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WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
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Presidential Documents

Title 3—

The President

Executive Order 12673 of March 23, 1989

Delegation of Disaster Relief and Emergency Assistance Functions

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*), and in order to conform delegations of authority to recent legislation, it is hereby ordered as follows:

Section 1. Section 4–203 of Executive Order No. 12148 is amended to read:

Section 4–203. The functions vested in the President by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*), except those functions vested in the President by Section 401 (relating to the declaration of major disasters and emergencies), Section 501 (relating to the declaration of emergencies), Section 405 (relating to the repair, reconstruction, restoration, or replacement of Federal facilities), and Section 412 (relating to food coupons and distribution), are hereby delegated to the Director of the Federal Emergency Management Agency.

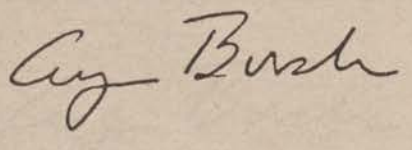
Sec. 2. Section 3 of Executive Order No. 11795 is amended by removing the words "Section 409" and inserting "Section 412" in place thereof.

Sec. 3. The functions vested in the President by Section 103(e)(2) of the Disaster Relief and Emergency Assistance Amendments of 1988, Public Law 100–707 (relating to the transmission of a report to the Committee on Public Works and Transportation of the House of Representatives and to the Committee on Environment and Public Works of the Senate), are hereby delegated to the Director of the Federal Emergency Management Agency.

Sec. 4. The functions vested in the President by Section 110 of the Disaster Relief and Emergency Assistance Amendments of 1988, Public Law 100–707, are hereby delegated to the Director of the Federal Emergency Management Agency.

Sec. 5. The functions vested in the President by Section 113 of the Disaster Relief and Emergency Assistance Amendments of 1988, Public Law 100–707, are hereby delegated to the Director of the Federal Emergency Management Agency.

Sec. 6. The amendments to Executive Order No. 12148 that are made by Section 1 of this Executive Order shall not affect the administration of any assistance for major disasters or emergencies declared by the President before the effective date of "The Disaster Relief and Emergency Assistance Amendments of 1988."



THE WHITE HOUSE,
March 23, 1989.

[FR Doc. 89-7472
Filed 3-24-89; 4:24 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5945 of March 24, 1989

Women's History Month, 1989 and 1990

By the President of the United States of America

A Proclamation

Women have written many proud pages in the history of the United States, throughout all areas of our national life. Women's History Month is a time to recognize those contributions and the critical role they have played in the preservation of the principles and values that all Americans hold dear.

Women have served with distinction in all professions; they have contributed to our Nation's prosperity in all fields of business; they have served our country with courage in time of conflict; they have educated and inspired our children; and they have figured prominently in all our great struggles for political and social reform. Today women play a major role in our public life—they can be found working in the Congress, in the Cabinet, on the Supreme Court, and in our embassies around the world. Every aspect of our national life has been touched by the leadership, energy, and insight of outstanding American women.

This month, as we recall the achievements of prominent women in U.S. history, we also remember the quiet yet lasting contributions women have made to our society through the family, as volunteers in local charities or relief organizations, and as leaders in our churches. Women have demonstrated their great love for this country and have made that love real by their engagement in the lives of others. If any definition of a successful life must include service to others, countless women live successful lives. Through their tireless service on a daily basis, the women of our Nation have woven the fabric of families and communities. For it is the family and the local community that have always been our Nation's stronghold, the first and greatest source of Americans' civic pride and sense of duty. The women who have sustained these institutions throughout America's history have strengthened this country beyond measure.

The Congress, by House Joint Resolution 148, has designated the month of March 1989 and the month of March 1990 as "Women's History Month" and authorized and requested the President to issue a proclamation in observance of the events.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim March 1989 and March 1990 as Women's History Month. I call upon all Americans to observe these months with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth

George Bush

[FR Doc. 89-7473
Filed 3-24-89; 4:25 pm]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

[Amdt. No. 2]

National School Lunch Program: Accountability

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: Recent audit and administrative review findings have identified a number of school food authorities which have improperly claimed reimbursement for meals served in the National School Lunch Program. This final rule is intended to clarify and improve school and school food authority meal counting and claiming requirements to ensure that reimbursement is claimed for only those reimbursable meals served to eligible children at the correct rate of reimbursement for those meals. Additional changes are intended to improve school food authority monitoring of each school's meal counting and claiming procedures, as well as State agency monitoring of these procedures at the school food authority level. These revisions are expected to improve the accuracy of school meal counting are claiming procedures and school food authority internal controls.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520), the reporting and recordkeeping requirements that are included in §§ 210.5 and 210.8 of this final rule have been submitted to the Office of Management and Budget (OMB) for approval. The OMB control number assigned to the existing reporting and recordkeeping requirements of 7 CFR Part 210 is OMB No. 0584–0006. These requirements have been approved by OMB for use through June 30, 1990.

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and 48 FR 29112, June 24, 1983.)

Background

On September 9, 1988, the Department published a proposed rule in the **Federal Register** at 53 FR 35083 intended to improve the accuracy of school and school food authority meal counting and claiming procedures by clarifying and standardizing these procedures and revising State and school food authority level monitoring responsibilities. These changes were proposed in response to audit and administrative review findings that identified a number of school food authorities that improperly claimed reimbursement for meals served in the National School Lunch Program. For a complete discussion of these findings and the Department's response, interested parties should refer to the preamble of the proposed rule.

Comment Analysis

A total of 607 comments were received during the 60-day comment period. These included 43 from State agencies; 453 from school food service and school food authority personnel; 89 from principals, superintendents, business managers, and other school personnel; 17 from interested organizations and businesses; and 5 from the general public. The majority of the commenters were opposed to one or more of the proposed revisions. Commenters also suggested technical and editorial changes, and requested clarification of certain provisions. All comments were considered before writing this final rule. The remainder of this preamble discusses the issues and concerns raised by commenters. The Department would like to express its thanks to all those who commented on this proposal.

General Comments

Many commenters disapproved of the proposed rule because they perceived it would increase paperwork and recordkeeping requirements, thereby requiring more personnel and increased costs, which could cause some schools to drop out of the lunch program or to increase meal prices. Some commenters, moreover, considered the proposed rule to be an unnecessary overregulation of the National School Lunch Program. Generally these commenters also thought that present monitoring systems either are sufficient or may only need minor adjustments to make them effective. Some of these commenters also believed that if additional training and technical assistance in the area of meal accountability were to be provided to State agencies, school food authorities and school food service personnel, the accuracy of meal counts and claims would improve; and any additional regulations, such as those proposed, would be superfluous. Finally, some commenters contended tha' the

problems the proposed rule attempts to address are found in only a small proportion of programs nationwide, and do not justify the imposition of burdensome regulations on all school food authorities.

The Department appreciates commenters' concerns about any possible burden implications associated with the proposed requirements. The Department notes, however, that most of the provisions set forth in the proposed rule represent clarification and standardization of accountability principles implicit in the program. It is essential that claims for Federal reimbursement be based on accurate counts of reimbursable meals served to eligible children. It is equally important that States and school food authorities review claims and monitor schools to ensure that Federal reimbursement is being properly paid. The Department agrees that willful wrongdoing likely occurs in only a small number of schools. Nevertheless, at this time of budget restrictions, every effort must be made to eliminate all improper payments, whether willful or not. Finally, the Department considers that schools which are already counting meals accurately will generally need to make minimal modifications to their systems at most.

To assist in the implementation of these provisions, the Department will issue guidance material to assist State agencies and school food authorities in meeting the specific requirements of this regulation. We also encourage States to provide more training and technical assistance in order to assist schools and school food authorities in carrying out the requirements.

School Level Revisions

Section 210.7(c) of the proposed rule specified that all Claims for Reimbursement must be based on daily meal counts, taken at the point of service, which identify the number of reimbursable lunches served by reimbursement type, unless an alternative system were approved by the State agency on a case by case basis. "Point of service" was defined in s210.2 as that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price or paid lunch has been served to an eligible child.

Several commenters requested that the definition of point of service be clarified. Many of these commenters were concerned that meal counts would have to be taken at the *end* of the line, in which case cash registers and electronic scanners would have to be moved to the end of the serving line and additional employees would need to be hired, thus increasing the cost of the program, slowing down the line and/or inconveniencing students. Other commenters believed that they would be able to comply with this regulation only by purchasing expensive electronic equipment. The Department believes that, in most cases, the "point of service" must be at the end of the serving line, since that is generally the only place where it can be determined that a reimbursable meal (i.e., one including the required components) has been served. Nevertheless, the Department recognizes that other procedures may also yield accurate counts. For example, if an elementary school served unitized meals containing all components, the point of service could be at the front of the line. Therefore, the language of the proposed provision did not specify that meal counts must be taken at the end of the line in order to allow maximum flexibility. The Department stresses, however, that schools using meal count systems that will not yield accurate counts, such as tray or milk counts, must change their procedures.

The Department also believes that commenters may have overstated the potential expense and inconvenience associated with taking meal counts at the end of the line. The Department notes that schools commonly operate separate food lines for a la carte sales or permit children receiving reimbursable meals to purchase additional food items (e.g., a second milk) in the school lunch line. In these instances, food service personnel must be stationed at the end of the serving line in order to collect the proper payment from the children. Schools should, therefore, be able to adapt these procedures to their meal counting systems.

Finally, thirteen comments, all from State agencies, were received on the issue of authorizing State agencies to approve alternate counting systems. Six approved of this provision because it would provide flexibility, while seven disapproved because they expected this provision to place an additional burden on State agencies. Several commenters also indicated that further guidance would be needed to help States identify what are acceptable alternative systems. The Department emphasizes that this provision was included in the proposal to provide State agencies with flexibility to approve of alternate systems. The Department believes that few alternatives will be approvable. Moreover, the Department is not requiring State agencies to consider approvals of alternative systems. State agencies have complete discretion to decide whether or not to consider alternative counting systems, and this final regulation has been modified to clarify this point. Furthermore, the Department will be issuing guidance materials to assist States in recognizing the elements of appropriate alternative systems.

School Food Authority Level Revisions

1. On-Site Reviews

In s210.8(a)(1), the proposed rule required school food authorities to perform at least two on-site reviews of the meal counting and claiming practices of each school under their jurisdiction each school year. The first such review must take place prior to December 1. A majority of commenters disapproval; in fact, this issue elicited more than 300 negative comments. The major reasons for disapproved were that this requirement would be financially burdensome and time-consuming, and that other administrative and supervisory activities of the school food authority would have to be curtailed. December 1 was viewed by 140 commenters as being too early a deadline for the first review since the first few months of the school year are spent on other necessary tasks such as application approval, technical assistance to schools, menu planning, food and supply bids, etc. Large school food authorities especially questioned the feasibility of conducting two reviews and meeting the December 1 deadline.

Fifty-four commenters suggested that second reviews be required only when problems are found during first reviews, or that only a proportion of schools in each school food authority be required to be reviewed each year. Ten suggested that school food authorities be allowed to target certain schools using their own criteria, such as when the administration or food service management in a school changes.

The Department strongly believes that school food authorities with the responsibility for administering the program in one or more schools from a centralized location must conduct on-site visits to observe counting and claiming practices. The final regulation reflects this requirement. These reviews are not intended for those school food authorities which operate only one program at their own site. The Department also believes that most school food authorities with multiple sites will not be overburdened by this requirement since most have only a small number of schools under their jurisdiction. According to a Department of Education publication, *1986 Directory*

of Public Elementary and Secondary Education Agencies, approximately 60% of all public education agencies administer 1, 2, or 3 schools, and about 90% administer 9 or fewer schools. Since education agencies will generally correlate to school food authorities, it does not appear that most school food authorities would need to conduct large numbers of visits. However, for those school food authorities that administer the program for a large number of schools, the Department acknowledges that the requirement for two reviews could constitute a substantial burden and may compromise the thoroughness of the reviews. Moreover, the Department recognizes that many small school food authorities do not have full-time directors or may have insufficient staff. Therefore, the final rule has been revised to require only one review by the school food authority of each school per school year. As in the proposed rule, if this review discloses problems with a school's meal counting or claiming procedures, the school food authority shall ensure that the school develops a corrective action plan and shall conduct a follow-up on-site review to determine that the problems have been corrected. In order to provide schools more time to develop plans and to correct problems, and to standardize the interval of time, the Department has extended the time that school food authorities have to conduct the follow-up review from 30 to 45 days, and has specified that these are calendar days from the time of the first review. In addition, the Department has changed the deadline for the review to February 1 in order to give school food authorities, especially large ones, sufficient time to review all schools under their jurisdiction. The Department emphasizes, however, that school food authorities should target schools with certain characteristics for review early in the school year. These include schools with new food service directors, new administrations, and large cafeteria employee turnover, as well as schools whose meal counts reveal problems when reviewed by the school food authority.

