reduced by the amount of the advances so converted, so that the total capitalization of SONOPCO does not exceed $11 million (including its present $1 million common equity) without further authorization from the Commission. The rate of return on SONOPCO's common equity capital will not exceed the average of the most recent rates of return allowed by the Alabama Public Service Commission and the Georgia Public Service Commission.

**New England Power Company (70–7863)**

New England Power Company ("NEP"), 25 Research Drive, Westborough, Massachusetts, a subsidiary of New England Electric System, a registered holding company, has filed a declaration under sections 6(a)(2), 7(e), and 12(e) of the Act and rules 62 and 65 thereunder.

The preference provisions of NEP's Dividend Series Preferred Stock and Preferred Stock—Cumulative (collectively, the "Cumulative Preferred Stock"), as set forth in NEP's Articles of Organization and By-Laws, provide that, except as voted by the holders of a majority of the Cumulative Preferred Stock, the short-term unsecured indebtedness of NEP shall not exceed 10% of the sum of (i) the principal amount of all outstanding bonds and other secured indebtedness and (ii) the capital, premium, and retained earnings of NEP, and that all unsecured indebtedness of NEP shall not exceed 20% of such sum. As used in NEP's Articles of Organization and By-Laws, short-term unsecured indebtedness means unsecured indebtedness having an original maturity of less than ten years. In recent years, NEP's unsecured indebtedness has been all short-term.

By a majority vote of the holders of the Cumulative Preferred Stock during a special meeting of stockholders held on December 6, 1984, and by order of the Commission (HCAR No. 23460, October 23, 1984), NEP was authorized to issue short-term unsecured indebtedness in excess of the 10% limitation thereon, provided that all unsecured indebtedness not exceed 20% of the sum of the principal amount of all outstanding bonds and other secured indebtedness and the capital, premium, and retained earnings of NEP and that any such unsecured indebtedness in excess of the 10% limitation be issued not later than November 1, 1991, and mature not later than November 1, 1992.

NEP now proposes to seek the affirmative vote of the holders of a majority of NEP's cumulative Preferred Stock, authorizing the continued issuance by NEP of short-term unsecured indebtedness in excess of the 10% limitation, provided (i) that any such excess indebtedness be issued not later than November 1, 1998, (ii) such excess indebtedness shall have a maturity not later than November 1, 1999 and (iii) the 20% limitation on all unsecured indebtedness of NEP shall remain in effect.

The continuation of the previously granted authorization requires the favorable vote, at a meeting called for that purpose, of a majority of the Cumulative Preferred Stock of all series now outstanding, voting as a single class. The Board of Directors intends to submit the proposal to the Cumulative Preferred Stockholders for approval, and to solicit proxies to obtain the required vote.

**Consolidated Natural Gas Co. (70–7864)**

Consolidated Natural Gas Co. ("consolidated"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, and Virginia Natural Gas, Inc. ("VNG"), 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23502–3488, its wholly owned gas public-utility subsidiary company, have filed a declaration under section 12(b) of the Act and rule 45 thereunder.

In 1989, prior to its acquisition by Consolidated, authorized by order dated February 14, 1990 (HCAR No. 25040), VNG issued $20 million principal amount of 9.94% senior notes, series A, due January 1, 1999 ("Notes") to the Aid Association of Lutherans ("Association") pursuant to a note purchase agreement dated January 1, 1989 ("Note Agreement"). The Note Agreement provides that interest on the unpaid principal is payable semi-annually on the first day of January and July of each year, commencing on July 1, 1989. The Note Agreement requires VNG to prepay $4 million principal amount of the Notes on January 1, 1995, and on each January 1 thereafter to and including January 1, 1998. The last $4 million installment would be paid at maturity on January 1, 1999. In addition, the Note Agreement requires VNG to provide to the Association copies of its financial statements accompanied by a report thereon of independent public accountants.

Consolidated proposes to enter into a guarantee agreement ("Guarantee") with the Association pursuant to which Consolidated would absolutely and unconditionally guarantee all of VNG's obligations under the Note Agreement in accordance with the terms thereof. In consolidation of the Guarantee, the Association would release VNG from having to provide reports of independent public accountants on its financial statements otherwise required by the Note Agreement. It is stated that the waiver of such requirement would result in an estimated savings to VNG of approximately $50,000 per year.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91–14894 Filed 6–21–91; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements filed during the Week Ended June 14, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 47583.

*Date filed:* June 10, 1991.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC12 Reso/C 0901 dated May 8, 1991; Europe To USA/US Territories, R–1 To R–7.

*Proposed Effective Date:* October 1, 1991.

*Docket Number:* 47584

*Date filed:* June 10, 1991.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC23 Reso/C 0201 dated May 27, 1991; TC23 Expedited (Except To/From US Territories), R–1 To R–3.

*Proposed Effective Date:* August 1, 1991.

*Docket Number:* 47585

*Date filed:* June 10, 1991.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC23 Reso/C 0220 dated May 27, 1991; TC23 Expedited (To/From US Territories), R–1; intended effective date: August 1, 1991; TC23 Reso/C0203 dated May 27, 1991; TC23 (To/From US Territories); intended effective date: October 1, 1991.

*Docket Number:* 47586
*Date filed:* June 10, 1991.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC12 Resp/C 0894 dated May 1, 1991; North Atlantic Areawide (Except USA), R–1 to R–2; TC12 Reso/C 0896 dated May 1, 1991; Canada-Africa Reso, R–3 To R–6; TC12 Rates 0468 dated May 22, 1991—Tables; TC12 Reso/C 0900 dated May 1, 1991; Canada-Africa Resos, R–7 To R–12; TC12 Rate 0470 dated May 22, 1991—Tables.
*Proposed Effective Date:* October 1, 1991.

*Docket Number:* 47587
*Date filed:* June 10, 1991.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC31 Reso/C 0219 dated April 22, 1991; South Pacific (To/From USA/US Terr.), R– To R–4; TC31 Rates 0146 Dated May 15, 1991—Rates Tables; TC31 Reso/C 0221 dated April 22, 1991; Japan-USA/US Terr., R–5 To R–9; TC31 Reso/C 0223 dated April 22, 1991; Korea-USA/US Terr., R–10 To R–21; TC31 Rates 0144 dated May 3, 1991—Rates Tables; TC31 Reso/C 0224 dated April 22, 1991; Southeast Asia-USA/US Terr., R–22.
*Proposed Effective Date:* October 1, 1991.

*Docket Number:* 47588
*Date filed:* June 10, 1991.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC3 Reso/C 0071 dated May 21, 1991; TC3 (Except To/From US Territories), R–1 To R–13; TC3 Rates 0078 dated May 16, 1991—Rates Tables.
*Proposed Effective Date:* October 1, 1991.

*Docket Number:* 47589
*Date filed:* June 10, 1991.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC123 Reso/C0025 dated April 22, 1991; TC1-South Asian Subcontinent Via The Atlantic; (Except To/From US Terriroties), R–1 To R–6.
*Proposed Effective Date:* October 1, 1991.

*Docket Number:* 47590
*Date filed:* June 10, 1991.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC123 Reso/C 0026 dated April 22, 1991; TC1-South Asian Subcontinent Via The Atlantic; (To/From US Territories); TC31 Meet/C 0071/TC123 Meet/C0007 dated May 27, 1991—Minutes; TC123 Rates 0013 dated May 27, 1991—Rates Tables.
*Proposed Effective Date:* October 1, 1991.

*Docket Number:* 47591.
*Date filed:* June 10, 1991.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC3 Reso/C 0070 dated May 21, 1991; TC3 (To/From US Territories), R–1 To R–4; TC3 Meet/C 0021 dated May 27, 1991—Minutes; TC3 Rates 0077 dated May 16, 1991—Rates Tables.
*Proposed Effective Date:* October 1, 1991.

*Docket Number:* 47592.
*Date filed:* June 10, 1991.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC31 Reso/P dated May 27, 1991; Expedited North America-Southwest Pacific; (To/From US Territories) Reso 002d, R–1; intended effective date: July 1. 1991; TC31 Reso/P 0873 dated May 29, 1991; Expedited South Pacific (To/From US Territories); R–2 to R–5; intended effective date: August 1, 1991.

*Docket Number:* 47594.
*Date filed:* June 10, 1991.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC31 Reso/C 0218 dated April 22, 1991; South Pacific (Except To/From USA/US Terr.), R–1 to R–4; TC31 Rates 0147 dated May 15, 1991—Rates Tables; TC31 Reso/C 0220 dated April 22, 1991; Japan–TC1 (Except USA/US Terr.), R–5 To R–9; TC31 Rates) 143 dated May 3, 1991—Rates Tables; TC31 Reso/C 0222 dated April 22, 1991; SE Asia/Korea—(Except USA/US Terr.), R–10 To R–17.
*Proposed Effective Date:* October 1, 1991.

*Docket Number:* 47598.
*Date filed:* June 13, 1991.
*Parties:* Members of the International Air Transport Association.
*Subject:* Mail Vote 500 (Within Africa).
*Proposed Effective Date:* July 1, 1991.

*Docket Number:* 47599.
*Date filed:* June 13, 1991.
*Parties:* Members of the International Air Transport Association.
*Subject:* Mail Vote 499 (Diplomatic bags).
*Proposed Effective Date:* July 1, 1991.

*Docket Number:* 47600.
*Date filed:* June 13, 1991.
*Parties:* Members of the International Air Transport Association.
*Subject:* Mail Vote 497 (Fare Reduction from Italy).
*Proposed Effective Date:* July 1, 1991.

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*
[FR Doc. 91–14905 Filed 6–21–91; 8:45 am]
BILLING CODE 4910–62–M

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[Docket 37554]

## Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 91–4–27 established the currently effective two-month SFFL applicable through May 31, 1991.

In establishing the SFFL for the two-month period beginning June 1, 1991, we have projected non-fuel costs based on the year ended December 31, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

These projections reflect sizeable decreases in fuel prices.

By Order 91–6–17 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.4503
Latin America—1.4051
Pacific—1.8868
Canada—1.3809

For further information contact: Keith A. Shangraw (202) 366–2439.

Dated: June 17, 1991.
By the Department of Transportation.

**Jeffrey N. Shane,**
*Assistant Secretary for Policy and International Affairs.*
[FR Doc. 91–14907 Filed 6–21–91; 8:45 am]
BILLING CODE 4910–62–M

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## Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended June 14, 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:* 47595.

*Date filed:* June 10, 1991.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 8, 1991.

*Description:* Application of Ground Air Transfer, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a determination of fitness to provide, on a code-sharing basis, interstate and overseas transportation of persons, property, and mail.

*Docket Number:* 44992.

*Date filed:* June 10, 1991.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 8, 1991.

*Description:* Application of Compania de Aviacion "Faucett," S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for renewal of its foreign air carrier permit between the United States and Peru.

*Docket Number:* 44689.

*Date filed:* June 11, 1991.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 9, 1991.

*Description:* Application of Aeroperu, pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for renewal of its foreign air carrier permit, to engage in scheduled foreign air transportation of persons, property, and mail between the United States and Peru.

*Docket Number:* 44944.

*Date filed:* June 11, 1991.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 9, 1991.

*Description:* Application of Aeronaves Del Peru, pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for renewal of its foreign air carrier permit for an additional indefinite period authorizing it to engage in scheduled foreign air transportation of property and mail twice weekly between Lima, Peru; via the intermediate points Panama City, Panama; Guayaquil, Ecuador (blind sector); Bogata and Cali, Colombia (blind sectors); and the terminal point Miami, Flordia.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 91-14906 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-62-M

## Federal Aviation Administration

### Air Traffic Procedures Advisory Committee: Meetings

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Air Traffic Procedures Advisory Committee meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

**DATES:** The meeting will be held from July 22, at 8 a.m., through July 25, 1991, at 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Experimental Aircraft Association Aviation Center, 3000 Poberezny Road, Oshkosh, WI.

**FOR FURTHER INFORMATION CONTACT:** Mr. Theodore H. Davies, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. 1), notice is hereby given of a meeting of the ATPAC to be held from July 22, at 8 a.m., through July 25, 1991, at 4:30 p.m., at the Experimental Aircraft Association Aviation Center, 3000 Poberezny Road, Oshkosh, WI. The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 19, 1991. The next quarterly meeting of the FAA ATPAC is planned to be held from October 21-24, 1991, in Washington, DC. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on June 17, 1991.

**Theodore H. Davies,**

*Executive Director, Air Traffic Procedures Advisory Committee.*

[FR Doc. 91-14925 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

## National Highway Traffic Safety Administration

**[Docket 91-05-IP-No. 2]**

### General Motors Corporation; Denial of Petition for Determination of Inconsequential Noncompliance

This notice denies the petition by General Motors Corporation of Warren, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for apparent noncompliances with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, "Controls and Displays," and with 49 CFR 571.105, Federal Motor Vehicle Safety Standard No. 105, "Hydraulic Brake Systems." The company had petitioned for a determination that these noncompliances were inconsequential as they relate to motor vehicle safety.

Notice of receipt of the petition was published on February 4, 1991, and an opportunity afforded to comment (56 FR 4315).

Paragraph S5.3.1(d) of Standard No. 105 specifies that an indicator lamp shall be activated when the ignition (start) switch is in the "on" (run) position and whenever there is application of the parking brake. Paragraph S5.3.3 requires that the brake indicator lamp shall remain activated as long as the parking brake is applied and the ignition (start) switch is in the "on" position.

Paragraph S5.3.4(a) of Standard No. 101 specifies that means be provided which are capable of making telltales and their identification visible to the driver under all driving conditions. Paragraph S5.4(b) states that telltales shall be displayed at the initiation of any underlying condition. "Telltales" means a display that indicates the actuation of a device, a correct or defective functioning or condition, or a failure to function.