Forty-seven commenters requested clarification of the term "on-site reviews". Some thought that the term implied a comprehensive program evaluation of all systems in the school, while others requested guidance on how to conduct the reviews. The Department assures these commenters that these "on-site reviews" are intended to be reviews of schools' counting and claiming practices, and not a total evaluation, unless the school food authority wishes to conduct a more comprehensive review. The Department intends to issue guidance materials to assist school food authorities in carrying out these reviews. Moreover, reviews conducted by the school food authorities for other reasons (e.g., menu planning, food purchasing, etc.) can suffice to meet this requirement as long as meal counting and claiming procedures are also reviewed.

2. Claims Reviews

To ensure the accuracy of the meal counts reported on Claims for Reimbursement, the Department proposed in § 210.8(a) (2) and (3) to require school food authorities to review each school's daily meal count using various analytical tools designed to identify and correct situations in which schools claim more meals than they serve. The proposed rule further specified that, at a minimum, the following data be used: (1) The number of children currently approved for free and reduced price meals in that school; (2) for every month but September, the average number of daily free, reduced price and paid lunches served in the preceding month; and (3) other readily available data such as the school's average daily attendance, enrollment or membership data and a factor or formula which would account for the difference between enrollment and attendance at any given time. The proposed rule explained that this formula was to be developed either by the school food authority based on local circumstances or by the State for school food authorities' use; if no State or local factor was developed, the school food authority was to use a nationwide attendance factor developed by FNS. When taking the attendance factor into consideration, school food authorities were to assume that children eligible for free and reduced price meals attend school at the same rate as the general population.

This aspect of the proposed rule generated a substantial number of negative comments, many of them based on what the Department believes are misunderstandings of the nature, purpose and use of this information. Thirty commenters objected to comparing daily meal counts to the number of enrolled children approved for free or reduced price meals because this procedure would impose a large financial and administrative burden, especially for large school food authorities. Some of these commenters believed the proposed regulations would have required counting approved applications every day, since school populations fluctuate continually. Seventy-five commenters disapproved of comparing meal counts for one month with those submitted for the preceding month for much the same reason—the increased paperwork would not necessarily identify problems because external factors such as weather, illnesses, dropouts, graduations, transient populations, etc., can cause great variations in the number of meals served from month to month. Finally, more than 300 commenters disapproved of using attendance factors for the following reasons: (1) The data on which attendance factors would be based would not consistently be available due to variations in collection and timeliness; (2) the data would not be an accurate gauge of participation; (3) the data would not necessarily be accurate; and (4) it would be burdensome to attempt to collect and apply such data. In addition, several commenters requested clarification about who would develop attendance factors and how such factors might be applied, especially in overclaim situations.

In response to the concerns of commenters, the Department would like to explain how it intends this data to be applied. The Department expects school food authorities to carry out these data comparisons in order to determine the reasonableness of school meal counts. This means that school food authorities are to compare school counts with the required data to identify potential count problems. These "edit checks" are expected to prevent overclaim problems such as the following found during OIG audits: reports of more free meals served than approved applications for free meals on file, counts exceeding attendance, and schools that reported all meals served as free instead of counting meals by category. In addition to identifying these types of problems, the regulation is intended to enable school food authorities to recognize potential inaccuracies if they discover significant variances or anomalies in meal counts from day to day or from month to month. Under no circumstances does the Department intend attendance factors and other such tools to take precedence over actual meal counts that are supported by documentation. However, in cases where no documentation exists to substantiate a school's meal count, the reviewer must rely on such data as average daily attendance and attendance factors to reconstruct the count.

The Department believes that the most accurate attendance factors are those developed at the local level and, therefore, encourages school food authorities to develop these for

themselves. In cases where attendance data is not available, the school food authority must then rely on factors developed by the State. In the absence of a local or State attendance factor, FNS will issue its own attendance factor for use by school food authorities.

To provide State agencies with an additional tool for reviewing claims, the proposed rule specified in § 210.8(c) that school food authorities' claims for October must state the number of enrolled children approved for free and reduced price meals. The rule further proposed to have States report this information to FNS on their October reports. This proposal did not generate significant disapproval. However, a few commenters requested clarification as to whether this data would be reported on a school-by-school basis to the State agency or would be consolidated into a total by the school food authority, and some wished to know if the data should be collected for a particular day of the month or should represent a daily average. The Department is requiring only a consolidation of school food authority data, although the State agency may, if it wishes, require this data to be reported for each school; and the Department encourages States to do so, as this method would allow for more precise comparison. The Department also recognizes the need for consistency in reporting this information. Therefore, the final regulation is being modified to specify that school food authorities must report the number of enrolled children approved for free and reduced price meals as of the last day of operation in October.

3. Agreement With State Agency

Finally, the Department proposed in § 210.9(b)(8) to amend the agreement which State agencies execute with school food authorities by incorporating a provision specifying that the school food authority official signing the monthly Claim for Reimbursement take full responsibility for ensuring that claims accurately represent the number of lunches served by reimbursement type. Ten commenters disapproved of placing full responsibility for the accuracy of the Claim on the signing school food authority official because that person many times only complies the information provided by the cafeteria manager or other school official. The Department recognizes that the person signing the Claim document frequently is not directly involved in counting the meals served at the local school. Nevertheless, the Department believes it is essential that a local official take responsibility for the meal counts submitted by schools. This responsibility includes analyzing meal counts and making adjustments when appropriate. The Department also believes that requiring the signature of a responsible official is the surest means of guaranteeing that meal counts have been subjected to appropriate analysis and review. Therefore, the Department is modifying the final rule to specify that the agreement signed by the authorized school food authority official must include a provision to the effect that the person signing the Claim is responsible for reviewing and analyzing meal counts to ensure accuracy. Moreover, since the provision assumes that claims are signed by responsible officials before submission to the State agency, the Department is amending § 210.8(c) to make clear that all claims must be signed.

State Level Revisions

1. Claims Review

In § 210.8(b) the proposed rule required State agencies to periodically review each school food authority's Claim for Reimbursement to assist in the identification and correction of claims in excess of the number of lunches served to eligible children. At a minimum, the State agency is to compare the number of free and reduced price meals claimed on each school food authority's monthly Claim for Reimbursement to the number of children approved for free and reduced price meals enrolled in that school food authority for October times the days of operation. State agencies would further be required to take into consideration the attendance factor for each school food authority as discussed above and to assume that children eligible for free and reduced price meals attend school at the same rate as the general school population.

Several commenters disapproved of this provision, mostly because they believed the use of attendance factors is inappropriate when considering claims. In particular, they considered attendance factors to be ineffective in identifying potential overclaims because problems in a given school may not appear in a consolidated claim. Finally, some commenters suggested that this section be deleted, with State agencies reviewing claims as part of their AIMS reviews. As noted in the discussion on school food authorities' review of meal counts, the Department considers such tools as prior months' claims, number of approved free and reduced price applications and attendance and participation factors to be essential to the accountability process. Like school food authorities, State agencies should employ these tools to ensure that the claims are reasonable and are representative of the meals served in schools. While it is true that problems with individual schools might not be discerned through these methodologies, State agencies frequently will be able to identify and correct systemic problems within the school food authority which are leading to significant overpayments. As noted above, these tools should be regarded as indicators of the reasonableness of claims and would not supersede documented meal counts which exceed the attendance factor, for example. The Department emphasizes, however, that when one of these tools indicates that meal counts are inaccurate and no other evidence or explanation is available, State agencies are expected to disallow the excess meals. As a technical matter, the Department notes that States may not have access to the number of approved applications for free and reduced price meals on file at the school food authority for the claiming month. States are required to collect this information only for the month of October, although they may collect it for each month if they wish. Therefore, the final regulation is being modified to require States to compare the number of free and reduced price meals claimed to the number of applications reported for October.

2. Monitoring Responsibilities

To improve monitoring of program activity at the local level, the proposed rule made a number of revisions to State level monitoring responsibilities. These revisions affected Performance Standard 2, the scope of AIMS reviews, the selection of schools and school food authorities for AIMS reviews, the error tolerance level for Performance Standard 2, and fiscal action based on AIMS reviews.

Scope of AIMS Reviews: Section 210.18(i)(1)(ii) of the proposed rule revised the scope of review for Performance Standard 2 to require the State agency to determine, for each school reviewed, whether the number of free and reduced price meals claimed for each day of the most recent month for which the school food authority submitted a claim is equal to the number of meals served to children eligible for free and reduced price lunches for each day of that month. In order to make this determination, State agencies would review the data required to be maintained by the school food authority as part of the claims review process and observe the meal counting and claiming procedures employed by each school reviewed.

Section 210.18(i)(1)(iii) of the proposed rule also revised the scope of review for Performance Standard 3 by defining an adequate counting system as one which meets the following objectives: (a) Provides accurate counts of the number of reimbursable free, reduced price and paid meals served to eligible children on a daily basis; (b) accurately records and reports those counts to the school food authority; (c) prevents the overt identification of free and reduced price meal recipients in accordance with 7 CFR Part 245; and (d) is monitored by the school food authority in accordance with the § 210.8 to ensure that internal controls exist. State agencies were required to review each system to determine whether meal counts are taken at the point of service and whether the meal counting and claiming system, as implemented, meets these objectives. If an alternative system is employed, State agencies were to ensure that if achieves the desired objectives, is correctly implemented and is approved by the State agency. The State agency would also ensure that the school food authority properly consolidated meal counts from its schools.

Fifty-two commenters approved of this revision, on the grounds that the incorporation of these criteria into AIMS reviews was logical and would yield better information than the revisions proposed in § 210.8(b) (State agency claims reviews). A few commenters, however, suggested that reviews of school food authority edit checks, school food authority monitoring and prevention of overt identification should be separated from AIMS reviews. The Department notes that the proposed revision to Performance Standard 3 was intended to specify those aspects which are crucial to the meal counting and claiming process. While school food authority monitoring is not directly connected with this process, the Department considers that the AIMS review is the most appropriate instrument for ensuring that school food authorities are fulfilling their responsibilities in this area. Therefore, in view of the fact that there was no general disagreement with the overall proposed revision and because the objectives specified for Performance Standard 3 are integral to the system, the Department is adopting revised Performance Standards 2 and 3 as proposed.

3. Selection of Schools for AIMS Reviews

Section 210.18(i)(3)(ii) of the proposed rule would require State agencies to select the required minimum number of schools from those which consistently claimed that a high proportion of children eligible for free or reduced price meals had been served. If, however, the State agency had reason to believe that problem schools would not be selected for review, the State agency was directed to substitute schools with a strong likelihood of problems. In those situations, the State was to maintain a justification on file for FNS review.

Thirty-five commenters opposed the proposed school selection method because they felt it would cause the same schools to be reviewed each time, with the result that problems in other schools would not be discovered or could develop without the deterrent of possible reviews. Many commenters also noted that AIMS reviews are valuable tools for program improvement, and many State agencies conduct comprehensive program reviews during AIMS visits. Therefore, all schools should have the possibility of being selected. Other commenters believed this selection method might not result in the schools with the most problems being chosen. For example, schools that claim that a high proportion of children eligible for free and reduced price lunch are served may be those that have the best programs and, consequently, have high participation rates. Also, high participation rates are usually claimed in elementary schools, and these schools generally have the least complicated and most accurate counting systems. Several commenters suggested alternatives to the proposed criteria: (a) Select all schools randomly, (b) select some randomly and some using an error-prone profile, (c) let the State agency use its own criteria, or (d) rotate schools so that all will be reviewed over a period of time. Finally, some commenters believed that justifying the selection of problem schools which do not fit into the proposed criteria would be burdensome and time consuming.

The Department agrees with commenters that a high participation rate by children eligible for free or reduced price meals would not necessarily indicate a deficiency in the meal counting system. Nevertheless, when a school consistently claims free and reduced price meals far in excess of what might ordinarily be expected, the Department believes that school should be reviewed. In these cases, if irregularities do exist, the potential for overpayments will frequently be greater than with schools claiming less participation by children eligible for free or reduced price meals. The Department recognizes, however, that States must have flexibility to deal with situations which do not meet this criterion but may be resulting in greater loss of Federal funds. For example, if a school were claiming participation by a high proportion of students eligible for free or reduced price meals but the total number of eligible children in that school was relatively small, the State could select another school. In making this selection, the State would merely have to indicate its reason for the substitution in the review file. The Department wishes to assure State agencies that lengthy justifications do not need to be prepared, and in this final regulation the term "justification" has been replaced with "reasons". The remainder of this provision is being adopted as proposed.

4. Second Review Threshold

In order to correct a misconception held by some States and school food authorities that AIMS has a tolerance for error, the proposed rule replaced the term "error tolerance level" with "second review threshold" throughout § 210.18. No significant issues on this revision were raised by commenters, and this revised terminology has been incorporated as proposed.

Furthermore, the proposed rule would have required State agencies to conduct second reviews of all large school food authorities found to have exceeded the "second review threshold" established in the regulations. With respect to AIMS Performance Standard 2, this would mean that a number of schools were found to have claimed more free and reduced price meals during the claiming period than would be obtained by multiplying the number of eligible children times the number of operating days times the attendance factor. In addition, State agencies would conduct second reviews of 25 percent of all small school food authorities exceeding the threshold. The small school food authorities selected for second reviews would be those with the most serious deficiencies. In general, commenters did not disapprove of these proposals. A few, however, believed the Department should be more stringent in requiring second reviews, arguing that second reviews should be conducted in all school food authorities which exceed the second review thresholds or in those school food authorities which have the most serious problems, regardless or whether they are large or small. Also, some commenters requested clarification of what the Department considers to be the "most serious problems".

In developing the proposed regulation, the Department balanced the need for enhanced accountability with the

equally important need for efficient utilization of resources. For this reason, the Department did not propose second reviews of all small school food authorities exceeding the thresholds because in some cases, the actual number of errors could be quite small. For much the same reason, the Department did not define what would constitute the "most serious problems" in these small school food authorities because we wished to allow States some flexibility in dealing with local problems. For the most part, however, seriousness would correlate closely to losses of Federal monies due to misclassifications or inaccurate counting of children.

5. Fiscal Action

Section 210.19(c)(1) of the proposed rule required States to take fiscal action on both first and second review for *any* degree of violation of any Performance Standard. The State agency would determine the amount of fiscal action based on the severity and longevity of the problems and would employ appropriate factors which accurately account for attendance and participation trends both for children who were determined eligible for free and reduced price meals and those determined ineligible. Ten commenters objected to the use of attendance factors in assessing overclaims, and nearly 200 opposed required fiscal action on first reviews. Many believed that first review findings should allow school food authorities the chance to correct mistakes, while others thought State agencies should be given flexibility to decide whether or not to take fiscal action on first reviews. Finally some also questioned whether "correctable" or "technical errors" which do not affect the child's eligibility or do not result in meals being overclaimed would require fiscal action.

The Department recognizes that first review findings can be valuable for corrective action purposes, and the Department expects States to continue to ensure that deficiencies will be corrected. Nevertheless, the Department firmly believes that overclaims must be generated whenever deficiencies are known to have resulted in improper payments to schools. Since overpayments represent monies never actually earned by the school food authority, it is only reasonable to require repayment. With respect to the use of attendance or participation factors, the Department reiterates that such tools would be employed only in the event the school or school food authority could not document different participation data. Finally, the Department emphasizes that any error which could affect a child's eligibility for benefits (e.g., missing information required on applications for free or reduced price meals) must be considered when determining the amount of any overclaims. As a practical matter, actual disallowances for violations of AIMS Performance Standard 1 would be accounted for under AIMS Performance Standard 2 to prevent disallowing meals more than once. The Department will issue guidance addressing this methodology.

Overpayment Disregard

In order to relieve State agencies of the burden and expense associated with collecting very small overpayments, the Department proposed to increase the limit for disregards from $35 to $100 in § 210.19(d)(1). Three commenters approved of the change, while one commenter thought that $100 was not enough. The Department believes that the increase to $100 will reduce paperwork, and make the overpayment disregard for the National School Lunch Program consistent with the disregard for other child nutrition programs. The change also recognizes and accounts for the increase in costs since the original $35 limit was adopted more than a decade ago. Therefore, this change will be finalized as proposed. However, in keeping with the need to maintain fiscal accountability, the Department does not believe it would be wise to raise the limit further at this time.

Technical Amendments

Finally, the Department has made a number of changes to correct errors and inconsistencies found in the regulatory text of the proposal. These changes do not reflect any substantive modifications. In § 210.5(d)(1), 210.8(b) and 210.8(c), the phrase "number of approved free and reduced price children" has been changed to "number of children approved for free and reduced price meals".

In § 210.8(a)(2), the phrase "that day" has been moved from the end of the first sentence so that it now reads: "* * * each school food authority shall compare each school's daily claim against data which will assist in the identification and correction of Claims for Reimbursement in excess of the number of reimbursable free, reduced price and paid lunches actually served *that day* to children eligible for such lunches." The Department did not intend for school food authorities to determine the number of children eligible by category in each school for each day, as was interpreted by some comments from the proposal, which read: "eligible for such lunches for that day." The last sentence in § 210.18(i)(4), which read "A second review is required when:" has been corrected to read "A second review threshold is exceeded when:". Finally, in § 210.19(c)(1), the reference to "§ 210.18(f) has been corrected to read "§ 210.18(n)".

List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grant programs-Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 210 is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Sec. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

2. In § 210.2, a new definition "Point of Service" has been added in alphabetical order as follows:

§ 210.2 Definitions.

* * * * *

"Point of Service" means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price or paid lunch has been served to an eligible child.

* * * * *

Subpart B—[Amended]

3. The title of Subpart B, "Assistance to States and School Food Authorities" is removed and the title, "Reimbursement Process for States and School Food Authorities" is added in its place.

4. In § 210.5, paragraph (d)(1) is amended by removing the second sentence and adding two new sentences in its place, as follows:

§ 210.5 Payment process to States.

* * * * *

(d) * * *

(1) * * * The final reports shall be limited to claims submitted in accordance with § 210.8 and, for the month of October, shall include the number of children approved for free and reduced price meals by category enrolled in participating schools in the State. The final reports shall be postmarked and/or submitted no later

than 90 days following the last day of the month covered by the report. * * *

* * * * *

5. In § 210.7:

a. Paragraph (a) is amended by removing the citation "§ 210.8(b)" from the second sentence and adding the citation "§ 210.8(c)" in its place.

b. The fourth, fifth and sixth sentences of paragraph (a) are removed.

c. New paragraph (c) is added.

The addition reads as follows:

§ 210.7 Reimbursement for school food authorities.

* * * * *

(c) *Reimbursement limitations.* To be entitled to reimbursement under this part, each school food authority shall ensure that Claims for Reimbursement are limited to the number of free, reduced price and paid reimbursable lunches that are served to children eligible for free, reduced price and paid lunches, respectively, for each day of operation. The school food authority shall not claim reimbursement for any excess lunches produced, as prohibited in § 210.10(b). Claims for Reimbursement shall be based on daily counts, at the point of service, which identify the number of free, reduced price and paid reimbursable lunches served, unless otherwise authorized at the discretion of the State agency on a case by case basis. Any request to use an alternative counting system is to be submitted in writing to the State agency for approval. Such request shall provide detail sufficient for the State agency to assess whether the proposed alternative would provide an accurate count of the number of reimbursable lunches, by type, served each day to eligible children. The details of each approved alternative system are to be maintained on file at the State agency for review by FNS.

6. In § 210.8: a. The title of § 210.8 "Method of reimbursement." is removed and new title "Claims for reimbursement." is added in its place.

b. Paragraphs (a) through (c) are redesignated as paragraphs (b) through (d), respectively, and a new paragraph (a) is added.

c. The reference to "paragraph (b)" in the first sentence of newly redesignated paragraph (b) is removed and the words "paragraph (c)" are added in its place.

d. Newly redesignated paragraph (b) is amended by adding three sentences between the third and fourth sentences.

e. Newly redesignated paragraph (c) is amended by adding two sentences between the first and second sentences.

f. The reference to "paragraph (a)" in the last sentence of newly redesignated paragraph (d) is removed and the words "paragraph (b)" are added in its place.

The additions and revisions specified above read as follows:

§ 210.8 Claims for reimbursement.

(a) *Claims review process.* (1) Every school year, each school food authority with more than one school shall perform no less than one on-site review of each school under its jurisdiction. The on-site review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures, the school food authority shall: ensure that the school develops and implements a corrective action plan; and within 45 calendar days of the review, conduct a follow-up on-site review to determine that the corrective action resolved the problems. Each on-site review shall ensure that the school's claim is based on the counting system authorized under § 210.7(c) and that the counting system, as implemented, yields the actual number of reimbursable free, reduced price and paid lunches served for each day of operation. School food authorities may review additional aspects of the school food service during these reviews.

(2) Prior to the submission of a monthly Claim for Reimbursement, each school food authority shall compare each school's daily claim against data which will assist in the identification and correction of Claims for Reimbursement in excess of the number of reimbursable free, reduced price and paid lunches actually served that day to children eligible for such lunches. Such data shall, at a minimum, include the number of children currently approved for free and reduced price lunches in that school, and, for every month except September, the average daily number of free, reduced price and paid lunches served for the preceding month.

(3) School food authorities shall also compare claims against any other data available to the school food authority, such as a school's average daily attendance, enrollment or membership data, and a factor which accurately accounts for the difference between enrollment and attendance at any given time. This attendance factor may be developed annually by the school food authority subject to State agency approval or may be developed annually by the State agency. In the absence of a local or State attendance factor, the school food authority shall use an attendance factor developed by FNS. When taking the attendance factor into consideration, school food authorities shall assume that children eligible for free and reduced price meals attend school at the same rate as the general population. School food authorities shall maintain on file, each month's Claim for Reimbursement and all data used in the claims review process, by school.

(4) School food authorities shall make this information available to the State agency upon request.

(b) * * * The State agency shall periodically review each school food authority's monthly Claims for Reimbursement to assist in the identification and correction of claims in excess of the number of lunches served, by type, to eligible childen. The State agency shall, at a minimum, compare the number of free and reduced price meals claimed on each school food authority's monthly Claim for Reimbursement to the number of children approved for free and reduced price meals enrolled in that school food authority for the month of October times the days of operation. In making that comparison, State agencies shall take into consideration the attendance factor employed by each school food authority in accordance with § 210.18(a); provided that, such attendance factor assumes that children eligible for free and reduced price meals attend school at the same rate as the general school population. * * *

(c) * * * Such data shall include, at a minimum, the number of free, reduced price and paid lunches served to eligible children and, for the month of October, the number of children approved for free and reduced price meals enrolled in that school food authority as of the last day of operation in October. The claim shall be signed by a school food authority official. * * *

* * * * *

7. In § 210.9: a. Paragraph (b)(8) is revised.

b. Paragraphs (b)(9) through (b)(18) are redesignated as paragraphs (b)(10) through (b)(19) respectively, and a new paragraph (b)(9) is added.

c. Newly redesignated paragraph (b)(19) is amended by removing the reference to "paragraph (b)(16)" and adding the reference "paragraph (b)(17)" in its place.

The additions and revisions read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(8) Claim reimbursement at the assigned rates only for reimbursable free, reduced price and paid lunches served to eligible children in accordance with 7 CFR Part 210. Agree that the school food authority official signing the claim shall be responsible for reviewing and analyzing meal counts to ensure

accuracy as specified in § 210.8 governing claims for reimbursement. Acknowledge that failure to submit accurate claims will result in the recovery of an overclaim and may result in the withholding of payments, suspension or termination of the program as specified in § 210.24. Acknowledge that if failure to submit accurate claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in § 210.25 shall apply;

(9) Count the number of free, reduced price and paid reimbursable meals served to eligible children at the point of service, or through another counting system if approved by the State agency;

* * * * *

8. In § 210.15, paragraph (a)(4) is amended by removing the words "error tolerances" and adding in their place "second review thresholds" and paragraph (b)(1) is amended by removing the citation "§ 210.8(b)" and adding in its place "§ 210.8 (a) and (c)".

9. In § 210.18: a. The words "error tolerance level," "error tolerance levels", "error tolerances", and "tolerances" are removed from the text wherever they appear and "second review threshold", "second review thresholds", "second review thresholds", and "thresholds", respectively, are added in their place.

b. Paragraph (g)(2) is removed and paragraphs (g)(3) through (g)(6) are redesignated as (g)(2) through (g)(5).

c. Newly redesignated paragraph (g)(2)(ii) is revised and new paragraph (g)(6) is added.

d. Paragraphs (i)(1) (ii) and (iii) are revised.

e. Paragraph (i)(3)(ii), the introductory text of paragraph (i)(4) and paragraph (i)(4)(ii) are revised.

f. Paragraph (m)(1) is amended by removing the words "if the selection is not random;" and replacing the comma at the end of this paragraph with a semicolon.

g. Paragraph (n)(5) is revised.

The additions and revisions read as follows:

§ 210.18 Monitoring responsibilities.