GM produced 14,400 Buick Rivieras and 4,200 Reattas of the 1990 model year which do not comply with the requirements of Standard No. 105 and Standard No. 101 mentioned above. The indicator lamp in these vehicles is not activated when the ignition is "on" and

the transmission is in "Park" or "Neutral." GM supported its petition with the following arguments:

"First, the brake indicator light is displayed as soon as the vehicle is capable of being driven, *i.e.*, as soon as the transmission lever is shifted into reverse or any forward gear. This should have the effect of informing drivers if the parking brake has not been fully released before they proceed. If the parking brake has been firmly applied drivers will also experience obvious drag in both drive and reverse when attempting to move the vehicle.

"Second, the vehicles are equipped with 'pump-to-set' foot pedal parking brake systems. 'Pump-to-set' systems are applied with several strokes, *i.e.*, full application of the park brake system is achieved with approximately two and one half full strokes of the pedal. If the brake indicator lamp does not light when parking brake application has begun and after the transmission selector is placed in 'PARK' or 'NEUTRAL' drivers might be inclined to pump the pedal an additional time, which would have the desirable effect of assuring that the brake is more fully set.

"Third, GM has reviewed its files and had found no owner complaints regarding parking brake telltale operation on the subject Rivieras and Reattas.

"Finally, all 1990 Buick Rivieras and Reattas are equipped with automatic transmissions with parking mechanisms which must be engaged before the ignition key can be removed. The vehicles also meet the requirements of FMVSS 105, Section 5.2.2.3, *viz*, that without the parking brake engaged, the transmission parking mechanism will not disengage or fracture in a manner permitting vehicle movement in a prescribed barrier test. This transmission parking mechanism provides sufficient gradeability so that even if drivers do not fully set the parking brake, the parking mechanism is capable of holding the vehicles on a steep grade.

In summary, GM believes that drivers will be sufficiently alerted to release their parking brake, despite the noncompliance, by the activation of the brake indicator lamp when the vehicle is shifted into gear and by apparent drag when attempting to move the vehicle. Failure of the lamp to activate while drivers are applying the parking brake may prompt them to take additional precautions to assure the parking brake and transmission parking mechanism are engaged."

Two comments were received on the petition. Robert F. Schlegel, Jr., a professional engineer, supported GM, and J.P. Nenries, Captain, Virginia State Police, opposed the Petitioner.

Mr. Schlegel believes the petition should be granted, principally because the key interlock prevents the transmission from being in any position other than PARK when the key is removed (GM's final argument), and recommended that the petitioner compare the actual operation of the parking brake telltale with the description in the owner's manual, and provide corrective pages if required. Captain Henries would deny the petition on the basis that the brake system checks of Standard No. 105 are in the proper sequence to allow the driver's examination of the instrument panel upon activation of the ignition, and before his or her attention is diverted by the task of actually operating the vehicle. "To allow other manners of activation of brake system indicator lamps would send ambiguous messages to drivers." He also points out that failure to disengage the parking brake could result in a failure of the brake system.

The agency has carefully reviewed the arguments of the Petitioner, and the comments received in response to the notice. It has decided to deny the petition.

GM's first argument has two components. The first component is that the activation of the brake indicator lamp with the transmission lever in a position other than PARK or NEUTRAL will inform the driver if the parking brake has not been fully released. Second, drivers will also experience obvious drag in attempting to move the vehicle when the brake is wholly or partially engaged. The agency views these arguments as irrelevant. The safety issue is the indication of parking brake application, not its release. The safety importance of parking brake application is underscored by GM's own concern, as expressed in this warning in vehicle operator manuals: "It can be dangerous to get out of your car if the shift lever is not fully in "PARK" with the parking brake firmly applied. Your car can roll." Without the brake lamp indicator illuminating, a driver parking or exiting the vehicle will not be aware as to whether the parking brake is actually applied. In the nonconforming Rivieras, even partial application of the parking brake won't be indicated.

GM's second argument is that if the brake indicator lamp does not light, drivers might be inclined to pump the pedal that sets the parking brake an additional time. In NHTSA's view, this is a speculative argument, and the agency offers one of its own and that offered by Capt. Henries: that a driver not seeing the indicator light illuminate after pumping the pedal only once, would believe that the indicator lamp had failed, and respond in an inappropriate and unsafe manner. (S)he might not pump the pedal again, resulting in an insufficient application of the parking brake. Or, (s)he might release the brake entirely, to forestall the possibility of brake damage by inadvertently operating the vehicle with the parking brake engaged.

The third argument advanced by GM is that it has reviewed its files and has found no owner complaints regarding parking brake telltale operation. The agency notes that this is an argument frequently made by inconsequentiality petitioners, to which it has given little weight. In the absence of an actual malfunction affecting the systems under which a vehicle operates, it is unlikely that the average owner will even be aware that the informational safety check system of a vehicle is noncompliant. Nevertheless, the full benefit of safety systems should be available to a vehicle owner.

Finally, GM argued that the parking mechanism must be engaged before the key can be removed, which commenter Schlegel found persuasive. GM further argued that if a driver does not fully set the parking brake, the strength of the parking mechanism is sufficient to hold the vehicle on a steep grade. Standard No. 105 requires a vehicle to remain stationary on a 30 percent grade for 5 minutes, in either direction, with both the parking mechanism and parking brake engaged. GM does not specify that the "steep grade" is one of 30 percent, nor did it argue that it could meet the requirement using the parking pawl alone. Thus, NHTSA has found GM's final argument unpersuasive.

For the foregoing reasons, it is hereby found that petitioner has failed to meet its burden of persuasion that the noncompliances herein described are inconsequential, and its petition is denied.

**Authority:** 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: June 18, 1991.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 91-14908 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Dryades Savings and Loan Association, F.A., Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Dryades Savings and Loan Association, F.A., New Orleans, Louisiana, on June 7, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-1496 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

### First Commerce Savings Bank, FSB Lowell, IN; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Commerce Savings Bank, FSB, Lowell, Indiana, on June 14, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-14968 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

### Springfield Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Springfield Federal Savings Association, Springfield, Pennsylvania, on June 14, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-14969 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

### Replacement of Conservator with a Receiver

Notice is hereby given that, on June 14, 1991 pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator with the Resolution Trust Corporation as sole Receiver for each of the following savings associations:

| Name | Location | OTS No. |
|---|---|---|
| 1. Atlanta Federal Savings Association | Atlanta, TX | 8899 |
| 2. First Guaranty Federal Savings and Loan Association | Hattiesburg, MS | 8712 |
| 3. Jasper Federal Savings and Loan Association | Jasper, TX | 3190 |
| 4. South Savings and Loan Association, F.A. | Slidell, LA | 8620 |
| 5. Southwestern Federal Savings Association | El Paso, TX | 8703 |
| 6. Texas Commercial Savings Association | Sulphur Springs, TX | 8946 |

Dated: June 18, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Coporate Secretary.*

[FR Doc. 91-14965 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

### Dryades Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Dryades Saving and Loan Association, New Orleans, Louisiana, OTS No. 1022, June 7, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-14962 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

### First Commerce Bank, a Federal Savings Bank, Lowell, IN; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Commerce Bank, A Federal Savings Bank, Lowell, Indiana, on June 14, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-14963 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

### Guaranty Savings Bank, F.S.B.; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Guaranty Savings Bank, F.S.B., Fayetteville, North Carolina ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 14, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-14966 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

### Springfield Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act, the Office of Thrift Supervision duly appointed the Resolution Trust Corporation as sole Receiver for Springfield Federal Savings and Loan Association, Springfield, Pennsylvania (OTS No. 5516), on June 14, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision
**Nadine Y. Washington,**
*Corporate Secretary.*
[FR Doc. 91-14964 Filed 6-21-91; 8:45 am]
BILLING CODE 6720-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### Special Medical Advisory Group; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Special Medical Advisory Group will be held on July 11-12, 1991, at the Ramada Renaissance Hotel, 999 9th Street, NW., Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration. The session on July 11 will convene at 6 p.m. and the session on July 12 will convene at 10 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertal, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/535-7603) prior to July 5, 1991.

Dated: June 16, 1991.

By Direction of the Secretary:

**Sylvia Chavez Long,**
*Committee Management Officer.*
[FR Doc. 91-14935 Filed 6-21-91; 8:45 am]
BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 56, No. 121
Monday, June 24, 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).

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 2:00 p.m., Thursday, June 27, 1991.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTERS TO BE CONSIDERED:**
Compliance Status Report.

The staff will brief the Commission on various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: June 20, 1991.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 91–15101 Filed 6–20–91; 3:07 p.m.]

BILLING CODE 6355–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of a Matter To Be Added for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be added to the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, June 25, 1991, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.:

Memorandum re: Policy Statement on Collaterized Letters of Credit and Collaterized Put Obligations.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 19, 1991.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 91–15032 Filed 6–20–91; 12:16 p.m.]

BILLING CODE 6714–0–M

**NATIONAL LABOR RELATIONS BOARD**

Changes to Previously Announced Meetings

**"FEDERAL REGISTER" CITATIONS OF PREVIOUS ANNOUNCEMENTS:** 56 FR 26851 and 56 FR 27297.

**PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETINGS:** 9:30 a.m. Tuesday, June 4, 1991 and 10:30 a.m. Tuesday, June 11, 1991.

**CHANGES IN THE MEETINGS:** Add to the reasons given for closing the meetings to public observation: 5 U.S.C. Section 552b(c)(10) (deliberations concern * * * the Board's participation in a civil action).

**CONTACT PERSON FOR MORE INFORMATION:** John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, Telephone (202) 254–9430.

Dated, Washington, D.C., June 19, 1991.

By direction of the Board.

**John C. Truesdale,**

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 91–15020 Filed 6–19–91; 5:03 pm]

BILLING CODE 7445–01–M

**NATIONAL LABOR RELATIONS BOARD**

Notice of Meeting

**TIME AND DATE:** 4:00 p.m., Monday, June 17, 1991.

**PLACE:** Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570.

**STATUS:** Closed to public observation pursuant to 5 U.S.C. Section 552b(c) (2) (internal personnel rules and practices (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy) and (c)(10) (deliberations concern * * * the Board's participation in a civil action.)

**MATTERS CONSIDERED:** Discussion of personnel matter.

**CONTACT PERSON FOR MORE INFORMATION:** John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, D.C., _____.

By direction of the Board.

**John C. Truesdale,**

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 91–15019 Filed 6–19–91; 8:45 am]

BILLING CODE 7445–01–M

**UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS**

Amendment to Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 56 FR 28224, June 19, 1991.

**PREVIOUSLY ANNOUNCED DATE OF MEETING:** July 2, 1991.

**CHANGE:** Add the following items to the open meeting agenda:

7. Capital Investments.
   b. Memphis, Tennessee, Southern Region Office and Services Centers.
   c. Baton Rouge, Louisiana, General Mail Facility.
   d. Charleston, West Virginia, Mail Processing Annex.

**CONTACT PERSON FOR MORE INFORMATION:** David F. Harris, (202) 268–4800.

**David F. Harris,**

*Secretary.*

[FR Doc. 91–15046 Filed 6–20–91; 12:16 pm]

BILLING CODE 7710–12–M

**RESOLUTION TRUST MEETING**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:29 p.m. on Tuesday, June 18, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of failed thrift institutions, and (2) the proposed contracting with the Small Business Administration for developing an RTC legal information system.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., and concurred in by Chairman L. William Seidman, Jonathan L. Fiechter acting in the place and stead of Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and Dean S. Marriott acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency) that Corporation business required its consideration of

the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(5), (c)(6), (c)(7)(A), (c)(7)(C), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, DC.

Dated: June 19, 1991.

Resolution Trust Corporation.

**John M. Buckley Jr.,**

*Executive Secretary.*

[FR Doc. 91–15040 Filed 6–20–91; 8:45 am]

BILLING CODE 6714–01–M

# Corrections

Federal Register
Vol. 56, No. 121
Monday, June 24, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## GENERAL SERVICES ADMINISTRATION

### Federal Supply Service

### 41 CFR Part 302-1

**[FTR Amendment 16]**

**RIN 3090-AD76**

### Federal Travel Regulation; "Last Move Home" Benefits for Senior Executive Service Career Appointees Upon Retirement

*Correction*

In rule document 91-8711 beginning on page 15049 in the issue of Monday, April 15, 1991, make the following corrections:

1. On page 15049:

a. In the first column, in the **SUMMARY:**, in the last line, "retirement" was misspelled.

b. In the same column, under **EFFECTIVE DATE:**, in the third line, "eligible" was misspelled.

c. In the 2d column, under **SUPPLEMENTARY INFORMATION:**, in the 2d paragraph, in the 14th line, "awithin" should read "within"; and in the 21st line, "under" was misspelled.

d. In the same column, in the third paragraph, in the third line, "individual" should read "individuals".

e. In the third column, in the first full paragraph, in the sixth line from the bottom, "are" should read "and"; and in the fifth line from the bottom, "or" should read "of".

**§ 302-1.101 [Corrected]**

2. On page 15050:

a. In the second column, in § 302-1.101(b)(3), in the second line from the bottom, "subchapter" was misspelled.

b. In the same column, in § 302-1.101(d), in the last line, "disability" was misspelled.

**§ 302-1.103 [Corrected]**

3. On page 15050, in the second column, in § 302-1.103, in the fourth line, "specified" was misspelled.

**§ 302-1.105 [Corrected]**

4. On page 15050, in the third column, in § 302-1.105(a), in the fourth line from the bottom, "where" was misspelled.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committees; Meetings

*Correction*

In notice document 91-11905 beginning on page 23069 in the issue of Monday, May 20, 1991, make the following corrections:

On page 23071:

1. In the first column, under **Peripheral and Central *****, in the second paragraph, in the third line, insert "public" after "unless".

2. In the second column, under **Fertility and Maternal *****, in the second paragraph, in the third line, insert "public" after "unless".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 91N-0162]**

### FDA Report of Consumer Research on Alternative Nutrition Label Formats; Availability

*Correction*

In notice document 91-11845 beginning on page 23072 in the issue of Monday, May 20, 1991, make the following corrections:

1. On page 23072, in the second column, under **Background**, in the first paragraph, in the third line from the bottom, "NAPRM" should read "ANPRM".