* * * * *

(g) * * *

(2) * * *

(ii) Performance Standard 2—Claims—The number of free and reduced price meals claimed for reimbursement by each school for any period are, in each case, equal to the number of meals which are served to children who are correctly approved for free and for reduced price meals, respectively, durir.g the period.

* * * * *

(6) "Second review thresholds" means the degree of error of an AIMS performance standard as specified in paragraph (i)(4) of this section which, if exceeded in a reviewed school food authority, triggers a second AIMS review in all large school food authorities and in at least 25 percent of those small school food authorities which exceed second review thresholds on a first review.

* * * * *

(i) * * *

(1) * * *

(ii) The State agency shall determine that, for each school reviewed, the number of free and reduced price meals claimed for each day of the most recent month for which the school food authority has submitted a claim are equal to the number of meals served to eligible children for that claiming month. In order to make this determination, State agencies shall review the data required to be maintained by the school food authority under § 210.8(a) and observe the meal counting and claiming procedures employed by each school reviewed.

(iii) The State agency shall ensure that each school reviewed has an adequate system for counting and claiming meals served by reimbursement type. An adequate system is one which meets the following objectives:

(A) Provides accurate counts of the number of reimbursable free, reduced price and paid meals served to eligible children on a daily basis;

(B) Accurately records and reports those counts to the school food authority;

(C) Prevents the overt identification of free and reduced price meal recipients in accordance with 7 CFR Part 245; and

(D) Is monitored by the school food authority in accordance with § 210.8(a) to ensure that internal controls exist. State agencies shall review each system to determine whether counts are taken at the point of service and whether the counting and claiming system, as implemented, meets these objectives. If an alternative counting system is employed, State agencies shall ensure that it achieves the desired objectives, is correctly implemented and is approved by the State agency. The State agency shall also ensure that the school food authority properly consolidates meal counts from its schools.

* * * * *

(3) * * *

(ii) On a first AIMS review of a school food authority, the State agency shall select the required minimum number of schools to review from those which consistently claim that a high proportion of children eligible for free or reduced price meals have been served. However, if the State agency has reason to believe that this criterion will not lead to a review of problem schools, the State agency shall substitute schools with the likelihood of problems. The State's reasons for substitution shall be kept on file at the State agency and will be subject to review by FNSRO.

(4) *Second review thresholds.* State agencies shall ensure that corrective action plans are completed by all school food authorities which are found on first reviews to exceed the second review thresholds described below. Further, State agencies shall conduct second reviews of: all large school food authorities found to exceed the second review thresholds on first reviews; and at least 25 percent of small school food authorities found to exceed those thresholds on first reviews. In determining which small school food authorities to include in the second review sample, State agencies shall, at a minimum, select those school food authorities which have the most serious problems on the first review. A second review threshold is exceeded when:

* * * * *

(ii) For AIMS Performance Standard 2, a number of schools reviewed in a school food authority, as specified in Table B of paragraph (i)(5) of this section, claim reimbursement for more free or more reduced price meals, respectively, than the number of children correctly approved for such meals for the review period times the days of operation times the attendance factor used by the school food authority under § 210.8(a); and or

* * * * *

(n) * * *

(5) Require that fiscal action is taken on any reviews where deficiencies are found and set forth the State agency's criteria for taking fiscal action.

* * * * *

10. In § 210.19: a. The fifth sentence of paragraph (c) introductory text is revised;

b. Paragraph (c)(1) is revised;

c. Paragraph (d)(1) is amended by removing $35 from the first sentence and adding $100 in its place.

The revisions read as follows:

§ 210.19 Additional responsibilities.

* * * * *

(c) * * * The State agency shall determine the extent of fiscal action based on the severity and longevity of the problems and shall employ appropriate factors which accurately

account for attendance and participation trends for both children who are determined eligible for free or reduced price meals and children who are ineligible for free or reduced price meals. * * *

(1) *AIMS.* When a State agency chooses to conduct AIMS reviews, as described in § 210.18(i) of this part, fiscal action shall be taken on both first and second reviews for any degree of violation of AIMS Performance Standards 2, 3, and 4. When a State agency chooses to conduct AIMS audits, as described in § 210.18(j) of this part, fiscal action shall be assessed for any degree of violation of Performance Standards 2, 3, and 4. When a State agency develops its own compliance monitoring system in accordance with § 210.18(n), fiscal action shall be taken for any degree of violation of any AIMS Performance Standard.

* * * * *

Date: March 21, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89-7263 Filed 3-27-89; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV-89-024]

Winter Pears Grown in Oregon, Washington, and California; Increase in Expenses for 1988-89 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes an increase in expenses for the Winter Pear Control Committee (committee) established under Marketing Order 927 for the 1988-89 fiscal year. The expenses are increased from $3,354,351 to $3,802,846. The increase is needed to cover additional market promotion and advertising activities needed to market the record large 1988-89 winter pear crop.

EFFECTIVE DATES: July 1, 1988, through June 30, 1989 (§ 927.228).

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 927 (7 CFR Part 927) regulating the handling of winter pears grown in Oregon, Washington and California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 96 handlers of winter pears under this marketing order, and approximately 1,800 winter pear producers in Washington, Oregon, and California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of Winter Pears maybe classified as small entities.

A final rule establishing expenses in the amount of $3,354,351 for the committee for the fiscal period ending June 30, 1989, was published in the **Federal Register** on August 5, 1988 (53 FR 29441). Such expenses included $2,774,857 for "paid advertising" and a "contingency" fund of $209,499. The final rule also fixed an assessment rate to be levied on winter pear handlers during the 1988-89 fiscal period.

In a recently conducted mail ballot, the committee voted unanimously to increase its budget of expenses from $3,354,351 to $3,802,846. Of the $448,495 increase in expenditures, $337,803 is for additional "paid advertising" deemed necessary to market the record large 1988-89 crop. These additional funds are to be allocated among the existing promotional projects which appear to be achieving the best results. The remaining $110,692 is to be added to the "contingency" expenditures. Contingency funds may be used for emergency spending in any budget category, including promotion and paid advertising.

A proposed rule inviting comments on this action was published in the **Federal Register** on March 1, 1989 (54 FR 8544). The comment period ended March 13, 1989. No comments were received.

Because of the unexpected record large crop, additional assessment funds are available to cover the increase in expenses. Hence, no increase in the assessment rate was recommended by the committee.

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

It is found that the increased expenses are reasonable and likely to be incurred, and that such expenses will tend to effectuate the declared policy of the Act.

Approval of the increased expenses must be expedited because the committee needs to have authority to pay its expenses which are incurred on a continuous basis and to conduct the additional promotion activities deemed necessary to market the record large crop. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 927

Marketing agreement and order, Winter pears, Oregon, Washington, California.

For reason set forth in the preamble, § 927.228 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON AND CALIFORNIA

1. The authority citation for 7 CFR Part 927 continues to read as follows:

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

2. Section 927.228 is amended as follows:

Note.—This section will not appear in the Code of Federal Regulations

§ 927.228 [Amended]

Section 927.228 is amended by changing "$3,354,351" to "$3,802,846".

Dated: March 23, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-7288 Filed 3-27-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1106

[DA-89-011]

Milk in the Southwest Plains Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends, for the months of March through August 1989, the monthly requirement under the Southwest Plains milk order that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. The action is necessary to assure the efficient disposition of an increasing supply of milk from producers who have historically supplied the market's fluid milk requirements.

EFFECTIVE DATE: Upon publication of this document in the **Federal Register** for the months of March through August 1989.

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

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 2, 1989; published March 7, 1989 (54 FR 9458).

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

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

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

Notice of proposed rulemaking was published in the **Federal Register** on March 7, 1989 (54 FR 9458) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of March through August 1989 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1106.13, paragraph (d)(1) in its entirety.

Statement of Consideration

This action for the Southwest Plains market suspends, for March through August 1989, the monthly requirement that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants. The order provides that a dairy farmer's milk may be diverted to nonpool plants and still be priced under the order if at least one day's production of such person is physically received at a pool plant during the month.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents a substantial number of producers who supply the market. The action is supported by Kraft, Inc., the operator of a pool supply plant at Bentonville, Arkansas, and a nonpool manufacturing plant at Springfield, Missouri.

The action is needed because the market's production is increasing at a faster rate than fluid milk sales. As a result, there will be ample supplies of milk available in the vicinity of the market's distributing plants to supply the fluid milk needs of such plants during the months of March-August this year. Thus, the milk of producers can be marketed more economically during this six-month period by supplying the needs of distributing plants with nearby milk and by moving the milk of more distant producers directly from the farm to manufacturing plants in the procurement area. Absent a suspension action, the requirement that each producer's milk be received at a pool plant one time each month will result in uneconomical and inefficient movements of milk to maintain pool status of producers who have historically been associated with the Southwest Plains market.

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

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action will eliminate unnecessary milk movements and will insure that dairy farmers who regularly have supplied the market's fluid milk needs will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing;

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

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No opposing views were received.

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

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in § 1106.13 of the Southwest Plains order are hereby suspended for the months of March through August 1989.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

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

§ 1106.13 [Suspended in Part]

2. In § 1106.13, paragraph (d)(1) is suspended in its entirety.

Signed at Washington, DC, on March 22, 1989.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89-7289 Filed 3-27-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-153-AD; Amdt. 39-6175]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires modification of the off-wing escape slide compartment door latching mechanism by replacing the hook in the integrator assembly. This amendment is prompted by reports of the off-wing escape slide deploying in flight. In two of these incidents the off-wing slide hit the stabilizer. This condition, if not corrected, could lead to damage to the stabilizer and elevator which may affect airplane controllability. Additionally, in this situation this escape slide would not be available in the event of an emergency evacuation.

DATES: Effective April 28, 1989.

ADDRESS: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Roger S. Young, Airframe Branch, ANM-120S; telephone (206) 431-1929. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 767 series airplanes, which requires replacement of the integrator hook in the escape slide compartment opening mechanism and re-rigging of part of the mechanism, was published in the **Federal Register** on November 11, 1988 (53 FR 46461).

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

One commenter pointed out that there was a slight error in the description of the system integrator's function and the commenter believes that the majority of the in-flight deployments were caused by a deviation from the rigging procedure called out in the Model 767 maintenance manual. The system integrator functional description provided by the commenter has been determined to be correct, and a mis-rigged nut on the latch release actuator is the most likely cause of the in-flight deployments. It has not been possible to determine the exact cause of the mis-rigging, but the hook replacement, along with proper rigging, will prevent in-flight deployment.

This commenter also stated that there are approximately 250 airplanes worldwide that would be subject to the AD rather than 150 airplanes stated in the NPRM. The FAA does not concur. The Boeing alert service bulletin effectivity calls out 230 affected airplanes, divided into two groups. There are 125 airplanes in one group that are subject to the AD. The remaining airplanes originally had a secondary lock installed on the system integrator either in production or in accordance with Boeing Service Bulletin 767-25-0015; these airplanes would be subject to the AD only if Boeing Service Bulletin 767-25-0051 is incorporated. The exact number of the worldwide airplanes with Boeing Service Bulletin 767-25-0051 incorporated is not known, but was estimated at 25, resulting in the FAA's estimate of 150 airplanes.

The second commenter requested that the proposed 6 month compliance time be extended to 18 months so that the integrator hook replacement could be accomplished in conjunction with the modification of the off-wing escape slide door actuators, as required by AD 88-18-04, Amendment 39-5992 (53 FR 29652; August 8, 1988). This will reduce the number of times the off-wing slide compartment will need to be opened and thereby decrease the possibility of inadvertent slide inflation. The FAA does not agree with the commenter's request to extend the compliance time to 18 months. In consideration of the serious consequences of the loss of an off-wing slide during flight, and to minimize the likelihood of an in-flight deployment, the FAA has determined that the integrator hook replacement should be done prior to, or concurrently with AD 88-18-04.

This commenter also requested clarification that only the hook replacement, and not the drilling of a witness hole, would be required. The commenter also requested clarification that only rigging of the integrator/latch actuator would be required, and not rigging of the complete latching system. With respect to the requested clarifications, the Boeing alert service bulletin refers to drilling the witness hole as optional. The NPRM preamble specifically stated that the hook replacement was required, but that the optional integrator rework was not required. Therefore, the commenter's conclusion that only the integrator hook replacement is required is correct. While drilling the witness hole will provide an additional means of determining correct rigging, accomplishment of the latch opening actuator installation procedures in the Boeing 767 Maintenance Manual Subject 25-65-11, (referred to in circle note 8 of figure 1 of the alert service bulletin) and adjusting the slide compartment door opening actuator system per the applicable portion of Maintenance Manual Subject 25-65-00 to obtain a 0.45 inch travel on the forward and aft slide compartment door opening actuator firing pin (referred to in circle note 7 of figure 1), are all that is necessary to assure proper operation. Since the latch opening actuator must be removed in order to install the new hook, the latch opening actuator installation instructions in Maintenance Manual Subject 25-65-11, August 10, 1988, or later revision, including the check for engagement between the pawl on the connector and the integrator carrier when the latch opening actuator is on the integrator carrier with its mounting screws removed, must be followed. The actuator nut adjustment dimension is of particular importance. The final rule has been changed to specify rigging of the latch opening actuator and the compartment door opening actuator.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted.

There are approximately 150 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,000.

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, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) 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. By adding the following new airworthiness directive:

Boeing: Applies to all Model 767 series airplanes, identified in Boeing Alert Service Bulletin 767-25A0104, Revision 1, dated September 29, 1988, certificated in any category. Compliance required within 6 months after the effective date of this AD, unless previously accomplished.

To ensure that the off-wing escape slide does not inadvertently deploy due to a disengaged integrator hook, accomplish the following:

A. Replace the integrator hook and rig the latch opening actuator and compartment door opening actuator, in accordance with Boeing Alert Service Bulletin 767-25A0104, Revision 1, dated September 29, 1988.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 28, 1989.

Issued in Seattle, Washington, on March 20, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-7241 Filed 3-27-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ASW-46; Amdt. 39-6171]

Airworthiness Directives; Sikorsky Aircraft Model S-76 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires that a service life limit be placed on the tail rotor horn on Sikorsky Model S-76 series helicopters. The AD is needed to prevent a fatigue failure of the tail rotor horn which could result in a reduction of directional control and hazardous tail rotor vibration in the helicopter.

EFFECTIVE DATE: April 27, 1989.

COMPLIANCE: As indicated in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7113.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of the tail rotor horn on or before reaching 12,000 hours' time in service on certain Sikorsky Model S-76 series helicopters was published in the Federal Register on December 12, 1988 (53 FR 49891).

The proposed AD was prompted by additional fatigue testing conducted by Sikorsky on tail rotor horns that were damaged by corrosion. The FAA has determined that the Sikorsky Model S-76 tail rotor horn component, Part Number (P/N) 76101-05006, has a limited service life. A tail rotor horn component fatigue failure could result in a reduction of directional control and hazardous tail rotor vibration in the helicopter.

Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires a service life limit on the tail rotor horn component on Sikorsky Model S-76 series helicopters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received in response to the Notice of Proposed Rulemaking (NPRM). Neither commenter disagrees with the text of the proposed AD. However, one commenter disagrees with the statements made in the "SUMMARY" and "SUPPLEMENTARY INFORMATION" sections of the preamble to the proposed AD. The commenter states that the phrase "* * * in loss of directional control of the helicopter and subsequent loss of the helicopter" is "pure conjecture and not substantiated by test results." Based on further FAA review, the FAA agrees that the statement "* * * a reduction of directional control and hazardous tail rotor vibration" more nearly describes the result of failure of the tail rotor horn. This amendment uses this new phraseology. This same commenter also disagrees with the proposed cost impact of $1.33 per flight hour. The commenter presents data to support an actual cost impact of $1.90 per flight hour. The FAA agrees, and the economic analysis of the preamble to this final rule reflects this change.

The second commenter does not disagree with the proposed AD but questions the methods of fatigue substantiation which resulted in the reduced service life of the tail rotor horn. Those methods included additional FAA approved tests and analyses conducted in accordance with accepted industry practice as a result of service experience, and the FAA, together with industry, has found that the reduction in service life is required.

Editorial changes have been made to paragraphs (d) and (e) to correct an address and to correctly identify an aviation safety inspector. Other than the

editorial change to paragraph (e) and an editorial change to the address in paragraphs (d) and (e), the AD is adopted as proposed.

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 involves approximately 300 helicopters at an added cost of $22,600 per helicopter for every 12,000 flight hours or $1.90 per flight hour. Therefore, 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); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) 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.

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 Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended].

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Model S–76 series helicopters, certificated in any category, that are equipped with tail rotor horn, P/N 76101–05006.

Compliance is required as indicated, unless already accomplished.

To prevent possible fatigue failure of the tail rotor component, which could result in a reduction of directional control and hazardous tail rotor vibration in the helicopter, accomplish the following:

(a) Within the next 100 hours' time in service after the effective date of this AD or before the accumulation of 12,000 hours' time in service, whichever occurs later, replace the tail rotor horn, P/N 76101–05006, with a serviceable tail rotor horn that has not exceeded 12,000 hours' time in service. Thereafter, replace the tail rotor horn P/N 76101–05006, with a serviceable tail rotor horn before the accumulation of 12,000 hours' time in service.

(b) Operators who have not kept records of hours' time in service on individual tail rotor horn component parts must substitute the hours' time in service of the tail rotor blade bonded assembly, P/N 76101–05020 or P/N 76088–20077.

(c) For purposes of complying with this AD, the hours' time in service for the individual tail rotor horn and blade components that were not installed at the time of issuance of the initial rotorcraft airworthiness certificate must be determined from rotorcraft records.

(d) Upon request, an alternate means of compliance which provides a level of safety equivalent to the requirements of this AD may be used when approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7118.

(e) Upon submission of substantiating data by an owner or operator through an FAA Aviation Safety Inspector, the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7118, may adjust the compliance time specified in this AD.

This amendment becomes effective on April 27, 1989.

Issued in Fort Worth, Texas, on March 17, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–7238 Filed 3–27–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–ASW–4, Amdt. 39–6172]

Airworthiness Directives; Sikorsky Model S–61 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal of certain main rotor gearbox helical gears on Sikorsky Model S–61 helicopters. The AD is needed to prevent premature failure of suspect helical gears which could result in loss of the aircraft.

EFFECTIVE DATE: April 20, 1989.

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

FOR FURTHER INFORMATION CONTACT: Mr. Wayne E. Gaulzetti, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803; telephone (617) 273–7102.

SUPPLEMENTARY INFORMATION: The FAA has determined that there has been one helical gear fatigue failure in service and a high percentage of helical gear tooth "capping" found at overhaul of an identified carburization heat lot of helical gears on Sikorsky S–61 helicopters. A failure of the main rotor gearbox helical gear will result in a complete power loss which may result in loss of the helicopter. Investigation into the incident by the United Kingdom Civil Aviation Authority and by the FAA continues, and the number of suspect helical gears may increase.

Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires inspection of the main rotor gearbox to determine the helical gear serial number and removal of certain main rotor gearbox helical gears on Sikorsky Model S–61 helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure herein are impracticable and good cause exists for making this amendment effective in less than 30 days.

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 further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a

final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional 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 § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended].

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Model S–61 series helicopters, certificated in any category, equipped with main rotor gearbox helical gear Part Number S6135–20620–003, Serial Numbers 1086, 1087, 1089, and 1090 through and including 1099, 1101, 1103 through and including 1113, 1116, 1117, 1130, and 1132. (Docket No. 89–ASW–4)

Compliance is required within the next 100 hours' time in service, unless already accomplished.

To prevent possible failure of the helical gear, accomplish the following:

(a) Inspect the main rotor gearbox to identify the serial number of the helical gear installed. If the helical gear is identified with a serial number listed in this AD, replace it with an airworthy helical gear which has a serial number other than listed in this AD.

Note: Sikorsky Aircraft message CBT–TS–89–002 dated January 23, 1989, applies to this AD.

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

(c) An alternate means of compliance or an adjustment of the initial compliance time which provides an equivalent level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

The noted service information may be obtained from Sikorsky Aircraft, 6900 Main Street, Mail Stop S409A, Stratford, CT 06601–1381.

This amendment becomes effective on April 20, 1989.

Issued in Fort Worth, Texas, on March 17, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–7239 Filed 3–27–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–159–AD; Amdt. 39–6176]

Airworthiness Directives: Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, which requires repetitive inspections of the horizontal stabilizer rear spar web fuselage attachment fitting area for defective rivets, and repair, if necessary. This amendment is prompted by reports of failure of rivets connecting the stabilizer rear spar web to the fuselage attachment fittings due to vibration of the tailplane during takeoff. This condition, if not corrected, could lead to loss of structural integrity of the attachment of the horizontal stabilizer to the fuselage and reduced life of the tailplane.

DATE: Effective April 28, 1989.

ADDRESSES: The applicable service information may be obtained from Short Brothers PLC, Librarian for Service Bulletins, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 431–1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Short Brothers Model SD3–60 series airplanes, which requires repetitive inspections of the horizontal stabilizer rear spar web fuselage attachment fitting area for defective rivets, and repair, if necessary, was published in the **Federal Register** on December 22, 1988 (53 FR 51565).

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

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 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $16,320.

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, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, The Federal Aviation Administration amends § 39.13 of 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. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD3–60 series airplanes, serial numbers SH3601 through SH3691 and SH3694, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the structural integrity of the horizontal stabilizer attachment to the fuselage, accomplish the following:

A. Visually inspect, in accordance with the schedule listed below, the forward face of the rear spar web and the aft face of the front spar web for defective rivets between fuselage attach fitting at 12.5" left and right of the airplane center line, in accordance with Short Brothers Model SD3–60 Service Bulletin SD360–55–16, dated April 1988.

1. For airplanes Serial Numbers SH3680 through SH3691 and SH3694, and airplanes affected by this AD which have used only 15° take-off flap setting since before or upon reaching 5,000 flights, inspection is required within the next 100 flights after the effective date of this AD or prior to the total accumulation of 12,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,500 flights.

2. For all other airplanes affected by this AD, inspection is required within the next 100 flights after the effective date of this AD or prior to accumulation of 8,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,000 flights.

B. If defective rivets are found, prior to further flight, repair in accordance with Part II of Short Brothers Model SD3–60 Service Bulletin SD360–55–16, dated April 1988. After repair, continue inspections in accordance with paragraph A., above.

C. The repetitive inspections required by paragraphs A. and B, above, may be terminated following completion of the modification of the horizontal stabilizer spar webs (Modification 7998), in accordance with Short Brothers Model SD3–60 Service Bulletin SD360–55–12, Revision 2, dated November 1986.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by 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 Short Brothers PLC, Librarian for Service Bulletin, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 28, 1989.

Issued in Seattle, Washington, on March 20, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–7240 Filed 3–27–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–32–AD; Amdt. 39–6177]

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Series Airplanes, Fuselage Numbers 1 Through 895.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and C–9 (Military) series airplanes, which requires installation of current limiters in the aircraft wiring to provide isolation for a shorted AC cross tie relay. This amendment is prompted by a recent report of an in-flight electrical fire caused by a failure of the AC cross tie relay that also resulted in total loss of AC electrical power. This condition, if not corrected, could result in total loss of AC electrical power and lead to fire on board the airplane in the cabin wall and/or below the cabin floor.

DATE: Effective April 17, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems and Equipment Branch, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5343.

SUPPLEMENTARY INFORMATION: A McDonnell Douglas Model DC–9 operator recently reported the occurrence of an in-flight electrical fire. The flight crew reported that all of the cockpit lights started operating intermittently; that a buzzing sound, emitted from the electrical power center (EPC), was heard shortly before an explosive sound was heard; and that an electrical fire subsequently occurred. Both left and right electrical generator busses dropped off line and the flight crew was unable to restore normal electrical power.

Subsequent inspection revealed that the fire was caused by a failure of the AC cross tie relay, part number 914F567–4. This condition, if not corrected, could result in the total loss of AC electrical power and lead to a fire on board the airplane in the cabin wall and/or below the cabin floor.

In 1979, McDonnell Douglas issued FAA approved DC–9 Service Bulletin 24–57, which describes procedures for installation of current limiters at the AC cross tie relay to isolate a shorted relay from the aircraft wiring, and to prevent electrical failures in one generator system from affecting the remaining operable generator system. The airplane involved in the incident described above had not incorporated this installation.

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin No. 24–57, Revision 1, dated March 12, 1980, which describes procedures for installation of current limiters in the aircraft wiring to isolate a shorted AC cross tie relay from the aircraft wiring, thus assuring continued normal operation of at least one generator system.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires the installation of the current limiters in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

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 that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) 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.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9 and C-9 (Military) series airplanes, Fuselage 1 through 895, as listed in McDonnell Douglas DC-9 Service Bulletin 24-57, Revision 1, dated March 12, 1980, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent the AC cross tie relay from shorting out internally and causing total loss of AC electrical power and to eliminate a potential source of fire ignition, accomplish the following:

A. Install current limiters in the aircraft wiring at the AC cross tie relay in accordance with the accomplishment instructions of McDonnell Douglas DC-9 Service Bulletin 24-57, Revision 1, dated March 12, 1980.

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

Note.—The request should be forwarded through an FAA Principal Avionics Inspector (PAI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized 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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

This amendment becomes effective April 17, 1989.