2. On page 23074, in the second column, in the third full paragraph, in the fifth line from the bottom, "an" should read "and".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

**[Social Security Ruling SSR 91-3p]**

### Title II: Determining Entitlement to Disability Benefits for Months Prior to January 1991 for Widows, Widowers and Surviving Divorced Spouses Claims

*Correction*

In notice document 91-12145 beginning on page 23589 in the issue of Wednesday, May 22, 1991, make the following corrections:

1. On page 23590, in the third column, beginning with the sixth line from the bottom of the page, remove the phrase "or step five (able to engage in past relevant work)".

2. On page 23591, in the 2d column, in the 25th line, insert "23," after "October".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT-942-4214-11; UTU 9850, et al.]**

### Proposed Continuation of Withdrawals; Utah

*Correction*

In notice document 91-12352 beginning on page 23933 in the issue of Friday, May 24, 1991, make the following correction:

On page 23934, in the second column, under Hammond Canyon Archaeological and Scenic area, in Sec. 25, "W¼" should read "W½".

BILLING CODE 1505-01-D

federal register

Monday
June 24, 1991

Part II

# Environmental Protection Agency

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; Lender Liability; Proposed Rule and Request for Comment

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL-3966-3]**

## National Oil and Hazardous Substances Pollution Contingency Plan; Lender Liability under CERCLA

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed Rule and request for comment.

**SUMMARY:** The Environmental Protection Agency is proposing this rule to define the meaning of certain statutory elements in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which pertain to the liability of both privately-owned financial institutions and governmental receivers, conservators, loan guarantors, lending or other governmental entities that hold or maintain indicia of ownership as protection for a security interest in contaminated facilities. CERCLA section 101(20)(A) exempts persons whose indicia of ownership in a facility are held primarily to protect a security interest, provided that they do not participate in the management of the facility. In this proposed rule, EPA is interpreting the CERCLA section 101(20)(A) "security interest exemption" to clarify the range of activities that may be undertaken by a private or governmental lending institution or other entity that holds a security interest in a facility in the course of protecting the security interest, without being considered to be participating in the facility's management and thereby voiding the exemption.

In addition, EPA is proposing this rule to define the meaning of certain statutory elements in CERCLA that pertain to the liability of governmental entities that involuntarily acquire ownership or possession of contaminated facilities. Under CERCLA, a governmental lending entity, receiver, or conservator involuntarily acquiring a contaminated facility may be entitled to assert the so-called "innocent landowner defense" under sections 101(35)(A)(ii) and 107(b)(3), provided that the other elements of the defense are met. In this rule, EPA is interpreting CERCLA section 101(35)(A)(ii), which affects the ownership status under CERCLA of government entities that acquire contaminated facilities through escheat, eminent domain, involuntary transfer or acquisition, and other means, to include within its scope the acquisition of facilities by governmental entities through an involuntary transfer under statutes requiring the acquisition of property in which the governmental entity holds a security interest or has acted as a loan guarantor, conservator, or receiver, provided that the other elements of the defense are met. Governmental entities may also acquire property through other mechanisms, such as through civil and criminal seizures and asset forfeitures, and EPA is also seeking comment on regulatory language which would specify such other types of acquisitions by governmental entities that may be considered "involuntary" within the meaning of the statute.

**DATES:** Comments on this proposed rule must be submitted by July 24, 1991.

**ADDRESSES:** Commenters must send an original and two copies of their comments to: John Fogarty, Office of Enforcement, Superfund Division, Mail Code LE-134S, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should include the docket number NCP-LL/DSB. The public docket is located at EPA Headquarters at the above address in room 2427 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Fogarty at (202) 382-3050.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Agency is proposing this rule to interpret the provisions of sections 101(20) and 101(35) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 *et seq.*, as they affect private lending institutions and governmental entities that hold a security interest in or that guarantee loans secured by a facility contaminated by or containing hazardous substances, or that acquire ownership of contaminated property in the course of acting as a conservator or receiver or protecting a secured interest.

Section 107(a) of CERCLA, 42 U.S.C. 9607(a), identifies four broad classes of responsbile parties that are liable for the costs of cleaning up hazardous substances when the federal government, state government, or a private party brings suit. The first two classes include certain owners and operators of facilities contaminated by or containing hazardous substances, 42 U.S.C. 9607 (a)(1)-(a)(2). The third class consists of certain persons who arranged for disposal or treatment of hazardous substances. *Id.* section 9607(a)(3). Finally, the fourth class includes persons who accepted for transportation hazardous substances and selected the disposal facility. *Id.* section 9607(a)(4).

It is well-settled that each of the four groups of responsible parties is strictly liable under section 107(a). See, e.g., *United States* v. *Monsanto Co.*, 858 F.2d 160, 167 & n.11 (4th Cir. 1988), *cert. denied*, 109 S.Ct. 3156 (1989); *Tanglewood East Homeowners* v. *Charles-Thomas, Inc.*, 849 F.2d 1568, 1572 (5th Cir. 1988). In addition, it is also settled that such parties are jointly and severally liable when the environmental harm is indivisible. *United States* v. *Monsanto Co.*, 858 F.2d at 171; *United States* v. *Chem-Dyne Corp.*, 572 F. Supp. 802, 810-11 (S.D. Ohio 1983).

This proposed rule concerns only the first two of these categories of potentially liable parties—specifically "owners or operators" of facilities subject to CERCLA—which are defined in Section 101(20). Section 101(20)(A) exempts those persons who, without participating in the management of a facility, hold indicia of ownership in the facility [1] primarily to protect a security interest. 42 U.S.C. 9601(20)(A). Interpretation of this "security interest" exemption under CERCLA has generated uncertainty within the financial and lending communities, particularly with regard to the extent to which a secured creditor may undertake activities to oversee the affairs of a person whose facility is encumbered by a security interest (hereinafter the "borrower," "debtor," or "obligor") for the purposes of protecting the security interest, without incurring CERCLA liability. Specifically, there is concern over whether certain actions commonly taken by the holder of a security interest—such as monitoring facility operations, requiring compliance activities, refinancing or undertaking loan workouts, providing financial advice, and similar actions that may affect the financial, management, and operational aspects of a business—can be considered to be evidence that the security holder is "participating in the management of a facility."

Under section 101(20)(A), participation in management by the holder of a security interest will void the exemption. However, the extent to which a security holder may become involved in a facility without being considered to be participating in the management is not defined by the

[1] The CERCLA definition of "facility" includes real property as well as any equipment or other articles contaminated by hazardous substances. See CERCLA 101(9).

statute. Judicial interpretations of the exemption have varied in their articulations of the meaning of this term, without clearly defining a precise standard. See e.g., *United States* v. *Maryland Bank & Trust Co.*, 632 F. Supp. 573 (D. Md. 1986); *United States* v. *Mirabile*, 15 Envtl. L. Rep. (Envtl. L. Inst.) 20994 (E.D. Pa. 1985); *United States* v. *Fleet Factors Corp.* 901 F.2d 1550 (11th Cir. 1990), *cert. denied*, No. 90–504 (U.S. Jan. 14, 1991) (cases suggesting that the exemption is abrogated once a security interest holder has divested the borrower or debtor of its management authority, such as when the holder becomes involved in the facility's day-to-day operations, where it becomes "overly entangled" in the affairs of the facility, or where its involvement otherwise affects a facility's hazardous waste practices). However, the few cases construing the exemption have uniformly indicated that a security holder's involvement in financially related matters, such as periodic monitoring or inspections of secured property, loan refinancing and restructuring, financial advice and similar activities will not necessarily void the exemption. See, e.g., *Guidice* v. *BFG Electroplating and Manufacturing Co.*, 732 F. Supp. 556 (W.D. Pa. 1989); *United States* v. *Nicolet*, 29 Env't Rep. Cas. (BNA) 1851 (E.D. Pa. 1989). Beyond these few judicial holdings, however, it is uncertain what activities are considered participation in the management of a facility, and which are not.

This uncertainty was heightened by *dicta* in the opinion of the Eleventh Circuit Court of Appeals in *United States* v. *Fleet Factors Corp.*, *supra*. In this opinion, the court suggested that a secured creditor may be liable, without being an operator, if it participates in the management of a facility "to a degree indicating a capacity to influence the corporation's treatment of hazardous wastes." 901 F.2d at 1557. While the court held that some level of actual participation by a security holder is required to abrogate the exemption, the court's opinion did not discuss what level of participation would be sufficient to support the inference that a security holder's involvement could influence operational decisions concerning a facility's treatment of hazardous waste. A subsequent decision by the Ninth Circuit Court of Appeals confirmed that the mere capacity or unexercised right to control facility operations is insufficient to void the exemption, and held that "there must be some actual management of the facility before a secured creditor will fall outside the exception." *In re Bergsoe Metal Corp.*, 910 F.2d 668, 672 (9th Cir. 1990) ("What is critical is not what rights the [creditor] had, but what it did. * * * [A creditor] cannot have participated in management if it never exercised [its rights].") See also *In re T.P. Long Chemical Inc.*, 45 Bankr. 278 (N.D. Ohio 1985) (bank that was not involved in facility's operations cannot be held to have voided security interest exemption). However, because the security holder in *Bergsoe Metals* was not in any way involved in the facility's operation, the court did not address the issue of the extent to which a security holder may act to protect its interest without being considered to be participating in the facility's management.

The scant legislative history of the security interest exemption sheds little light on this issue. The history of the exemption indicates only that it was added to the definition of "owner or operator" out of a concern that the definition as initially drafted "inadvertently" included a person who held title or other ownership interest as security for a loan or other obligation, even though the security holder was not otherwise affiliated with or involved in the management of the facility. See House Debate on H.R. 85, 96th Cong., 1st Sess. (1979) (Sept. 18, 1980), reprinted in 2 A Legislative History of the CERCLA, Senate Comm. on Environment and Public Works, 97th Cong., 2d Sess. 889, 945 (Comm. Print 1983). The legislative history does not, however, provide any guidance or other indication of the types of activities that would be considered impermissible participation or involvement in the facility's management, or of the sorts of activities that were considered to be consistent with the exemption.

Uncertainty in this area has assumed particular importance for the Federal Deposit Insurance Corporation ("FDIC") and the Resolution Trust Corporation ("RTC"), both of which act as conservators and receivers of failing or failed insured depository institutions under the Federal Deposit Insurance Act ("FDI Act"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"), Public Law No. 101–73, 103 Stat. 183 (Aug. 9, 1989), due to their potential liability under CERCLA for the properties and assets owned by the failed lending institutions. Under this statutory mechanism, and because of the recent high failure rate of the country's lending institutions, these government entities are likely to own, possess, or have security interests in potentially contaminated properties as a consequence of their appointment as the conservator or receiver of failed and insolvent lending institutions. Additionally, other governmental entities that provide lending and credit services are also likely, through a variety of statutory mechanisms, to acquire or to have transferred to them an interest in or possession of diverse businesses, properties, and other assets which may be contaminated by hazardous substances. The governmental takeover of assets formerly held by private entities in this manner has raised pressing questions regarding the potential for CERCLA liability as an owner or operator as the result of such acquisitions, and the availability of the "innocent landowner" defense of sections 107(b)(3) and 101(35) to these governmental entities.

To reduce these uncertainties, EPA is issuing this proposed rule to specify the range of permissible actions that may be undertaken by holders of a security interest within the bounds of the section 101(20)(A) security interest exemption. This rule will also specify the circumstances in which governmental entities that acquire possession or control of contaminated facilities as conservators or receivers will be considered "involuntary" owners for purposes of the section 101(35)(A)(ii) "innocent landowner" defense. Governmental entities may also acquire property through other mechanisms, such as through civil and criminal seizures and asset forfeitures. The Agency is also seeking comment on regulatory language which would specify such other types of acquisitions by governmental entities that may be considered "involuntary" within the meaning of the statute.

EPA is proposing this rule as a revision to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), codified at 40 CFR part 300 *et seq.*, under the authority of CERCLA sections 105 and 115. EPA recognizes that this revision to the NCP raises a number of important issues and is accepting public comment for a thirty-day period. Upon consideration and review of the comments, EPA may revise this proposed rule and will formally codify the provisions as subpart L in 40 CFR part 300. Prior to its promulgation as a final rule, this rule represents EPA's interpretation of sections 101(20)(A) and 101(35)(A)(ii), and EPA will utilize it as guidance for implementing these sections.

Judicial review of this proposed rule, when promulgated, will be governed by

the provisions of CERCLA section 113(a). These provisions mandate that any review of a regulation promulgated under CERCLA is confined to the United States Court of Appeals for the District of Columbia Circuit and that any application for such review must be made within ninety days of the rule's date of promulgation. By enacting these provisions, Congress intended that the District of Columbia Circuit Court would have "exclusive" jurisdiction to review regulations and that any petitions for review that were filed after the ninety day period would be barred. S. Rep. No. 848, 96th Cong., 2d Sess. 95 (1980); see *Lubrizol Corp.* v. *Train,* 547 F.2d 310, 314–16 (6th Cir. 1976) (by centralizing appeals in the D.C. Circuit under the Clean Air Act, Congress hoped to avoid needless delays in the implementation of important national programs caused by incessant litigation and inconsistent decisions).

## II. Summary

### *A. Security Interest Exemption*

This proposed rule interprets the section 101(20)(A) "security interest" exemption to permit the holder of a security interest to undertake a broad range of activity in the course of protecting a security interest in a facility that is subject to CERCLA, without being considered to be participating in the management of the facility. The activities specified in this rule are not mandatory or required to be undertaken as a condition of maintaining the exemption. Instead, this proposed rule identifies a range of permissible activities that a security holder may take to protect the security interest. The specific activities actually undertaken with respect to a particular facility in which a person holds a security interest may vary from case to case; the purpose of this rule is to specify, by illustration and example, the activities that a security holder may undertake without losing the exemption. The rule accomplishes this by defining the key terms of CERCLA section 101(20)(A): (1) "indicia of ownership," (2) "primarily to protect a security interest," and (3) "participating in the management of a . . . facility." This proposed rule does not define all possible activities that may be undertaken by a security holder without voiding the exemption: other permissible activities may be undertaken, even though not specifically identified in this rule.