Issued in Seattle, Washington, on March 21, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-7363 Filed 3-27-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ASW-14; Amdt. 39-6173]

Airworthiness Directives; McDonnell Douglas Helicopter Co., Model 369 (YOH-6A), A(OH-6A), H, HM, HS, HE, D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires a one-time inspection and replacement of the outer race component of the overrunning clutch assembly (sprag clutch) on McDonnell Douglas Helicopter Company (MDHC) Model 369 (YOH-6A), A(OH-6A), H, HM, HS, HE, D, E, F, and FF helicopters. This amendment is needed to provide additional criteria for establishing the airworthy components of the overrunning clutch which will reduce the scope of the AD and the premature removal of otherwise airworthy components.

DATE: *Effective:* April 17, 1989.

Compliance: As indicated in the body of this AD.

ADDRESSES: The applicable service information notice may be obtained from MDHC Techincal Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797. This information may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas, or 3229 E. Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. John E. Golinski, Aerospace Engineer, Propulsion Section, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5264.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-5897 (53 FR 16384; May 9, 1988), AD 88-10-04, which currently requires a one-time inspection and replacement of the outer race component of the overrunning clutch assembly (sprag clutch) on MDHC Model 369 (YOH-6A), A (OH-6A), H, HM, HS, HE, D, E, F, and FF helicopters. Further investigation by MDHC and the FAA has revealed that the outer race components, Part Number (P/N) 369A5352, which have been improperly processed during manufacturing are identified not only by Serial Numbers 0692 through 0927 but also with the heat treat number "HT 255534." Helicopters which have the outer race P/N 369A5352, Serial Numbers 0692 through 0927 and heat treat batch number of "HT 255534" must have the outer race assemblies removed from service. Therefore, the FAA is amending Amendment 39-5897 by providing additional criteria for establishing unairworthy components of the overrunning clutch. The inspection required will be that inspection prescribed in revised MDHC Mandatory Service Information Notice (SIN) HN-215.1/DN-156.1/EN-46.1/FN-34.1, dated October 14, 1988, on MDHC Model 369 (YOH-6A), A (OH-6A), H, HM, HS, HE, D, E, F, and FF helicopters. This inspection will limit the scope of the AD and reduce the number of parts which may be affected by the AD.

Since this amendment provides a clarification only, and imposes no additional burden on any person, notice and public procedures hereon are unnecessary, and the amendment may be made effective in less than 30 days.

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 provides a clarification only. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional 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 § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. By amending Amendment 39–5897 (53 FR 16384, May 9, 1988), AD 88–10–04, by revising paragraphs (a) and (c) to read as follows; by removing the incorporation by reference paragraph following paragraph (c); and by adding an Appendix I:

McDONNELL DOUGLAS HELICOPTER COMPANY (MDHC) (Hughes Helicopters, Inc.)

Applies to Model 369 (YOH–6A), A(OH–6A), H, HM, HS, HE, D, E, F, and FF helicopters, certificated in any category. (Docket No. 88–ASW–14)

* * * * *

(a) Within the next 50 hours' time in service after the effective date of May 20, 1988, for AD 88–10–04, perform a one-time inspection of the outer race component, P/N 369A5352, of the overrunning clutch (sprag) assembly, P/N 369A5350, to identify the serial number and heat treat batch number and remove unairworthy components in accordance with the instructions in Appendix I, paragraphs (a) through (g) of this AD. Remove outer race component, P/N 369A5352, with Serial Numbers 0692 through 0927 and heat treat batch Number "HT 255534" from service prior to further flight. No action is required on this amendment if the requirements of paragraph (a), AD 88–10–04, as originally issued have been accomplished.

* * * * *

(c) An alternate method of compliance, which provides an equivalent level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425.

This amendment amends Amendment 39–5897 (53 FR 16384; May 9, 1988), AD 88–10–04.

This amendment becomes effective April 17, 1989.

Issued in Fort Worth, Texas, on March 17, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

Appendix I

Note: McDonnell Douglas Helicopter Company Service Information Notice Nos. HN–215.1, DN–156.1, EN–46.1, FN–34.1, dated October 14, 1988, pertain to these inspections.

PROCEDURE

a. Remove overrunning clutch sub-assembly per section 9 of HMI.

b. Inspect outer race and record heat treat and serial number of outer race in Log Book.

NOTE

• Outer races which do not have heat treat or serial numbers vibroscribed on the outer surfaces are not affected by the requirements of this Notice.

• Heat treat and serial numbers are clearly vibroscribed on outer surface of the outer race on affected parts. (See Figure 1.)

c. If the outer race heat treat number is not HT 255534 and serial number 0692 thru 0927, proceed to step e. If the outer race heat treat number is HT 255534 and serial number 0692 thru 0927, proceed to step d.

d. Replace outer race of overrunning clutch assembly per Part II of COM (369D,E,F/FF) or Basic HMI, Appendix C (369H).

e. Reinstall clutch sub-assembly into clutch housing per section 9 of HMI.

CAUTION

Ensure that clutch sub-assembly retaining ring is installed WITH BEVELED SIDE OUTWARD.

f. Check clutch oil level per section 2 of applicable HMI.

g. Record compliance to this Service Information Notice in the Compliance Record section of the helicopter Log Book.

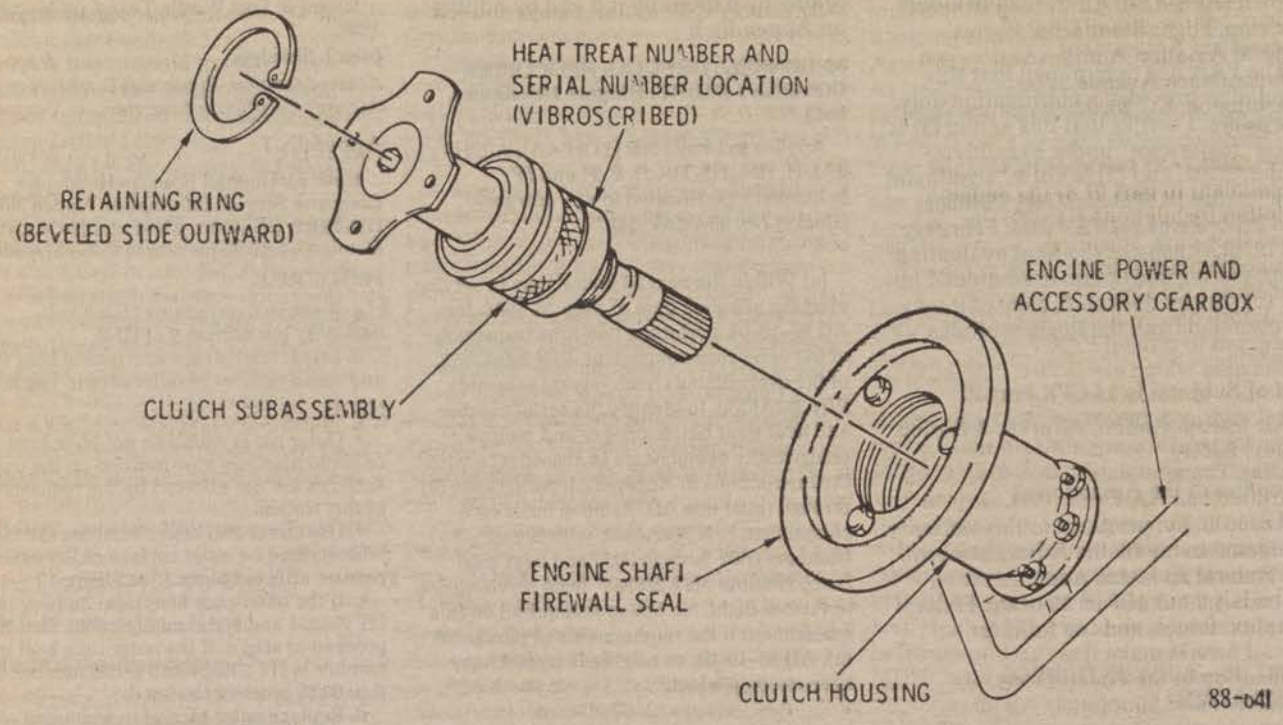

Figure 1. Inspection of Overrunning Clutch Assembly Outer Race.

[FR Doc. 89-7362 Filed 3-27-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25833; Amdt. No. 1396]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue W., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards

Branch (AFS–420), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment 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 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on March 17, 1989.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective June 1, 1989

Fort Wayne, IN—Fort Wayne Muni/Baer Fld, ILS RWY 5, Amdt. 12
Oakley, KS—Oakley Muni, NDB RWY 34, Amdt. 1
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY 3L, Amdt. 11
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY 3R, Amdt. 10
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY 21L, Amdt. 6
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY 21R, Amdt. 24
Ironwood, MI—Gogebic County, VOR RWY 9, Amdt. 12
Ironwood, MI—Gogebic County, VOR/DME RWY 27, Amdt. 8
Ironwood, MI—Gogebic County, ILS RWY 27, Amdt. 3
Ontonagon, MI—Ontonagon County, NDB–A, Amdt. 4
International Falls, MN—Falls Intl, VOR RWY 13, Amdt. 12
International Falls, MN—Falls Intl, LOC BC RWY 13, Amdt. 8
Beatrice, NE—Beatrice Municipal, VOR RWY 13, Amdt. 13
Beatrice, NE—Beatrice Municipal, VOR RWY 35, Amdt. 3
Beatrice, NE—Beatrice Municipal, NDB RWY 13, Amdt. 6
Beatrice, NE—Beatrice Municipal, NDB–A, Amdt. 1
San Antonio, TX—Stinson Muni, VOR RWY 32, Amdt. 13

. . . Effective May 4, 1989

Hazlehurst, GA—Hazlehurst, NDB RWY 14, Amdt. 3
Reidsville, GA—Reidsville, NDB RWY 11, Amdt. 6
Ruidoso, NM—Sierra Blanca Regional, NDB RWY 24, Orig.
Lawrenceburg, TN—Lawrenceburg Muni, NDB RWY 16, Amdt.2
Houston, TX—Houston Intercontinental, NDB RWY 26, Orig.

. . . Effective April 6, 1989

Lebanon, NH—Lebanon Muni, MLS RWY 18, Orig.
Dallas-Fort Worth, TX—Dallas/Fort Worth International, ILS–1 RWY 13R, Amdt. 1
Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS–2 RWY 13R, Orig.
Dallas-Fort Worth, TX—Dallas/Fort Worth International, ILS–1 RWY 17L, Amdt. 2
Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS–2 RWY 17R, Orig.
Dallas-Fort Worth, TX—Dallas/Fort Worth International, ILS–1 RWY 17R, Amdt. 14
Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS–2 RWY 17R, Orig.
Dallas-Fort Worth, TX—Dallas/Fort Worth International, ILS–1 RWY 18L, Amdt. 14
Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS–2 RWY 18R, Orig.
Dallas-Fort Worth, TX—Dallas/Fort Worth International, ILS–1 RWY 18R, Amdt. 2
Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS–2 RWY 18R, Orig
Dallas-Fort Worth, TX—Dallas/Fort Worth International, ILS–1 RWY 31R, Amdt. 6
Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS–2 RWY 31R, Orig.

Dallas-Fort Worth, TX—Dallas/Fort Worth International, ILS-1 RWY 35R, Amdt. 3
Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS-2 RWY 35R, Orig.
Dallas-Fort Worth, TX—Dallas/Fort Worth International, ILS-1 RWY 36L, Amdt. 3
Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS-2 RWY 35L, Orig.

. . . *Effective March 15, 1989*

Jefferson City, MO—Jefferson City Meml, LOC BC RWY 12, Amdt. 4

. . . *Effective March 3, 1989*

Tampa, FL—Tampa Intl, ILS RWY 18L, Amdt. 37

[FR Doc. 89-7242 Filed 3-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 778

[Docket No. 90247-9047]

Clarifications to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the Export Administration Regulations (15 CFR Parts 768-799), makes editorial corrections and clarifications and, in some cases inserts material inadvertently omitted from earlier regulatory amendments.

Among these corrections and clarifications, are the following:

(a) Section 778.2 and Supplement No. 1 to Part 778 are amended to update the Nuclear Non-Proliferation Act section 309(c) procedures, as amended on May 16, 1984, 49 FR 20780.

(b) Section 778.3 is amended to include language erroneously deleted from the section when last amended.

EFFECTIVE DATE: This rule is effective March 28, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule mentions a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), which is cleared under OMB control number 0694-0005. This rule will have no effect on the paperwork burden on the public.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Patricia Muldonian, Regulations Branch, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

Accordingly, Part 778 of the Export Administration Regulations (15 CFR Parts 768-799) is amended as follows:

1. The authority citation for 15 CFR Part 778 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985 and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 778—[AMENDED]

2. Section 778.2(a) is amended by revising the fourth sentence, following the phrase "Nuclear Referral List", to read as follows:

§ 778.2 Nuclear-Related Commodities and Technical Data (The Nuclear Referral List).

(a) * * * The procedures established pursuant to section 309(c), which appeared at 49 FR 20780 (May 16, 1984), are reprinted as Supplement No. 1 to this Part 778. * * *

* * * * *

3. Section 778.3 is amended by revising the introductory paragraph to read as follows:

§ 778.3 Additional Validated License Requirements For Exports With Certain Nuclear End-Uses.

In addition to the validated license requirements for commodities and technical data referred to in § 778.2 above, a validated license is required for export to all destinations, including Canada, of any technical data not exportable under the provisions of General License GTDA (except "operation technical data" and "sales technical data" for export to and use in the countries listed in Supplement No. 2 to Part 773 or Canada) where the exporter knows or has reason to know that the data will be used directly or indirectly in the activities listed below. A validated license is required for export to all destinations, except Canada and those countries listed in Supplement No. 2 to Part 773, of any commodity where the exporter knows or has reason to know that the commodity will be used directly or indirectly in the activities listed below, whether or not the item is specifically designed or modified for such activities.

* * * * *

4. Supplement No. 1 to Part 778 is amended by revising the last sentence of paragraph (c) and by revising paragraph (d) to read as follows:

Supplement No. 1—Procedures Established Pursuant To The Nuclear Non-Proliferation Act of 1967

* * * * *

(c) * * * In accordance with section 17(d)(2) of the Export Administration Act of 1979, if action is not completed within 180 days of receipt of the application by the Department of Commerce, the applicant shall have the rights of appeal and court action provided in section 10(j) of such Act.

(d) If the Subgroup recommends denial of an application, the reasons therefor shall be

articulated for the record. If the Department of Commerce agrees with the recommendation, that Department, in accordance with section 10(f)(2) of the Export Administration Act of 1979, shall to the maximum extent consistent with national security and foreign policy of the United States, inform the applicant in writing of the negative considerations raised with respect to such license application. Before final action is taken on the application, the applicant shall be afforded the opportunity to respond within 15 days to such negative considerations. If appropriate, the applicant's response will be made available to the Subgroup for further review and advice. In the event oif any disagreement which cannot be resolved between the agencies, the provisions in section 5 of part A shall be followed.

Dated: March 21, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89-7269 Filed 3-27-89; 8:45 am]

BILLING CODE 3501-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3248]

JS&A Group, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Northbrook, Ill., corporation from falsely claiming that any product has been independently investigated or evaluated. Respondent is also prohibited from misrepresenting that a paid advertisement is an independent consumer or news program.

DATE: Complaint and Order issued February 24, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Toby M. Levin, FTC/S-4002, Washington, DC 20580. (202) 326-3156.

SUPPLEMENTARY INFORMATION: On Tuesday, November 1, 1988, there was published in the **Federal Register**, 53 FR 44014, a proposed consent agreement with analysis In the Matter of JS&A Group, Inc. and Joseph Sugarman, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising falsely or misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.160 Promotional sales plans; § 13.265 Tests and investigations. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-10 Corrective advertising; § 13.533-20 Disclosures; § 13.533-50 Maintain means of communication. Subpart—Misbranding or mislabeling: § 13.1170 Advertising and promotion; § 13.1195 Connections and arrangements with others. Subpart—Using Deceptive Techniques In Advertising: § 13.2275 Using deceptive techniques in advertising; § 13.2275-70 Television depictions.

List of Subjects in 16 CFR Part 13

Sunglasses, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 89-7272 Filed 3-27-89; 8:45 am]

BILLING CODE 6570-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Trenbolone; Technical Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulation that provides for safe concentrations of trenbolone residues in uncooked edible tissues of cattle. The concentrations for residues in kidney and fat as they currently appear in 21 CFR 556.739 are incorrect. This document amends the regulation to indicate the correct concentrations.

EFFECTIVE DATE: March 28, 1989.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 2, 1987 (52 FR 24994), FDA published a document amending the animal drug regulations to reflect approval of NADA 138-612 filed by Roussel-UCLAF, Division Agro-Veterinaire, 163 Avenue Gambetta, 75020 Paris, France. The NADA provides for use of a slow-release implanted anabolic agent, trenbolone acetate, for increased rate of weight gain and improved feed efficiency in growing-finishing feedlot heifers and steers. The NADA also provides for safe concentrations of trenbolone residues in uncooked edible cattle tissues as a result of these uses. The concentrations are currently codified in 21 CFR 556.739 as 50 parts per billion (ppb) in muscle, 100 ppb in liver, 300 ppb in kidney, and 400 ppb in fat. The concentrations in kidney and fat were miscalculated. Section 556.739 is amended to indicate the correct concentrations in kidney and fat.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 556.739 [Amended]

2. Section 556.739 *Trenbolone* is amended by removing "300 ppb in kidney, and 400 ppb in fat." and inserting in its place "150 ppb in kidney, and 200 ppb in fat."

Dated: March 22, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-7341 Filed 3-27-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by Custom Feed Services Corp. The NADA provides for the use of a Type A medicated article containing 0.6 gram of hygromycin B per pound for making Type C medicated feed to be used as anthelmintics for chickens and swine. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: April 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 129–158 held by Custom Feed Services Corp. The NADA provides for the use of a Type A medicated article containing 0.6 gram of hygromycin B per pound for making Type C medicated feed to be used as anthelmintics for chickens and swine. This document removes the firm's drug labeler code from 21 CFR 558.274 (a)(4) and (c)(1), which reflects approval of the NADA.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.274 [Amended]

2. Section 558.274 *Hygromycin B* is amended in paragraph (a)(4) and in the table of paragraph (c)(1) under the "Sponsor" column for entries (i) and (ii) by removing "017473,".

Dated: March 22, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–7266 Filed 3–27–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF STATE

Bureau of Personnel

22 CFR Part 192

[Final Rule 108.884]

Victims of Terrorism Compensation

AGENCY: Bureau of Personnel, Department of State.

ACTION: Final rule.

SUMMARY: The Bureau of Personnel has prepared implementing regulations for Title VIII of Pub. L. 99–399 which describe benefits for victims of terrorism activity. The regulations outline the eligibility for monetary, educational, medical, and death and disability benefits provided under the governing statute, and describe application procedures for eligible employees and family members.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: S. Donald Youso, Office of Employee Relations, Bureau of Personnel, (202) 647–2781.

SUPPLEMENTARY INFORMATION: On November 29, 1988, the State Department published proposed regulations (53 FR 47970) on Victims of Terrorism Compensation. The comment period, which was 30 days from the date of publication, ended on December 28, 1988. Comments were received from two agencies and one federal employee's union. Comments are summarized below, along with any changes in, or clarification of, the proposed regulations.

Subpart A—General

An agency suggested that the language exempting certain decisions from judicial review in section 192 was applicable only for determinations as to captive status and cash payments for captives. We agree that exemption from judicial review is applicable only to these two determinations, and the regulations are modified to reflect this fact.

One commenter felt that the language in Section 192.1(a) could be read to require a determination of captive status for purposes of both sections 5569 and 5570 of 5 U.S.C., and indicated that such determination is necessary only under the provisions of section 5569. We agree that a determination of captive status is not required for purposes of section 5570, but believe that the language in § 192.1(a) is clear in making this distinction, and is not changed here.

A question was raised on the propriety of the Secretary of the Department of Labor being part of the decision process for declarations of hostile action in section 192. Such consultation is required by the Executive Order which delegated responsibilities under the Act.

Two commenters thought that the language in § 192.2 setting time limits for filing applications was unclear. The language in the final regulations has been changed to provide for a uniform filing period for declarations of captive status and hostile action.

Two commenters indicated that the definition of family member in § 192.3 seemed to be inconsistent with the intent of the legislation. In the final regulations we added language from the legislation to the definition of family member that was contained in the proposed regulations.

One commenter questioned the accuracy of the definition in § 192.3(g) pertaining to contract employees. This language elaborates on the definition contained in the legislation, as provided in the legislative history, and is not changed here.

One Agency questioned if the intent of section 192.3(c) was to designate the Secretary of State as the employer for contract employees or other individuals filling that description, for domestic as well as overseas locations. Such was not the intent, and language is added specifying that the Secretary of State is responsible only for overseas situations.

The employee union questioned the use of the word "including" in § 192.3(h), since the language in the definition is a quote from 5 U.S.C. We agree the word "including" is redundant and it is deleted.

An agency questioned the notification procedures in § 192.5(b), indicating that the responsibilities of agency heads and the State Department appear to be unclear. We agree that clarification is needed, and the regulations are changed to indicate that the State Department has responsibility for notification.

Subpart B—Payment of Salary and Other Benefits for Captive Situations

An agency questioned the use of the term "family member of a Civil Service employee" as being inconsistent with the statute. We have modified the language to "family member of a principal" to be consistent with the language in the statute.

One commenter questioned the language in § 192.12 providing for the establishment of an account to deposit the salary and benefits of captives, feeling that is contravened the language of the statute. Although the statute indicates the Secretary of the Treasury will establish a savings account for a captive's pay and allowances, we have coordinated the writing of this section of the regulations with Department of the Treasury staff, and these regulations meet the requirements of the statute.

Subpart D—Medical Benefits for Captive Situations

A commenter stated that § 192.31 places limitations on medical care not found in the statute. Furthermore, they described the proposed regulations as onerous. These regulations extend benefits to family members and others who do not qualify for benefits under the Office of Workers' Compensation Programs (OWCP), and accordingly are modeled on the regulations and procedures used by the OWCP to administer medical benefits under the Federal Employees Compensation Act. Therefore, we believe it is entirely consistent to utilize procedures adopted by OWCP to administer these benefits. We find that this section does not place limitations on benefits provided for in the Act, nor are the regulations onerous. Rather, they are consistent with the intent of the provisions of the Act.

The same commenter voiced concern about provisions which call for the Department of State to decide the appropriateness of medical treatment, but also calls for a private insurance carrier, if any, to be the primary source of reimbursement. The commenter felt that if a private insurance carrier authorized medical treatment, the Agency should not question such authorization. We agree that this is the case, and there is nothing in the regulations that requires Agency approval of medical treatment if approved by an individual's private medical insurance carrier.

An agency suggested clarification of the language in § 192.32(a)(1) which covers administration of medical benefits by the Department of State and Agency Heads. We have modified the last sentence of this section to clarify the procedures to be used by Agency Heads.

Subpart E—Educational Benefits for Captive Situations

One agency suggested clarification of § 192.40(b) which extends a benefit to a captive contingent upon the individual not being eligible for comparable benefits under Title 38 of the U.S.C. The final regulations have been modified to add the suggested language. Section 192.44(b) has been corrected to indicate that educational benefits for a dependent child terminate at age 21.

Subpart F—Compensation for Disability or Death

One agency suggested a need for clarification of the language of the third sentence of § 192.50(a)(1), which defines eligibility for benefits under FECA. In the final regulations, we have included a reference to 5 U.S.C. 8101(1) to clarify the language.

A question was raised about the propriety of the language in § 192.51(a) which calls for payment of the death benefit to an individual who dies as a result of injuries caused by hostile action or as the result of captivity. In the final regulations, we have changed the language to state that the death benefit is payable when the death was caused by hostile action and was a result of the individual's relationship with the Government (although ordinarily death as the result of captivity will satisfy these criteria).

E.O. 12291, Federal Regulations

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

Regulatory Flexibility Act

These rules will not have a significant impact on a substantial number of small entities because they will affect only Federal employees and agencies.

Paperwork Reduction Act

These regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 22 CFR Part 192: Education, Foreign Service, Government employees, Grant programs-education, Grant programs-health, Health care, Captives.

For the reasons set out in the preamble, 22 CFR Part 192, is added to Title 22, Code of Federal Regulations, as follows:

SUBCHAPTER T—HOSTAGE RELIEF

PART 192—VICTIMS OF TERRORISM COMPENSATION

Subpart A—General

Sec.
192.1 Declarations of hostile action.
192.2 Application for determination of eligibility.
192.3 Definitions.
192.4 Notification of eligible persons.
192.5 Relationships among agencies.

Subpart B—Salary and Other Monetary Benefits for Captive Situations

Sec.
192.10 Eligibility for benefits.
192.11 Applicable benefits.
192.12 Administration of benefits.

Subpart C—Application of Soldiers' and Sailors' Civil Relief Act to Captive Situations

Sec.
192.20 Eligibility for benefits.
192.21 Applicable benefits.
192.22 Description of benefits.
192.23 Administration of benefits.