With respect to a governmental lending entity that may assume ownership, conservatorship, or receivership of a lending institution or business, or that may acquire or have transferred to it property or other assets, through a variety of statutory mechanisms and thereby assume possession and control of a contaminated facility, this rule specifies circumstances in which the governmental lending entity may have a defense available under section 101(35)(A)(ii) of CERCLA.

While section 101(20)(A) provides persons who hold a security interest with a potential exemption from CERCLA liability when the real or personal property serving as the security is contaminated, this statutory provision does not otherwise provide protection from the ordinary risk assumed by the security holder that the facility's market value may not be sufficient to cover the borrower's debt. The CERCLA security interest exemption is not a loan guarantee for lending institutions and does not shift to the Superfund the cost of poor loan decisions, see *United States* v. *Maryland Bank & Trust, supra,* 632 F. Supp. at 580, but serves only as a shield from CERCLA liability where a person's ownership indicia are held as protection for a security interest.

From an environmental perspective, EPA must concern itself first with protection of public health, welfare, and the environment. Following expenditure of public funds to clean up contaminated property, EPA's mandate under CERCLA is to seek to recover the costs incurred by the Fund from those liable under CERCLA. Accordingly, where there is a release or threat of release of hazardous substances, CERCLA clearly imposes liability on owners of real property for the consequences of that release. However, security holders (commonly lending institutions) that possess an ownership interest in a facility may need to undertake certain activities in the course of protecting their security interest to manage properly their loan portfolios; such activities may include inspections or monitoring of the borrower's business and collateral, providing financial or other assistance, engaging in "loan workout" activities, and foreclosing on secured property.

This proposed rule seeks to reconcile a security holder's need to manage, oversee, or to otherwise act to protect a security interest, with EPA's duty to clean up waste sites and recover public funds spent in remediating these sites from those responsible or otherwise involved in the facility's operations, either through their participation in management (i.e., under section 107(a)(1)–(a)(2)) or through their own activities at the facility (i.e., under section 107(a)(3)–(a)(4)). EPA's interpretation of the security interest exemption both acknowledges and accommodates these competing interests within the current statutory scheme by specifying the permissible range of activities that may be undertaken by a security holder without voiding the exemption.

Specifically, the proposed rule provides that a security holder may, at its option, conduct or require an environmental inspection of a facility and may require cleanup of a facility prior to or during the life of the loan; may require from the facility owner or operator assurances of compliance with applicable federal, state, and local environmental and other laws, rules and regulations during the life of the loan; may periodically or regularly monitor or inspect both the facility (including site inspections) and the facility owner or operator's business or financial condition; may provide periodic financial or other advice to a financially distressed debtor; or may take other actions that are necessary for the security holder to adequately police the debt or other obligation or to comply with applicable legal requirements.

A security holder may also undertake so-called "loan workout" activities, such as restructuring or renegotiating the terms of the obligation, requiring payment of additional interest, extending the payment period, exercising forbearance, or providing advice or taking other actions that are necessary to protect the security interest. A security holder may also foreclose on the security (whether by formal means such as through the use of the judicial process, or by informal means such as by taking a deed in lieu of foreclosure), may wind-up operations, may liquidate or sell off assets, or may otherwise act to recover the value of the security interest in a manner consistent with good commercial practice. These activities are considered to be consistent with the CERCLA security interest exemption, and are not considered to be evidence of participation in management by a security holder. Note, however, that while a security holder may not be liable as an "owner" or "operator" under CERCLA section 107(a)(1) by virtue of the exemption, liability may nevertheless attach under section 107(a)(3) or section 107(a)(4) as the result of a security holder's own actions in connection with a facility.

It has become a customary or common practice for holders of security interests to undertake or require environmental inspections to minimize the risk that their loans will be secured by

contaminated property, and EPA considers such inspections to be consistent with this exemption from CERCLA liability. An inspection of a facility provides environmental advantages by identifying properties in need of cleanup or other environmentally beneficial response, and by helping to minimize environmental liability. Under this proposed rule, a security holder that undertakes or requires a borrower to undertake an environmental inspection or investigation of a facility securing the obligation is not considered to be participating in management. However, neither the statute nor this proposed rule requires a security holder to undertake an inspection to qualify for the exemption, and the liability of a security holder seeking to avail itself of the exemption cannot be based on or affected by the failure to conduct or require such an inspection.

This rule also proposes to define a security interest holder's obligations following foreclosure in cases where the security holder has not otherwise participated in the facility's management. Specifically, the proposal provides that a security holder may avail itself of the security interest exemption post-foreclosure unless it fails to take reasonable actions to sell the property, or it rejects or fails to act upon a written, *bona fide* offer for a value equal to or exceeding the outstanding loan obligation.

Under this proposal, a security holder, who did not prior to foreclosure participate in management, may foreclose, sell, liquidate, wind up operations, or retain and continue functioning the enterprise in order to protect the value of the secured asset prior to sale as a means to realize the debtor's unpaid obligation pending sale, liquidation, or other disposition of the property, without incurring liability under CERCLA section 1207(a)(1), unless (1) the security holder fails within twelve months following foreclosure to take the following actions to sell the property: (i) List the property with a broker, dealer or agent who deals with the type of property in question, and (ii) begin advertising the property as being for sale or disposition on at least a monthly basis in either a real estate publication, or a trade or other publication suitable for the property in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located; or (2) at any time after six months following foreclosure the security holder rejects, or does not act upon within 90 days of receipt of a written, *bona fide*, firm offer of fair consideration for the property. For purposes of this proposal: (a) a "written, *bona fide*, firm offer" is a legally enforceable offer, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the security holder's satisfaction the ability to perform; and (b) "fair consideration" is an amount equal to or in excess of the sum of the outstanding principal owed to the holder, plus any unpaid interest and penalties (whether arising before or after foreclosure), plus all reasonable and necessary costs, fees or other charges incurred by the holder incident to foreclosure, retention, continued functioning of the enterprise, and sale of the property, less any amounts received by the holder in connection with any partial disposition of the property or net revenues received as a result of continued functioning of the facility.

Unless otherwise provided by this proposal, during the applicability of the exemption, the security holder's CERCLA liability is only as provided for under CERCLA section 107(a)(3) or 107(a)(4), 42 U.S.C. 9607(a)(3)–(a)(4). In addition, where a defendant claims the section 101(20)(A) exemption from liability under section 107(a)(1), the burden is on the plaintiff to prove that the defendant is an owner or operator, as provided in this rule.

*B. Involuntary Governmental Acquisition of Facilities*

CERCLA section 101(20)(D) excludes from the definition of "owner or operator" a unit of state or local government which acquires ownership or control over a facility involuntarily by virtue of its function as sovereign. 42 U.S.C. 9601(20)(D). There is no comparable provision for Federal government entities. Section 101(35)(A)(ii), however, specifies that acquisition by any governmental entity is "involuntary" if the facility is acquired through "escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation." 42 U.S.C. 9601(35)(A)(ii).

An "involuntary transfer or acquisition" of a facility is an element of the "innocent landowner" or third-party defense for a government entity: Section 101(35)(A)(ii) works in conjunction with section 107(b)(3), which requires for the defense the absence of a "contractual relationship" concerning the manner in which the contaminated facility was acquired. Section 101(35) defines "contractual relationship" to exclude such involuntary transfers.[2] The chief difference is that a state or local government that involuntarily acquires a contaminated property is exempted from the definition of an owner or operator of the facility, whereas federal entities are not specifically accorded such treatment, but may be able to assert a defense to liability.

Government entities have become increasingly likely to own or possess properties as a consequence of bank and savings and loan failures, through statutory mechanisms that result in governmental takeover of the failed or insolvent lending institutions. Under the FDI Act, as amended by FIRREA, the Office of Thrift Supervision or the Office of the Comptroller of the Currency will direct the FDIC or RTC to acquire the property and assets of failed or insolvent banks, credit unions, savings institutions, and thrifts. The range of assets acquired by these governmental entities may include, among others, simple security interests, property for which the depository or thrift institution held record title or other form of title through foreclosure, or property that had been purchased or acquired as an investment by the failed institution or its subsidiary. Pursuant to these authorities, the FDIC and RTC succeed to such assets and act as the conservator or receiver of the insolvent lending institutions. For the purposes of CERCLA, there is no "contractual relationship" between the FDIC or RTC and the assets so acquired because this manner of acquisition by a government entity is an "involuntary transfer or acquisition" within the meaning of section 101(35)(A)(ii).

Other government financial regulatory or lending entities [3] that act in a similar

[2] Section 101(35) specifies two other circumstances in which no "contractual relationship" exists with respect to the transfer of a facilty for purposes of asserting the innocent landowner-third party defense: where the party acquiring the property did not and had no reason to know that hazardous substances had been released or disposed of on the property, after having undertaken "all appropriate inquiry" (CERCLA 101(35(A)(i), 101(35)(B)); and where the property is acquired by inheritance or bequest (CERCLA 101(35)(A)(iii)).

[3] As used throughout this rule, the term "governmental lending entities" refers to governmental lending and credit institutions, loan guarantors, and financial regulatory entities which acquire security interests or properties of failed private lending and depository institutions as conservators or receivers.

capacity under a statutory mandate are also considered to be similarly situated; "involuntary acquisitions" by such entities are discussed in greater detail in section IV. While this rule discusses generally the manner in which governmental lending entities involuntarily acquire property, it is not intended to preclude other similarly situated government entities that involuntarily acquire contaminated property from asserting the defense, nor are other means of involuntary acquisition by government entities intended to be excluded.

Governmental entities that acquire assets involuntarily in their capacity as a conservator or receiver may acquire some assets to which the security interest provisions of this rule will apply. Such assets include security interests securing performing loans, loans in workout, those in default or non-performing and are unforeclosed-upon, and foreclosed-upon assets net yet sold by the prior security holder, as examples. The involuntary governmental acquirer of such assets generally stands in the shoes of the prior security holder, and may exercise the same rights under the security interest provisions of this rule with respect to such assets. Where the governmental lending entity involuntarily acquires assets to which the security interest provisions would not apply—i.e., those which the predecessor did not hold as protection for a security interest—the "involuntary transfer or acquisition" provisions of this rule apply.

## III. CERCLA Provisions Protecting the Holder of a Security Interest

The section 101(20)(A) security interest exemption is the principal means of avoiding CERCLA liability for the holder of a security interest in a facility.

Section101(20)(A) provides, in part:

> Such term [owner or operator] does not include a person who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility.

There are three key terms found in the exemption that are not otherwise defined in CERCLA: (1) "Indicia of ownership" (2) the requirement that the ownership indicia be held "primarily to protect [the] security interest" in the facility, and (3) the prohibition of the security holder from "participating in the management" of the facility.

### *1. Indicia of Ownership*

Ownership indicia within the meaning of section 101(20)(A) include evidence of interests in real or personal property held as security for a loan or other obligation, including title to the real or personal property acquired incident to foreclosure and its equivalents. The nature of the ownership interest may vary under the laws of different states and by the type of secured loan transaction. Examples of such indicia may include, but are not limited to, a mortgage, deed of trust, or legal title obtained pursuant to foreclosure or its equivalents, or an assignment, lien, pledge, or other right to or form of encumbrance against property that is legally recognized as establishing a *bona fide* security interest.

### *2. Primarily To Protect the Security Interest*

Whether a person's ownership indicia bring it within or outside of the definition of "owner or operator" under CERCLA is determined by whether the indicia are held "primarily to protect [the] security interest." The use of this phrase requires that the ownership interest must be a legally recognized security interest, and not an interest in property held for some other reason. A *bona fide* security interest may arise pursuant to a variety of statutory or common law mechanisms. While a security interest is ordinarily created by mutual consent, such as a secured transaction within the scope of Article 9 of the Uniform Commercial Code, there are other means by which a legally recognized security interest may be created, some of which may or may not be the result of a consensual arrangement between the parties to the transaction. In general, a transaction that gives rise to a security interest is one that provides the security holder with recourse against real or personal property of the person pledging the security; the purpose of the interest is to secure the repayment of money, the performance of a duty, or of some other obligation. See generally J. White & R. Summers, Handbook on the Uniform Commercial Code section 22 (2d Ed. 1980); Restatement of Security (1941).

Recognized forms of security interests include mortgages, certain types of liens, forms of conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements or accounts receivable financing arrangements, and some forms of leases or consignments, among others.[4] In all cases, the salient question is whether a security interest arises under applicable law, regardless of the label given to the particular transaction.[5] A holder of a security interest may include the initial holder (such as the loan originator, for example), and any successor-in-interest, subsequent purchaser on the secondary market, loan guarantor, or other person who holds a security interest under the applicable law governing the transaction.

In contrast, under section 101(20)(A), "indicia of ownership" held "primarily to protect [a] security interest" do not include evidence of interests in the nature of an investment in the facility, or an ownership interest held for any reason other than as protection for a security interest. See, e.g., *United States* v. *Maryland Bank & Trust, supra* (actions taken by lending institution after foreclosure indicate property held as an investment rather than as security for a loan). EPA recognizes that lending institutions typically have revenue interests in the loan transactions that create security interests; such transactions are not considered to be investment interests, but are generally considered *bona fide* secured transactions falling within the exemption. See *In re Bergsoe Metal Corp., supra,* 910 F.2d at 672 n.2. However, when a person holds indicia of ownership in a facility primarily for investment purposes, as opposed to assuring repayment of a loan or as security for some other obligation, the exemption will not apply.

Lending institutions, which typically hold a large number of security interests, may also act in some fiduciary or other capacity with respect to a facility. However, this proposed rule does not address circumstances in which a lending institution or any person acts in a non-lending capacity or has any interest in a facility other than a *bona fide* security interest in real or personal property. Because the exemption in section 101(20)(A) covers only security interests, any discussion of other interests or involvement in a facility is beyond the scope of this rule.

### *3. Participating in the Management of a Facility*

Whether the holder of a security interest has participated in management sufficiently to void the exemption is a fact-sensitive inquiry. Participation in

[4] Whether a sale-and-leaseback, conditional sale, installment sales contract, or any other transaction creates a security interest and is within the security interest exemption under CERCLA is determined by the facts of each case.

[5] See, e.g., U.C.C. 1–201(37) ("'Security interest'" means an interest in personal property or fixtures which secures payment or performance of an obligation. . . . Whether a lease [or other transaction] is intended as security is to be determined by the facts of each case. * * *"

the management of a facility means actual participation in the management or operational affairs by the holder of the security interest, and does not include the mere capacity, ability, or unexercised right to influence facility operations. In all cases, the determination of whether a security holder is participating in management depends on the holder's actions with respect to the facility. A security holder is not considered to be participating in management within the meaning of section 101(20)(A) unless, while the borrower is still in possession, either: (1) The security holder is exercising decisionmaking control over the borrower's environmental compliance, such that the security holder has undertaken responsibility for the borrower's waste disposal or hazardous substance handling practices which results in a release or threatened release, or (2) the security holder is exercising control at a management level encompassing the borrower's environmental compliance responsibilities, comparable to that of a manager of the borrower's enterprise, such that the security holder has assumed or manifested responsibility for the management of the enterprise by establishing, implementing, or maintaining the policies and procedures encompassing the day to day environmental compliance decisionmaking of the enterprise. A security holder will not be considered to be participating in management when it undertakes certain actions to protect the security interest, as discussed in the following sections.

Consistent with the exemption, a security holder may act to protect the interest by, for example, policing the loan, undertaking financial workout with a borrower where the obligation is in threat of default, or by foreclosing and preparing the facility for sale or liquidation. Such actions are not considered to be participation in the management of a facility provided that the actions taken are reasonably necessary to protect the security interest.

Accordingly, the holder of a security interest is not considered to be acting outside the scope of the exemption when the holder regularly or periodically monitors the borrower's business, or requires or conducts on-site inspections and audits of the environmental condition of the facility or the borrower's financial condition, or monitors other aspects of the facility considered relevant for adequate protection of the security interest, or requires certification of financial information or compliance with applicable duties, laws or regulations, or requires other similar actions, provided that the borrower remains in possession and control of the operations of the facility (except as provided incident to foreclosure, discussed below). Such oversight and obligations of compliance imposed by the holder of a security interest are considered to be undertaken to protect the security interest and are not considered part of the management and operation of a facility. Although such requirements and oversight may inform the borrower's management of a facility, the security holder is not considered to be participating in management where the borrower continues to make operational decisions at the facility.

Cases addressing the issue of a security holder's involvement with a borrower have routinely held that financial, administrative, and similar general advice is not ordinarily considered to rise to the level of management particpation. See, e.g., *United States* v. *Fleet Factors Corp., supra,* 901 F. 2d at 1556–57 (facility monitoring and involvement in financial decisions permissible); *United States* v. *Mirabile, supra,* 15 Envtl. L. Rep. at 20996–97 (facility monitoring, involvement in financial decisions, restrictions on financial decisions contained in loan documents, and general financial advice permissible); *In re Bergsoe Metals Corp., supra,* 910 F.2d at 672 (input at planning stages of project, inspection and entry rights permissible); *Guidice* v. *BFG Electroplating and Manufacturing Co., supra,* 732 F. Supp. at 562 (monitoring of accounts and of business and personnel matters, site inspections, assistance in loan negotiations, loan restructuring, and procurement of purchaser for facility permissible).

This proposed rule describes a range of activities that a security holder may undertake in the course of protecting its security interest; these activities are not considered to be evidence of management participation. Certain activities—such as undertaking or requiring an environmental inspection at the creation of the security interest, policing the loan, engaging in so-called "loan workout," and foreclosure and liquidation of assets—are considered permissible and within the scope of the exemption. However, merely labeling a certain activity as part of a "workout," for example, is not by itself conclusive; what matters is what the security holder actually does. Permissible "loan workout" activities include financial and other advice, renegotiation of loan terms, and similar financially related activities, but do not include exercising decisionmaking control over the operational affairs of the facility. In this context, the statute does not permit a security holder to act as the operator of a facility (an independent basis of liability) under the mantle of holding a security interest. The range of permissible activities are discussed in greater detail in the following sections. This proposed rule does not define the only activities that may be undertaken by a security holder without voiding the exemption, and no inferences should be drawn about the impermissibility of activities not specifically mentioned in this rule—those will be addressed on a case-by-case basis. As discussed in detail in this rule, a security holder may monitor and police its security interest consistent with ordinary and customary loan management practices, without voiding the exemption. A security holder voids the exemption when it exercises decisionmaking control over facility operations, particularly with respect to the hazardous substances present at the facility.

Actions at the Inception of the Loan or Other Transaction Giving Rise to a Security Interest

Actions undertaken by a security holder prior to or at the inception of a security interest are not considered evidence of participation in management that would void the exemption. For example, consultation and negotiation concerning the structure and terms of the loan or other obligation, the payment of interest, the payment period, and specific or general financial advice, suggestions, counseling, guidance, or other actions incident or prior to creation of the security interest are not considered evidence of participation in management.

In addition to such involvement, a security holder may determine for risk management or other business purposes, to undertake or require an environmental inspection of a facility securing a loan or other obligation giving rise to a security interest. Such environmental inspections may be undertaken by the security holder, for example, or the security holder may require one to be conducted by another party (such as the borrower) as a condition of the loan or other transaction. The statute does not require that such an inspection be undertaken to qualify for the exemption, and the liability of a security holder seeking to avail itself of the exemption cannot be based on or affected by the omission or

failure to undertake or require an inspection in connection with the security interest. In addition, neither can liability be premised on a security holder's having undertaken or required an inspection, and nothing in this rule should be understood to discourage a security holder from undertaking or requiring such an inspection in circumstances deemed appropriate by the security holder.

In the event that an environmental inspection of a facility reveals contamination, the security holder may undertake a variety of responses that it deems appropriate: for example, the holder may refuse to extend credit or to follow through with the transaction creating the security interest, or instead take a security interest in non-contaminated property. Alternatively, a security holder may determine that the risk of default is sufficiently slight (or that the extent of contamination is minimal and does not significantly affect the value of the facility) and proceed to take a security interest in the contaminated property. Additionally, the security holder may require the borrower to clean up the facility as a condition of the loan or other obligation. Such activities are not considered management participation, and knowingly taking a security interest in a contaminated facility will not subject a *bona fide* security holder to CERCLA liability.

Policing the Security Interest or Loan

Actions which are consistent with protecting a security interest include, but are not limited to, a requirement that the borrower clean up the facility prior to or during the life of the loan or security interest; a requirement of assurance of the borrower's compliance with applicable federal, state, and local environmental and other rules and regulations during the life of the loan or security interest; securing authority or permission for the security holder to periodically or regularly monitor or inspect both the facility in which the security holder possesses indicia of ownership (including site inspections) or the borrower's business or financial condition; or other requirements or conditions reasonably necessary for the security holder to police adequately the loan or security interest, or to comply with legal requirements.

Such requirements may be contained in contractual (e.g., loan) documents or other relevant documents specifying requirements for financial, environmental, and other warranties, covenants, and representations or promises from the borrower, as conditions for the loan or other obligation. While the exemption requires that the actions undertaken by a security holder be consistent with protecting a security interest, a security holder is not expected to be an insurer or guarantor of environmental safety at a facility in which it has a security interest. The inclusion of environmental warranties and covenants are not considered to be evidence of a security holder acting as an insurer or guarantor, and liability cannot be premised on the existence of such terms, or upon the security holder's actions that ensure that the facility is managed in an environmentally sound manner. Neither are these actions or requirements considered to be evidence of participation in management. See, *e.g., United States* v. *Fleet Factors Corp., supra,* 901 F.2d at 1558 (secured creditors "encouraged" to closely monitor waste treatment practices and policies of debtors, and may insist upon compliance with acceptable treatment standards as a condition of financial support, and may adjust loan terms to reflect debtor's hazardous waste practices).

Loan Workout

The holder of a security interest may determine that it needs to take action with respect to the facility to secure or safeguard the security interest from loss. These actions may be necessary when, for example, a loan is in default or threat of default, and are commonly referred to as "loan workout" activities. These actions will not take a security holder outside of the section 101(20)(A) security interest exemption provided that the actions are taken in the course of protecting the security interest. To remain within the exemption from CERCLA liability, all such actions must be structured to protect and preserve the security interest; such measures are taken to protect the security interest when the security holder is assisting the borrower in an effort to prevent default of the loan or diminution of the value of the security.

When the holder of a security interest undertakes work-out activities, provides financial or other advice, and similar support to a distressed borrower, the security holder will remain within the exemption if the holder does not divest the borrower of its decisionmaking control over facility operations, particularly with respect to any hazardous substances present at the facility, such that the borrower remains the ultimate decisionmaker for operation of the facility. Where the evidence demonstrates that the security holder controls the decisionmaking of the borrower, EPA considers the security holder to be "participating in the management of the facility" and therefore to have voided the exemption.

Activities that EPA considers to be permissible actions taken in the course of protecting a security interest (and which are not evidence of "participation in management") during the work-out period include, but are not limited to, restructuring or renegotiation of the terms of the loan obligation, requiring payment of additional interest, extension of the payment period, specific financial or operational advice, suggestions, counseling, guidance, or any other action reasonably necessary to protect the security interest.

While a security holder does not "participat[e] in the management" of a facility within the meaning of Section 101(20)(A) merely because it causes or contributes to hazardous substance contamination, in general a security holder must be cautious that its own actions do not result in independent liability under CERCLA. See, e.g., CERCLA section 107(a)(3)–(4), 42 U.S.C. 9607(a)(3)–(4). This admonition is not a new requirement or an obligation imposed by the terms of section 101(20)(A): In general, any person that is itself responsible for a release may be liable under section 107(a) of CERCLA and held strictly, jointly, and severally liable.[6] Even a party owning a facility that may have a defense to liability for pre-existing contamination [7] or that is by definition exempt from status as an owner or operator [8] may be held to be responsible for the costs of cleanup if its actions contribute to contamination at a facility.[9] Accordingly, a security holder is cautioned to be aware of the hazardous substances present at a facility when providing financial or other advice, or when otherwise acting to protect the security interest, to ensure

[6] See, e.g., *Tanglewood East Homeowners* v. *Charles-Thomas, Inc., supra; United States* v. *Monsanto, supra; United States* v. *Chem-Dyne Corp., supra.*

[7] The traditional "third-party" defense under section 107(b)(3) is voided where the defendant has failed to exercise due care with respect to the hazardous substances present at a facility. See CERCLA 107(b)(3)(a)–(b), 42 U.S.C. 9607(b)(3)(a)–(b). Similarly, the "innocent landowner" defense under Section 101(35) is voided where the defendant, "by act or omission, caused or contributed to the release or threatened release of a hazardous substance." See *id.* Section 101(35)(D), 42 U.S.C. 9601(35)(D).

[8] A state or local government entity that acquires a contaminated facility "by virtue of its function as sovereign" is not an "owner or operator" of the facility, unless it "has caused or contributed to the release or threatened release of a hazardous substance." See CERCLA 101(20)(D), 42 U.S.C. 9601(20)(D).

[9] For example, by having arranged for disposal or treatment of a hazardous substance, under section 107(a)(3), 42 U.S.C. 9607(a)(3).

that its actions do not subject it to liability under other provisions of CERCLA.

Foreclosure and Liquidation

The process of foreclosure and sale may require or result in the security holder taking record title to the property under the laws of some states. For the purposes of this proposed rule, foreclosure, purchase at foreclosure sale, acquisition or assignment of title in lieu of foreclosure, acquisition of a right to title, or other agreement in settlement of the loan obligation, or any other formal or informal manner by which the security holder acquires, for subsequent disposition, possession of the borrower's collateral, are considered to be actions within the scope of the statutory exemption as necessary incidents to protection of the security interest. However, the temporary acquisition must be reasonably necessary to ensure satisfaction or performance of the obligation. A security holder's actions in outbidding or refusing bids from parties offering fair consideration for the property are evidence that the property is no longer being held primarily to protect the security interest.[10] In this regard, "fair consideration" refers to an amount, taking into consideration the terms and conditions of the offer, that represents a value equal to or greater than the outstanding obligation of the debtor.[11]

To remain within the exemption after foreclosure, the foreclosing entity must be acting to preserve the assets of the facility for its subsequent sale. This means that the security holder must undertake to sell or liquidate the secured all assets, wind up operations, or take other action as appropriate for maximizing the value of the secured asset prior to sale as a means to realize the debtor's unpaid obligation. "Winding up" is construed as including those actions necessary to properly and responsibly close down a facility's operations, secure the site, and otherwise protect the value of the foreclosed assets for subsequent liquidation. See, e.g., *United States* v. *Mirabile, supra.* In winding up a facility a security holder may undertake all necessary security measures or take other actions that protect and preserve a facility's assets. In addition, steps taken to prevent or minimize the risk of a release or threat of release of hazardous substances are not considered evidence of management participation.[12]

In addition, there may be circumstances in which a security holder may determine a need to undertake certain actions with respect to a facility's operations in order to preserve the value of the foreclosed-on assets or to prevent a future release (such as by the removal of drummed waste), or to prepare property for safe public access incident to sale or liquidation of assets. Precisely because a security holder in charge of a facility may need to take affirmative action with respect to the hazardous substances that are known to be present, such mitigative actions are not considered to be evidence of participation in management.

For purposes of this proposed rule, mitigative or preventative measures that are environmentally responsible are considered to be actions that preserve and protect the value of the facility and, hence, protect the security interest. Accordingly, such actions are not considered evidence of participation in management. Security holders that undertake environmentally mitigative actions should be aware that section 107(d), 42 U.S.C. 9607(d), provides that no person is liable for CERCLA costs or damages "as a result of rendering care, assistance, or advice" with respect to hazardous substances—even if such actions result in the release or threat of release of a hazardous substance—so long as the actions taken are consistent with the NCP, or at the direction of an On-Scene Coordinator. The NCP, promulgated under CERCLA section 105, 42 U.S.C. 9605, specifies the appropriate response actions for addressing the release or threat of release of hazardous substances at a facility. 40 CFR part 300, 55 FR 8666 (Mar. 8, 1990). In addition, a security holder—or any person—is not considered to be liable under CERCLA for the release or threatened release of a hazardous substance for which another party is solely responsible, as provided in section 107(b), 42 U.S.C. 9607(b).

Holding Property for Disposition

Foreclosure and possession of property incident to sale or liquidation is often the only remedy the holder of a security interest may have to secure performance of an obligation. Several courts construing section 101(20)(A) have accordingly indicated that the mere foreclosure and taking of title does not necessarily void the security holder exemption. *United States* v. *Mirabile, supra; United States* v. *Maryland Bank and Trust, supra; In re T.P. Long Chemical Inc., supra;* but see *Guidice* v. *BFG Electroplating and Manufacturing Co., supra.* While mere foreclosure is considered permissible, a security holder that does not endeavor to sell or otherwise divest itself of foreclosed-on property runs the risk that it will be considered to be possessing the property for some purpose other than to protect its security interest in the property, such as for investment. *See, United States* v. *Maryland Bank and Trust, supra.* Existing case law provides little precise guidance regarding the period of time that is considered reasonable for a security interest holder to maintain possession of foreclosed-on property. Four years was found too long in *United States* v. *Maryland Bank and Trust, supra,* while four months was found reasonable in *United States* v. *Mirabile,* supra. In addition, the circumstances facing foreclosing security holders may vary widely, depending on, among other things, the nature of the property securing the obligation and local and national economic conditions. Thus, the time required to dispose of security property may vary widely, notwithstanding a security holder's best efforts. Accordingly, EPA believes that it is proper to define the obligations of a security holder seeking to remain within the exemption following foreclosure (in cases where the security holder has not otherwise participated in the facility's management prior to foreclosure) without regard to specific time periods within which a sale or other disposition must occur. Specifically, this proposal provides that a security holder may avail itself of the security interest exemption unless the holder fails to take reasonable steps to sell the property, or rejects or fails to act upon a written *bona fide* offer for a value equal to or exceeding the outstanding loan obligation.

Under this proposal, a security holder (who did not prior to foreclosure participate in management) may foreclose, retain possession, and, where necessary to maintain the value of the secured property, may continue functioning the enterprise in order to protect the holder's security interest, without triggering liability under CERCLA section 107(a)(1), 42 U.S.C. 9607(a)(1) (pertaining to the liability of owner or operator of a vessel or facility), unless the holder fails promptly to take specific actions to attempt to dispose of the property, or has rejected

[10] To the extent that the foreclosing lender is acting "primarily to protect its security interest" and is within the secured creditor exemption, EPA considers that the ownership of the property remains with the borrower for purposes of the CERCLA lien provision. See 42 U.S.C. 9607(1).

[11] See infra "Holding Property for Disposition"; 40 CFR 300.1100(b)(1)(iii) (definition of "fair consideration").

[12] A security holder also may be under an obligation to protect collateral from loss or impairment, or to act in a commercially reasonable manner. See, e.g., U.C.C. 9-507.

or ignored a written *bona fide* firm offer of fair consideration for the property.[13]

Under this proposal, within twelve months following foreclosure the security holder must have taken at least the following actions to sell the property, in order to avoid triggering potential liability under section 107(a)(1): begin advertising the property on at least a monthly basis as being for sale in either a real estate publication, or a trade or other publication suitable for the property in question, or a newspaper or general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable Federal, State, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located; and at any time following six months after foreclosure, the security holder must not have rejected, or failed to act upon within 90 days of receipt of a written, *bona fide*, firm offer of fair consideration for the property. For purposes of this proposal, a "written, *bona fide*, firm offer" is a legally enforceable offer, containing all material terms of the transaction, from a ready, willing and able purchaser who demonstrates to the security holder's satisfaction the ability to perform. "Fair consideration" under this proposal is an amount equal to or in excess of the sum of the outstanding principal owed to the holder, plus any unpaid interest and penalties (whether arising before or after foreclosure), plus all reasonable and necessary costs, fees or other charges incurred by the holder incident to foreclosure, retention, continuing functioning of the enterprise, and sale of the property, less any amounts received by the holder in connection with any partial disposition of the property or net revenues received as a result of continued functioning of the facility.

Nothing in this proposal requires a security holder to hold secured property longer than it might otherwise do so in order to receive fair consideration, where business or other considerations would prompt a quicker disposition for a lesser amount. However, where a security holder rejects or fails to respond to a *bona fide* offer for an amount equal to or greater than the outstanding obligation at the time of the offer, it is reasonable to conclude that the security holder is holding the property for some reason other than to protect its security interest, and that the section 101(20)(A) exemption is voided.

**Note:** That during this period although a security holder may be exempt from liability as an owner or operator of a facility under section 107(a)(1) or section 107(a)(2), liability may still attach under section 107(a)(3) or section 107(a)(4).

Relationship to CERCLA Lien

In the event that EPA conducts a response action at a facility during the time that a security holder maintains indicia of ownership to protect a security interest, pursuant to CERCLA section 107(1), 42 U.S.C. 9607(1), a lien in favor of the United States may be imposed. See Adams, Guidance on Superfund Liens (EPA, Office of Enforcement and Compliance Monitoring, Sept. 22, 1987). In addition, should the EPA response action enhance the value of the facility and result in the security holder realizing an amount greater than that to which the security holder is entitled under rules of equity, the United States may seek equitable reimbursement under applicable principles of law, of the amount by which the security holder has been unjustly enriched or has benefited as a result of the EPA cleanup.

## IV. Involuntary Transfer or Acquisition By A Government Entity

A government entity that involuntarily acquires a facility may be entitled to assert a defense to liability as an "innocent landowner" or, in the case of state and local government entities, it may be exempt from the definition of "owner or operator" under CERCLA.[14] The statute refers to "involuntary acquisitions" by government entities in two sections defining the terms used in CERCLA: section 101(20)(D) with respect to state and local governments, and section 101(35)(A)(ii) with respect to any governmental entity. Under the well-established principle of statutory interpretation that identical words used twice in a statute are presumed to have the same meaning, EPA interprets Congress' use of the same term in close proximity in the definitional section of CERCLA to refer to the same concept.[15]

Section 101(35)(A)(ii) was added by the Superfund Amendments and Reauthorization Act (SARA) of 1986, Public Law No. 99–499, 100 Stat. 1613 (Oct. 17, 1986). Where a government entity acquires property involuntarily within the meaning of this section, it may be able to assert a defense to liability as an "innocent landowner." The innocent landowner defense is part of the third-party defense contained in section 107(b)(3), which works in tandem with section 101(35).[16]

The relevant sections of the third-party/innocent landowner defense provide:

Section 107(b):

"There shall be no liability under [section 107(a)] for a person who can establish . . . that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(3) an act or omission of a third party other than . . . one whose act or omission occurs in connection with a *contractual relationship, existing directly or indirectly with the defendant* . . ., if [the defendant] (a) [has] *exercised due care with respect to the hazardous substances* . . ., and (b) he took precautions against the foreseeable acts or omissions of any . . . third party . . . ."

Section 101(35):

"(A) The term 'contractual relationship,' for the purpose of section 107(b)(3), includes, but is not limited to, land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of hazardous substances, and . . .:

(ii) The defendant is a government entity which *acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation*. . . .

In addition, . . . the defendant must . . . satisf[y] the requirements of section 107(b)(3)(a) and (b). (emphasis added.)

The defense is available for the government-as-owner where the harm

[13] Notwithstanding this exemption from liability as an owner or operator, a security holder in possession of secured property may face potential CERCLA liability as provided for under section 107(a)(3) (affecting persons who arrange for disposal or treatment of hazardous substances at a facility owned or operated by another party or entity and containing such hazardous substances) and section 107(a)(4) (affecting persons who accept for transportation hazardous substances and selected the disposal facility).

[14] In addition, section 101(20)(A)(iii), 42 U.S.C. 9601(20)(A)(iii), specifies that where title or control of a facility is "conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government," the owner of the facility is the person "who owned, operated, or otherwise controlled activities at such facility immediately beforehand."

[15] See generally 2A Sutherland Statutory Construction section 46.06 (4th ed. 1984); *ICC Industries, Inc. v. United States*, 812 F.2d 694, 700 (Fed. Cir. 1987) (citing cases). Even though the language differs slightly between sections, this is not unusual in CERCLA and does not indicate that Congress intended different meanings in the absence of any legislative history to the contrary. See *Pennslyvania v. Union Gas Co.*, ____ U.S. ____, 109 S.Ct. 2273, ____ (1989) (similar language in different sections of CERCLA separately waiving State and Federal immunity held to have the same effect).

[16] See Guidance on Landowner Liability Under section 107(a)(1) of CERCLA, De Minimis Settlements Under section 122(g)(1)(B) of CERCLA, and Settlements With Propsective Pruchasers of Contaminated Property, 54 Federal Regulation 34235 (Aug. 18, 1989).

was caused solely by the acts of third parties with which the government entity had no "contractual relationship," provided that certain additional elements specified in section 101(35)(A)–(B) are also established. Section 101(35)(A)(ii) lists three situations in which a government entity has no such "contractual relationship": acquisition through the exercise of eminent domain authority by purchase or condemnation, through escheat, or "through any other involuntary transfer or acquisition."

The legislative history of section 101(35)(A) does not discuss the issue of involuntary acquistions or transfers to government entities, and with respect to this specific provision notes only that the cost of cleaning up a contaminated facility taken by eminent domain may be offset against the price paid to the owner of property as compensation. H. Conf. Rep. No. 962, *supra*, at 187. However, while it is clear that the clause is intended to shield a government entity from CERCLA liability in certain narrow and limited circumstances when a facility is involuntarily transferred to the government in its capacity as sovereign, it is also clear that it is not so broad as to serve as a defense in every instance in which the government owns contaminated property, however contaminated or acquired.

Section 101(20)(D) contains the statute's second use of the term "involuntary," and is substantially similar to section 101(35). The section, also added by the SARA of 1986, provides an exemption from the definition of "owner or operator" (and therefore liability under sections 107(a)(1) and (a)(2)) for state and local entities that acquire possession of property involuntarily. Section 101(20)(D) provides (in part):

> The term 'owner or operator' does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign.

The section's legislative history does not discuss the "other circumstances" in which acquisition of property by state or local governments may be involuntary; it only mentions that state and local governments will lose the exemption if they cause or contribute to the release or threat of release of hazardous substances at such involuntarily acquired properties. H. Conf. Rep. No. 962, 99th Cong., 2d Sess., at 185–86 (1986).

The examples of "involuntary" acquisition given in section 101(20)(D) may require some intentional or purposeful action on the part of the government to complete—abandonment, for example, requires government-initiated proceedings to determine that property has, in fact, been abandoned. See, e.g., *United States* v. *Sylvester*, 848 F.2d 520, 525 (5th Cir. 1988) (determination of abandonment a question of fact). However, once abandonment, tax delinquency, or bankruptcy has been determined, a state or local government acquiring the property that was the subject of such proceedings is not considered the "owner or operator" of the property because the transfer was "involuntary" for purposes of CERCLA. In addition, section 101(20)(D)'s use of the phrase "or other circumstances in which the government involuntarily acquires title or possession by virtue of its function as sovereign" indicates that the exemption includes other acquistions in which the government has property involuntarily transferred to it—so long as the government's acquisition is by virtue of its function as sovereign.

Governmental ownership or control of property by involuntary transfer clearly includes acquisition that is involuntary to the government in its capacity as a sovereign. Involuntary acquisitions within the meaning of the statute includes acquisitions of property in which a governmental lending or credit institution or financial regulatory entity is assigned, required, appointed, or otherwise obligated to act as a conservator or receiver of a private lending institution, its assets and property, pursuant to specific enabling legislation. Acquisition under law as a conservator or receiver of property is not materially different from other forms of involuntary acquisitions listed in the statute, such as transfers to government entities pursuant to abandonment proceedings, or as the result of tax delinquency, or other circumstances in which the government obtains ownership of property by virtue of its function as sovereign.[17] Acquisition of property as a conservator or receiver is ordinarily pursuant to a clear and direct statutory mandate that provides little or no discretion with respect to fact and the manner of acquisition, and without regard to the condition of the property acquired. Such acquisitions are ordinarily for limited and non-proprietary purposes, and often occur because no entity other than a government entity is available to serve in this capacity with respect to the property so acquired.

Governmental entities that acquire assets involuntarily through their lending-related activities may acquire both security interests as well as properties wholly owned by the person from whom the government acquired the properties or assets. While all such assets may be involuntarily acquired within the meaning of this rule, with respect to security interests so acquired the acquiring governmental entity is permitted to exercise the same rights under the security interest provisions of this rule as the prior security holder. Where the security interest provisions are unavailable with regard to the assets so acquired, the "involuntary transfer or acquisition" provisions of this rule may apply.

In addition, all property acquired "involuntarily" within the meaning of this proposed rule by a governmental entity as a conservator or receiver, regardless of whether the property was formerly held as an investment property or for some other purpose by the prior owner, is defined to be property obtained through an "involuntary transfer or acquisition" under section 101(35)(A)(ii) of CERCLA. The manner or purpose for which the subject property was owned prior to its acquisition is irrelevant for determining whether the acquisition is "involuntary" for purposes of this rule, and accordingly this rule does not distinguish among former uses of property so acquired. Finally, where a governmental entity or its designee is acting as a conservator or receiver of an institution, the general rule that the liabilities against the institution's estate

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[17] That property may be acquired by virtue of the government's function as sovereign is not necessarily dispositive, however; the clear terms of sections 101(20)(D) and 101(35(A)(ii) require that the acquisition must be involuntary as well. Other sections of CERCLA indicate that government entities which acquire ownership or possession of facilities under circumstances different that those specified in sections 101(20)(D) and 101(35(A)(ii), or where the government entity itself is responsible for contamination on property owned by it, are subject to CERCLA's liability provisions. See CERCLA 101(21), 42 U.S.C. 9601(21) (federal, state, and local governments included in definition of "person"); *id.* section 101(20)(D), 42 U.S.C. 9601(20)(D) (loss of exemption for involuntarily acquired property by state or local government where entity caused or contributed to release); *id.* section 107(d)(2), 42 U.S.C. 9607(d)(2) (government entity may be liable for gross misconduct in conducting cleanup action); *id.* section 120, 42 U.S.C. 9620 (federal government liable as any nongovernment entity under § 107). Reading the definition of "involuntary" to cover every instance of governmental ownership as ownership by virtue of its function as sovereign would render these other sections meaningless. *Pennsylvania* v. *Union Gas Co.*, ⁹⁰⁹ U.S. ____, 109 S. Ct. 2273, ____ (1989) (the narrow exclusion from liability provided for states in section 101(20)(D) is meaningful only because "Congress intended that States be liable along with everyone else for cleanup costs . . . .").

are limited to the estate's assets will apply, and such liabilities do not extend to the assets of the conservator or receiver.

As part of this proposal, EPA is also seeking comment on the following language concerning the United States' potential liability when it acquires property pursuant to federal criminal or civil seizure or forfeiture statutes. Specifically, the Justice Department has opined that federal governmental agencies that seize property under federal forfeiture and seizure laws are entitled to the CERCLA liability defense found in sections 107(b) and 101(35). With this understanding, EPA is considering the following language for possible inclusion in the final rule:

> Acquisition of property by any department, agency, and instrumentality of the executive, legislative, or judicial branch of the federal government pursuant to any forfeiture or seizure law or authority of the United States shall be deemed to be an involuntary transfer within the meaning of CERCLA Section 101(35)(A)(ii). This language is being repeated in the regulatory text of this proposed rule.

## V. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an annual effect on the economy of $100 million or more. By establishing criteria for determining which parties fall within the "secured creditor" exemption under CERCLA section 101(20)(A) and which governmental entities should be entitled to argue that they have involuntarily acquired a facility under CERCLA section 101(35)(A)(ii), this proposal could potentially result in costs savings to holders of security interests which may have previously been held liable under CERCLA sections 107(a)(1) or 107(a)(2). In addition, this proposed rule imposes no new requirements or reporting obligations upon a person who holds a security interest, or upon a person whose property is encumbered by a security interest. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

### *B. Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act of 1980, agencies must evaluate the effects of a regulation on small entities. If the rule is likely to have a "significant impact on a substantial number of small entities," then a Regulatory Flexibility Analysis must be performed. Because this proposal may result in cost savings for small entities that hold security interests in contaminated facilities, EPA certifies that today's proposed rule would not have a significant impact on a substantial number of small entities.

### *C. Paperwork Reduction Act*

This proposed rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Part 300**

Hazardous substances, Intergovernmental relations, Superfund.

For the reasons set out in the preamble, title 40, chapter I, part 300 is proposed to be amended as follows:

## PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

1. The authority citation for part 300 continues to read as follows:

**Authority:** 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

2. Part 300 is proposed to be amended by adding subpart L to read as follows:

**Subpart L—National Oil and Hazardous Substances Pollution Contingency Plan; Lender Liability Under CERCLA**

Sec.



## Subpart L—National Oil and Hazardous Substances Pollution Contingency Plan; Lender Liability Under CERCLA

### § 300.1100 Security interest exemption.

(a) *Indicia of ownership* as used in section 101(20)(A) of CERCLA means evidence of interests in real or personal property held as security for a loan or other obligation, including full title to real or personal property acquired incident to foreclosure and its equivalents. Examples of such indicia may include, but are not limited to, a mortgage, deed of trust, or legal title obtained pursuant to foreclosure or its equivalents, or an assignment, lien, pledge, or other right to or other form of encumbrance against property that is recognized under applicable law as establishing a *bona fide* security interest. If a defendant claims the exemption the plaintiff has the burden of establishing that the defendant is the owner or operator as provided in this regulation.

(1) A holder of a security interest is a person who holds indicia of ownership in a vessel or facility to protect a security interest. A holder of a security interest includes the initial holder (such as the loan originator), and any successor-in-interest, including a subsequent purchaser on the secondary market, loan guarantor or insurer, or other person who holds a security interest under the applicable law governing the transaction.

(2) A borrower, debtor, or obligor is a person whose vessel or facility is encumbered by a security interest. These terms may be used interchangeably.

(b) *Primarily to protect a security interest* for the purposes of section 101(20)(A) of CERCLA means that the indicia of ownership in the vessel or facility are held for the purpose of securing payment or performance of an obligation. Recognized transactions that may create security interests include mortgages, certain types of liens, forms of conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, or accounts receivable financing arrangements, and some forms of leases or consignments, among others. Whether a sale-and-leaseback, conditional sale, installment sales contract, or any other transaction creates a security interest within the meaning of the security interest exemption under CERCLA is determined by the facts of each case and whether a security interest is created under applicable law. The term "security interest" does not include an ownership interest in property held for investment purposes, nor ownership indicia held for purposes other than as protection for a security interest.

(1) *Foreclosure, Holding for Disposition and Liquidation—(i) Foreclosure.* Indicia of ownership that are held "primarily to protect [a] security interest" may include full legal title acquired through foreclosure, purchase at foreclosure sale, acquisition or assignment of title in lieu of foreclosure, acquisition of a right to title, or other agreement in settlement of the loan obligation, or any other formal or informal manner by which the security holder temporarily acquires, for subsequent disposition, possession of the borrower's collateral, and are necessary incidents to protection of the security interest. A security holder's actions in outbidding or refusing bids from parties offering fair consideration for the property are evidence that the property is not held primarily to protect the security interest. "Fair consideration" refers to an amount, taking into consideration the terms and conditions of the offer, that represents a value equal to or greater than the

outstanding obligation of the debtor, as defined in 40 CFR 300.1100(b)(1)(ii).

(ii) *Holding Property for Disposition and Liquidation.* A security holder, who did not participate in management prior to foreclosure, may, without incurring liability under CERCLA section 101(20)(A), foreclosure, sell, liquidate, wind up operations, or retain and continue functioning the enterprise in order to protect the value of the secured asset prior to sale as a means to realize the debtor's unpaid obligation pending sale, liquidation, or other disposition of the property, without incurring liability under CERCLA section 107(a)(1). A security holder retains this exemption unless:

(A) The holder fails, within twelve months following foreclosure, to list the property with a broker, dealer, or agent who deals with the type of property in question, and begin advertising the property as being for sale or disposition on at least a monthly basis in either a real estate publication, or a trade or other publication suitable for the property in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located; or

(B) If at any time after six months following foreclosure the security holder rejects, or does not act upon within 90 days of receipt of a written, *bona fide,* firm offer of fair consideration for the property. A "written, *bona fide,* firm offer" is a legally enforceable offer, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstates to the security holder's satisfaction the ability to perform. "Fair consideration" is an amount equal to or in excess of the sum of the outstanding principal owed to the holder, plus any unpaid interest and penalties (whether arising before or after foreclosure), plus all reasonable and necessary costs, fees or other charges incurred by the holder incident to foreclosure, retention, continuing functioning of the enterprise, and sale of the property, less any amounts received by the holder in connection with any partial disposition of the property or net revenues received as a result of continued functioning of the facility.

(2) [Reserved]

(c) *Participation in Management Defined—*

(1) *Actions That Are Participation in Management.* Participation in the management of a facility means, for the purpose of section 101(20)(A), actual participation in the management or operational affairs by the holder of the security interest, and does not include the mere capacity, or ability to influence, or the unexercised right to control facility operations. A security holder is considered to be participating in management if, while the borrower is still in possession, the security holder is either:

(i) exercising decisionmaking control over the borrower's environmental compliance, such that the security holder has undertaken responsibility for the borrower's waste disposal or hazardous substance handling practices which results in a release or threatened release; or

(ii) exercising control at a management level encompassing the borrower's environmental compliance responsibilities, comparable to that of a manager of the borrower's enterprise, such that the security holder has assumed or manifested responsibility for the management of the enterprise by establishing, implementing, or maintaining the policies and procedures encompassing the day-to-day environmental compliance decisionmaking of the enterprise.

(2) *Actions That Are Not Participation in Management.—*

(i) *Actions at the Inception of the Loan or Other Transaction Giving Rise to a Security Interest.* No act or omission prior to the creation of a security interest constitutes evidence of participation in management within the meaning of section 101(20)(A). The holder of a security interest who undertakes or requires an environmental inspection of the vessel or facility in which indicia of ownership are held is not by such action considered to be participating in the vessel or facility's management, nor is such ongoing involvement with the borrower that responds to the inspection by ensuring that the vessel or facility remains or is maintained in compliance with all applicable requirements considered to be evidence of management participation. Neither the statute nor this regulation require a holder of a security interest to conduct an inspection to qualify for the inspection, and the liability of a holder of a security interest cannot be based on or affected by a failure to conduct an inspection.

(ii) *Policing the Security Interest or Loan.* Actions that are consistent with protecting a security interest do not constitute participation in management for purposes of section 101(20)(A) of CERCLA. Such actions include, but are not limited to, a requirement that the borrower clean up the vessel or facility prior to or during the term of the security interest; a requirement of assurance of the borrower's compliance with applicable federal, state, and local environmental and other rules and regulations during the life of the loan or security interest; securing authority for the holder of the security interest to periodically or regularly monitor or inspect the vessel or facility in which the security holder possesses indicia of ownership (including site inspections) or the borrower's business or financial condition; or other requirements or conditions reasonably necessary for the security holder to adequately police the loan or security interest, or to comply with legal requirements. Such requirements may be contained in contractual documents or other relevant documents specifying requirements for financial, environmental, and other warranties, covenants, and representations or promises from the borrower.

(iii) *Work Out.* The holder of a security interest may act with respect to the vessel or facility to secure or safeguard the security interest from loss without being considered to have participated in management. "Work out" activities will not void the exemption provided that the actions are taken in the course of protecting the security interest. Work out activities must be structured to protect and preserve the security interest in an effort to prevent default of the obligation or the diminution in value of the security. When the holder of a security interest undertakes work-out activities, provides financial or other advice, or similar support to a distressed borrower, the security holder will remain within the exemption unless the holder participates in management, as specified in 40 CFR 300.1100(c)(1). Work out activities include, but are not limited to, restructuring or renegotiation of the terms of the loan or other obligation, payment of additional interest, extension of the payment period, specific or general financial advice, suggestions, counseling, guidance, or other actions reasonably necessary to protect the security interest.

**§ 300.1105 Involuntary acquisition of property by the government.**

Governmental ownership or control of property by involuntary transfer within the meaning of CERCLA section 101(35)(A)(ii) includes acquisition by the government in its capacity as a sovereign. An involuntary acquisition includes the transfer to a government entity pursuant to abandonment proceedings, as the result of tax delinquency, escheat, or other circumstances in which the government

involuntarily obtains ownership or control of property by virtue of its function as sovereign, including situations in which a government entity or its agent (which includes governmental lending and credit institutions, loan guarantors, and financial regulatory entities which acquire security interests or properties of failed private lending and depository institutions) is assigned or required to act as a conservator or receiver pursuant to a clear and direct statutory mandate. An involuntary acquisition also includes the acquisition of assets through foreclosure or other means by a federal, state, or local governmental entity in the course of administering a governmental loan or loan guarantee program. Additional language under consideration: "Acquisition of property by any department, agency, and instrumentality of the executive, legislative, or judicial branch of the federal government pursuant to any forfeiture or seizure law or authority of the United States shall be deemed to be an involuntary transfer within the meaning of CERCLA section 101(35)(A)(ii)."

Dated: June 5, 1991

**F. Henry Habicht,**

*Acting Administrator.*

[FR Doc. 91-14448 Filed 6-21-91; 8:45 am]

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federal register

Monday
June 24, 1991

Part III

# Department of the Interior

## Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Harvest Information Program; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**RIN 1018-AB65**

## Migratory Bird Harvest Information Program

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** This document announces the intention of the Fish and Wildlife Service (hereinafter the Service) to establish a National Migratory Bird Harvest Information Program. This notice provides the public with information about the need for such a program and the procedures that may be necessary to implement it. The notice will allow the Service to receive public comment and suggestions in advance of preparing a proposed rule, and therefore to develop proposals from a more complete information base.

**DATES:** Written comments pertaining to the intended establishment of a National Migratory Bird Harvest Information Program should be received on or before August 1, 1991.

**ADDRESSES:** Written comments should be sent to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Office of Migratory Bird Management, route 197 and Powder Mill Road, Laurel, Maryland 20708–9619. Comments received will be available for public inspection during normal business hours in room 226, Gabrielson Laboratory, Patuxent Wildlife Research Center, route 197 and Powder Mill Road, Laurel, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Geissler, Chief, Waterfowl Harvest Surveys Section, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Laurel, Maryland 20708–9619 (301) 498–0401, FAX (301) 498–0222.

**SUPPLEMENTARY INFORMATION:** Under the Migratory Bird Treaty Act (16 U.S.C. 703–711) the Secretary of Interior has responsibility for setting appropriate regulations for the hunting of migratory birds, with due regard for maintaining such populations at healthy levels. The Fish and Wildlife Service Act of 1956 (16 U.S.C. 742 a–d and e–j) more specifically authorizes collection of such information as is necessary to determine appropriate regulations.

Harvest estimates are one of the primary management tools. Waterfowl harvest is currently monitored by a national survey that has severe nonresponse problems; national surveys of the harvest of other migratory game birds are lacking. State harvest surveys provide some information but cannot produce coordinated national or regional estimates. To provide improved migratory bird harvest estimates, the Fish and Wildlife Service intends to revise the migratory bird hunting regulations to require all migratory bird hunters to have a Migratory Bird Harvest Information Program Card (Card) in their possession while they are hunting migratory birds. Some States may choose to combine this requirement with a State license requirement. Hunters would be required to supply their names and addresses as a condition for obtaining the Card. The names would provide a sampling frame for an expanded Migratory Bird Harvest Survey. All records of hunters' names and addresses would be deleted after each annual survey and no permanent records of names and addresses would be maintained by the Fish and Wildlife Service (Service). Cards would be distributed by State wildlife agencies through their hunting license vendors. The Service would provide the Cards to the State agencies without charge, but the State agencies may require a small handling fee to cover their administrative costs and to compensate their license vendors. The Program would be phased-in, starting with a few States in 1992. The Program would be expanded to other States at the rate of about 10-15 States per year starting in 1994 with the States that have the largest migratory bird harvest. All States would be required to comply by 1998.

### Historical Review

Wildlife professionals have long recognized the need for reliable harvest data to guide management decisions. States have established surveys to meet their individual needs for resident games species, and a Federal waterfowl harvest survey has been conducted since 1952. During the past 25 years, several initiatives were begun to establish a basis for improving and expanding surveys to other nonwaterfowl species. Between 1967 and 1983, eight Congressional bills were drafted advocating a national permit for webless migratory shore and upland game birds to provide a sampling frame for generating harvest estimates and to provide modest income for funding needed research and management projects for these species. In 1969, a committee of the International Association of Fish and Wildlife Agencies (Association) proposed that a national woodcock harvest survey be established, and in its 1977 landmark book, Management of Shore and Upland Game Birds, the Association listed initiation of a national survey for nonwaterfowl migratory game birds, with a required permit or other sampling frame, as the number one priority among research and management needs.

In 1978, the National Program Planning Group was directed by the Association's Migratory Wildlife Committee to develop alternatives for addressing deficiencies in migratory bird harvest data. In 1979, this task force proposed establishment of a national permit required of all migratory bird hunters. A nominal fee to cover administrative costs and provide management program funding was suggested. The Migratory Wildlife Committee rejected the proposal and instructed the task force to consider an alternative whereby State surveys might be utilized to satisfy harvest data needs. A select committee of State, Federal and University employees with expertise in survey design was named to examine this option. In their 1980 report to the National Program Planning Group, this committee concluded that State surveys could not satisfy harvest data needs for migratory birds.

In 1980, the Service in cooperation with several States attempted to augment the sample of waterfowl hunters from the Federal Duck Stamps with a sample of other hunters from State license files. The attempt failed because of problems resolving differences between State surveys and obtaining hunter names in time for the survey.

In 1990, the Association unanimously recognized the deficiencies in harvest data for migratory birds and recommended that the Service publish a proposed rule in the **Federal Register** to establish a regulation that all migratory bird hunters annually obtain a national migratory bird hunting program card. Distribution and administration of this Card would be the responsibility of the individual States. The Service also acknowledges weaknesses in the methods now used to estimate harvest of migratory birds and intends to use this expansion of current survey methods to improve the extent and quality of information on all migratory bird harvest. The purpose of the proposed rule will be to implement the recommendations of the States expressed through the Association.

### Description of Current Migratory Bird Harvest Surveys

The Federal Waterfowl Harvest Surveys provide some of the information that is used to set Federal hunting

regulations. The estimates are provided in administrative reports prior to the July public hearings. There are two harvest surveys. The Hunter Survey estimates the duck harvest, goose harvest, coot harvest, and days of hunting. The harvest of mourning dove, woodcock, snipe, sora rail, other rails, gallinule, white-winged dove, band-tailed pigeon and sandhill crane by waterfowl hunters is also estimated. The Parts Survey estimates the species, age and sex composition of the harvest, and the distribution of harvest by date and county. There is also a separate sandhill crane harvest survey that uses names and addresses from sandhill crane permits.

Each year, a random sample of 3,400 post offices is selected from the 16,000 post offices that sell Federal Duck Stamps. Sample post offices are asked to distribute survey cards to Duck Stamp purchasers on a cost-reimbursable basis. Other Duck Stamp outlets such as stores, national wildlife refuges and conservation agencies are also sampled. About 64,000 survey cards are returned. Of these, 57,000 respondents who plan to hunt waterfowl are sent a questionnaire after the hunting season. Nonrespondents are sent a follow-up questionnaire. About 37,000 questionnaires are returned.

Successful waterfowl hunters who respond to the Hunter Survey are requested to contribute to the Parts Survey duck wings and goose tails from the birds they shoot. About 33,000 hunters contribute 84,000 duck wings and 21,000 goose tails each year. Hunters also report the date, time and county where each bird was taken. The parts are mailed to a central location in each flyway. State and Federal biologists meet at these locations in January and February to determine the species, age and sex of the birds.

**Problems with the Current Migratory Bird Harvest Surveys**

Of the five million migratory bird hunters, 2.3 million hunt only nonwaterfowl species, but they are not sampled to determine their hunting success.

Low response rates indicates that our waterfowl harvest estimates can have serious errors.

- 24% of people who buy Federal Duck Stamps at sample post offices are given survey cards by post office personnel.
- 54% of those who receive cards return them with their name and address.
- 65% of those who are sent questionnaires return them.
- (24%)(54%)(65%)=8% overall response rate of the intended sample.
- There is no legal requirement to return the cards.

Twenty-seven percent of duck stamps are sold by stores. Stores are not compensated for distributing name and address cards and have no obligation to cooperate. On the other hand, these vendors are usually compensated for selling State hunting licenses and State duck stamps. A system that also compensates vendors for obtaining the names and addresses of National Harvest Information Program Card purchasers would be a major improvement.

The primary purpose of duck stamps is to raise funds for wetland acquisition, and they are being aggressively marketed to both hunters and nonhunters. Stamps are sold through the Postal Service, National Wildlife Refuges, and directly to vendors, such as sporting goods stores. Sales through multiple outlets make it difficult to track the stamps and identify the purchasers who are hunters. This problem makes the estimation of the waterfowl harvest more complicated each year.

Hunters less than 16 years old are not required to purchase a duck stamp and are excluded from the current harvest survey and there is no direct estimate of their harvest.

**State Harvest Surveys Cannot Provide Adequate National Estimates of Waterfowl and Other Migratory Bird Harvests**

Some States do not conduct annual hunting surveys or maintain accessible lists of hunter names and addresses. The lists may be maintained at vendors or county seats and often are not available from a centralized location. Comparable information is not available from all States because each State has different licensing laws regulating who must buy a hunting license and different survey procedures. Some hunters can legally hunt without an annual State license. Hunters may buy more than one type of license in a single State and may buy licenses from more than one State, introducing duplication problems.

Many State license lists are not available in time for survey results to be useful for promulgating regulations for the following year. Harvest information for a given year must be ready at the time proposals are developed for the following year. Proposals are developed in late June for waterfowl seasons, but are developed in June for webless migratory birds seasons and for certain waterfowl seasons. For example, harvest information from the 1990–91 dove season must be available by June of 1991.

Use of State lists, where available, would not permit distribution of hunter records forms early in the hunting season. Budget constraints often prevent States from conducting harvest surveys during certain years or could cause some States to eliminate them completely. Previous attempts to use State information have not been successful because of the difficulty in reconciling State survey differences.

**Advantages of Proposal**

Requiring Survey Cards from all migratory bird hunters would provide a current list of names and addresses from which a sample could be drawn for a national Migratory Bird Harvest Survey. All migratory bird hunters would be included, not just waterfowl hunters, making precise estimates of dove, woodcock, snipe, rail and other migratory game bird harvests possible for the first time. Waterfowl harvest estimates would be improved and further deterioration of the present estimating system would be avoided.

An improved sampling frame would increase efficiency and reduce costs of State harvest surveys. The Service will cooperate with States in providing surveys to meet special management needs. Increased cooperation between Federal and State agencies would reduce duplication of survey efforts. Response rates would be increased by compensating vendors for distributing the permits.

Some hunting seasons have been threatened by legal action because of lack of adequate harvest estimates. Improved estimates of both population sizes and harvest are needed to assure that hunting does not threaten migratory bird population levels.

**Survey Procedures**

The National Migratory Bird Harvest Information Program (Program) would be phased-in, starting with a few States on January 1, 1992. All persons hunting migratory birds in specified States after July 1, 1992, would be required by Federal regulation to have in their possession a signed separate Program Card or a signed combination of Program Card and other State license requirement. A combination system must retain separate enough identities of the State and Federal requirement to allow the Federal part to be valid in any State regardless of the State in which it was purchased. Program Cards would be valid from July 1 until June 30 of the following year.

The Program Card would bear the text "Migratory Bird Harvest Information Program," year issued, "Void after June 30, 19____" and a serial number assigned by the Service. There would be a space for the hunter's signature. The Service would print and distribute Program Cards to the States without charge by December 1 of each year, maintaining a list of serial numbers sent to the State. A Survey Card would be attached to each Program Card. The Survey Card would have space for the hunter's name and address and for the other questions described later. States would distribute Program and Survey Cards to migratory bird hunters through its license vendors, maintaining a list of serial numbers sent to each vendor. The State would provide the Service with that list of serial numbers by April 1 each year. The State may charge hunters a small handling fee to cover the State's administrative costs and the vendor's distribution costs.

State hunting license vendors would distribute Program Cards only to hunters who complete a Survey Card giving their name and complete address. It would be the policy of the Service and the State to use the names and addresses only for conducting hunter surveys and for no other purpose. Vendors would mail completed Survey Cards first class to specified locations within 4 days after the Program Card is provided to the hunter.

Survey Cards would have a standard format that would allow machine processing and would have room for questions in addition to the hunter's name and address. The State and the Service would have equal areas for additional questions. The Service's questions would be:

• Is this the first Migratory Bird Harvest Information card you have obtained this hunting season? YES____ NO____ (This question would identify duplicate cards.)

| Kind of bird | Number bagged last season in U.S. | | |
|---|---|---|---|
| | None | 1-10 | 11+ |
| Ducks | ____ | ____ | ____ |
| Geese | ____ | ____ | ____ |
| Doves | ____ | ____ | ____ |
| Woodcock | ____ | ____ | ____ |

Please mark if you hunted these birds last season. ____Band-tailed Pigeons, ____ Coots, ____ Cranes, ____ Crows, ____ Gallinules, ____ Rails, ____ Snipe (This question would identify what groups of species the respondent has hunted and would identify those who harvest large numbers of birds. Those who are very successful and those who hunt less-commonly hunted species would be sampled at a higher rate to substantially increase the efficiency and reduce the cost of the hunter surveys. No bias would be introduced. A separate hunter survey would be conducted for duck, goose, and coot hunting, for dove, woodcock, and band-tailed pigeon hunting; and for snipe, rail, gallinule, and crane hunting to reduce the burden on individual respondents. No one would be asked to participate in more than one survey.)

If a combination Program Card/State license requirement is used, specific details will have to be worked out on a State-by-State basis. Combination systems would also have to meet similar criteria on format and accountability as a separate Program Card.

The Service would select a sample of hunters for the harvest surveys. Personal letters, enclosing hunting record forms, would be mailed to selected hunters within 2 weeks of receipt of the names and addresses. At the State's request, another sample of hunter names and addresses derived from the Survey Cards would be express-mailed to the State within 1 week of receipt of the Survey Cards. To protect hunters' privacy, Survey Cards not selected for a survey would be destroyed by the Service immediately after the sample is selected and no records of the names or addresses would be kept. As soon as a hunter responds to a survey, all records of his/her name and address would be deleted by the Service. Names and addresses of nonresponding hunters would be deleted by the Service at the end of each annual survey.

Vendors would return unused Program Cards to a designated location within 30 days after the end of migratory bird hunting seasons in their States. The Service would provide States with a monthly accounting of Program Cards and a final accounting by May 1 of each year. States would follow-up with vendors who have not accounted for all their cards.

The Service would conduct surveys and provide migratory bird harvest and waterfowl age ratio estimates prior to the annual hunting regulations meetings. Survey procedures would be the same as the existing Waterfowl Harvest Surveys except that the hunter names would come from the Survey Card instead of from Federal Duck Stamp purchasers.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Authority:** The Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. 701–711); the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742 a–d and e–j); and the fish and wildlife improvement Act of November 8, 1978, as amended, (16 U.S.C. 712).

Dated June 14, 1991.

**Richard N. Smith,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 91–14848 Filed 6–21–91; 8:45 am]

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## LIST OF PUBLIC LAWS

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**H.R. 971/Pub. L. 102–58**

To designate the facility of the United States Postal Service located at 630 East 105th Street, Cleveland, Ohio, as the "Luke Easter Post Office". (June 18, 1991; 105 Stat. 299; 1 page) Price: $1.00

**S. 483/Pub. L. 102–59**

Entitled the "Taconic Mountains Protection Act of 1991". (June 18, 1991; 105 Stat. 300; 2 pages) Price: $1.00

**S.J. Res. 111/Pub. L. 102–60**

Marking the seventy-fifth anniversary of chartering by Act of Congress of the Boy Scouts of America. (June 18, 1991; 105 Stat. 302; 1 page) Price: $1.00

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[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

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[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.