Subpart D—Medical Benefits for Captive Situations

Sec.
192.30 Eligibility for benefits.
192.31 Applicable benefits.
192.32 Administration of benefits.
192.33 Disputes.

Subpart E—Educational Benefits for Captive Situations

Sec.
192.40 Eligibility for benefits.
192.41 Applicable family benefits.
192.42 Applicable benefits for captives.
192.43 Administration of benefits.
192.44 Maximum limitation on benefits.

Subpart F—Compensation for Disability or Death

Sec.
192.50 Eligibility for benefits.
192.51 Death benefit.
192.52 Disability benefits.

Authority: 5 U.S.C. 5569 and 5570 and E.O. 12598 (52 FR 23421).

Supart A—General

§ 192.1 Declarations of hostile action.

(a)(1) The Secretary of State shall declare when and where individuals in the Civil Service of the United States, including members of the Foreign Service and foreign service nationals, or a citizen, national or resident alien of the United States rendering personal services to the United States similar to the service of an individual in the Civil Service, have been placed in captive status commencing on or after November 4, 1979, for purposes of § 192.11(b) or January 21, 1981, for all other purposes under this part, which arises because of hostile action abroad and is a result of the individual's relationship with the U.S. Government as provided in the Victims of Terrorism Compensation Act, codified in 5 U.S.C. 5569 and 5570 and Executive Order 12598.

(2) The Secretary of State, in consultation with the Secretary of

Labor, shall also declare when and where individuals in the Civil Service of the United States including members of the Foreign Service and foreign service nationals, including individuals rendering personal services to the United States similar to the service of an individual in the Civil Service, and family members of these individuals are eligible to receive compensation for disability or death occurring after January 21, 1981. Such determination shall be based on the decision by the Secretary of State that the disability or death was caused by hostile action abroad and was a result of the individual's relationship with the Government.

(3) Declarations of hostile action in domestic situations shall be made by the Secretary of State in consultation with the Attorney General of the United States and the head of the employing agency or agencies.

(b) The Secretary of State for actions abroad, or Agency Head for domestic actions, upon his or her own initiative, or upon application under §192.2 shall determine which individuals in captive or missing status as so declared shall be considered captives eligible for benefits under the Act. The Secretary or Agency Head shall also determine who is eligible under the Act for benefits as a member of a family or household of a captive. The determination of the Secretary or Agency Head shall be final for purposes of determining captive status and cash payments, and not subject to judicial review, but any interested person may request reconsideration on the basis of information not considered at the time of original determination. The criteria for determination are set forth in sections 5569 and 5570 of Title 5 of U.S.C., and in these regulations.

§ 192.2 Application for determination of eligibility.

(a) Any person who believes that that person or other persons known to that person are either captives as defined in 5 U.S.C. 5569(a)(1), individuals who have suffered disability or death caused by hostile action which was a result of the individual's relationship with the U.S. Government, members of the family or household of such individuals as defined in § 192.3(a)(1), or a child eligible for benefits under Subchapter D, may apply for benefits under this subchapter for that person, or on behalf of others entitled thereto.

(b) The application in connection with hostile action abroad shall be in writing, shall contain all identifying and other pertinent data available to the person applying about the person or persons claimed to be eligible, and shall be addressed to the Director General of the Foreign Service, Department of State, Washington, DC 20520. Applications may be filed within 60 days after the latest of: a declaration under § 192.1(a), the hostile action, or release from captivity. Later filing may be considered when in the opinion of the Secretary of State there is good cause for the late filing. Applications in connection with hostile action in domestic situations shall conform to these same requirements and be filed with the Agency Head.

§ 192.3 Definitions.

When used in this subchapter, unless otherwise specified, the terms—

(a) "Secretary of State" includes any person to whom the Secretary of State has delegated the responsibilities of carrying out this subpart.

(b) "Family Member" means a dependent of a captive and any individual other than a dependent who is a member of such person's family or household and shall include the following: (1) A spouse, (2) an unmarried dependent child including a step-child or adopted child under 21 years of age, (3) a person designated in official records or determined by the agency head or designee thereof to be dependent, and (4) other persons such as parents, non-dependent children, parents-in-law, persons who stand in the place of a spouse or parents, or other members of the family or household of a captive or employee, as determined by the Agency head concerned.

(c) "Agency Head" means the head of an Executive Agency of the U.S. Federal Government employing an individual affected by hostile action as covered by these regulations. The Secretary of State is the agency head for actions abroad with respect to any such individual not employed by an agency.

(d) "Captive" means any individual in a captive status commencing while such individual is in the Civil Service or a citizen, national or resident alien of the United States rendering personal service to the United States similar to the service of an individual in the Civil Service (other than as a member of the uniformed services).

(e) "Captive Status" means a missing status which, as determined under § 192.1, arises because of a hostile action and is a result of the individual's relationship with the Government.

(f) "Principal" means the person whose captivity, death or disability forms the basis for benefits for that individual or for a family member under this subchapter.

(g) "Individual rendering personal services to the United States similar to the service of an individual in the Civil Service" includes contract employees and other individuals fitting that description.

(h) "Pay and Allowances" has the meaning set forth in 5 U.S.C. 5561(6):

(1) Basic pay;

(2) Special pay;

(3) Incentive pay;

(4) Basic allowances for quarters;

(5) Basic allowance for subsistence; and

(6) Station per diem allowances for not more than 90 days.

(i) "Child" means a dependent as defined in paragraph (b)(2) of this section.

§ 192.4 Notification of eligible persons.

The Director General of the Foreign Service for the Department of State, or other Agency Head in domestic situations, shall be responsible for notifying each individual determined to be eligible for benefits under the Act, or if that person is not available, a representative or family member of the eligible individual.

§ 192.5 Relationships among agencies.

(a) To assist in ensuring that eligible persons receive compensation, each Agency Head shall notify the Director General of the Foreign Service of the Department of State of any incident which he or she believes may be appropriately declared a hostile action under § 192.1.

(b) The Director General of the Foreign Service for the Department of State shall promptly inform the head of any agency whenever an employee of that agency, or Family Member of such employee, is determined to be eligible for benefits under this subchapter in connection with hostile action.

(c) In accordance with inter-agency agreements between the Department of State and relevant agencies—

(1) The Department of Veterans Affairs will periodically bill the Department of State for expenses it pays for each eligible person under Subpart E of this subchapter plus the administrative costs of carrying out its responsibilities under this part.

(2) The Department of State will, on a periodic basis, determine the cost for services and benefits it provides to all eligible persons under this subchapter, and bill each agency for the medical service costs (in connection with hostile action abroad) and educational benefits attributable to Principals and Family Members, plus a proportionate share of related administrative expenses.

Subpart B—Payment of Salary and Other Benefits for Captive Situations

§ 192.10 Eligibility for benefits.

A person designated as a captive under Subpart A of this subchapter shall be eligible for benefits under this subpart.

§ 192.11 Applicable benefits.

(a) Captives are entitled to receive or have credited to their account, for the period in captive status, the same pay and allowances to which they were entitled at the beginning of that period or to which they may have become entitled thereafter.

(b) A person designated as a captive (or a family member of a principal) under Subpart A of this subchapter whose captivity commenced on or after November 4, 1979, is also entitled to receive a cash payment from the captive's employing agency, for each day held captive, in an amount equal to but not less than one-half of the amount of the world-wide average per diem rate established under 5 U.S.C. 5702.

§ 192.12 Administration of benefits.

(a) The amount deducted from the pay and allowances of captives must be recorded in the individual accounts of the agency concerned. A Treasury designated account, set up on the books of the agency concerned, may be utilized by the head of an agency to report the net amount of pay, allowances and interest credited to captives pursuant to 5 U.S.C. 5569(b). Interest payments under this section shall be paid out of funds available for salaries and expenses of the agency. Interest shall be computed at a rate for any calendar quarter equal to the average rate paid on United States Treasury bills with 3-month maturities issued during the preceding calendar quarter, with quarterly compounding.

(b) Cash payments to captives for each day of captivity shall be made by the head of an agency before the end of the one-year period beginning on the date on which the captive status terminates. In the event the captive dies in captivity or prior to payment of these benefits, payment shall be made to the eligible survivors under § 192.51(c) or the estate. A payment under this subchapter may be deferred or denied by the head of an agency pending determination of an offense committed by the captive under the provisions of 5 U.S.C. 8312.

Subpart C—Application of Soldiers' and Sailors' Civil Relief Act to Captive Situations

§ 192.20 Eligibility for benefits.

A person designated as a captive under Subpart A of this subchapter, shall be eligible for benefits under this part.

§ 192.21 Applicable benefits.

(a) Eligible persons are entitled to the benefits provided by the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501, et seq.), including the benefits provided by section 701 (50 U.S.C. App 591) notwithstanding paragraph (c) thereof, but excluding the benefits provided by sections 104, 105, 106, 400 through 408, 501 through 512, and 514 (50 U.S.C. App. 514, 515, 516, 540 through 548, 561 through 572, and 574).

(b) In applying such Act for purposes of this section—

(1) The term "person in the military service" is deemed to include any such captive;

(2) The term "period of military service" is deemed to include the period during which such captive is in a captive status;

(3) References therein to the Secretary of the Army, the Secretary of the Navy, the Adjutant General of the Army, the Chief of Naval Personnel, and the Commandant, United States Marine Corps, or other officials of government are deemed, in the case of any captive, to be references to the Secretary of State; and

(4) The term "dependents" shall, to the extent permissible by law, be construed to include "Family Members" as defined in § 192.3 of these regulations.

§ 192.22 Description of benefits.

The following material is included to assist persons affected, by providing a brief description of some of the provisions of the Civil Relief Act. Note that not all of the sections applicable to captives have been included here. References to sections herein are references to the Civil Relief Act of 1940, as amended, followed by references in parentheses to the same section in the United States Code.

(a) *Guarantors, endorsers.* Section 103 (50 U.S.C. App 513) provides that whenever a captive is granted relief from the enforcement of an obligation, a court, in its discretion, may grant the same relief to guarantors and endorsers of the obligation. Amendments extend relief to accommodation makers and others primarily or secondarily liable on an obligation, and to sureties on a criminal bail bond. They provide, on certain conditions, that the benefits of the section with reference to persons primarily or secondarily liable on an obligation may be waived in writing.

(b) *Written Agreements.* Section 107 (50 U.S.C. App. 517) provides that nothing contained in the Act shall prevent captives from making certain arrangements with respect to their contracts and obligations, but requires that such arrangements be in writing.

(c) *Protection in Court.* Section 200 (50 U.S.C. App. 517) provides that if a captive is made a defendant in a court action and is unable to appear in court, the court shall appoint an attorney to represent the captive and protect the captive's interests. Further, if a judgment is rendered against the captive, an opportunity to reopen the case and present a defense, if meritorious, may be permitted within 90-days after release.

(d) *Court Postponement.* Section 201 (50 U.S.C. App. 521) authorizes a court to postpone any court proceedings if a captive is a party thereto and is unable to participate by reason of being a captive.

(e) *Relief Against Penalties.* Section 202 (50 U.S.C. App. 522) provides for relief against fines or penalties when a court proceeding involving a captive is postponed, or when the fine or penalties are incurred for failure to perform any obligation. In the latter case, relief depends upon whether the captive's ability to pay or perform is materially affected by being held captive.

(f) *Postponement of Action.* Section 203 (50 U.S.C. App. 523) authorizes a court to postpone or vacate the execution of any judgment, attachment or garnishment.

(g) *Period of Postponement.* Section 204 (50 U.S.C. App. 524) authorizes a court to postpone proceedings for the period of captivity and for 3 months thereafter, or any part thereof.

(h) *Extended Time Limits.* Section 205 (50 U.S.C. App. 525) excludes the period of captivity from computing time under existing or future statutes of limitation. Amendments extend relief to include actions before administrative agencies, and provide that the period of captivity shall not be included in the period for redemption of real property sold to enforce any obligation, tax, or assessment. Section 207 excludes application of section 205 to any period of limitation prescribed by or under the internal revenue laws of the United States.

(i) *Interest Rates.* Section 206 (50 U.S.C. App. 526) provides that interest on the obligations of captives shall not exceed a specified per centum per annum, unless the court determines that

ability to pay greater interest is not affected by being held captive.

(j) *Misuse of Benefits.* Section 600 (50 U.S.C. App. 580) provides against transfers made with intent to delay the just enforcement of a civil right by taking advantage of the Act.

(k) *Further Relief.* Section 700 (50 U.S.C. App. 590) provides that a person, during a period of captivity or 6 months thereafter, may apply to a court for relief with respect to obligations incurred prior to captivity, or any tax or assessment whether falling due prior to or during the period of captivity. The court may, on certain conditions, stay the enforcement of such obligations.

(l) *Stay of Eviction.* Section 300 (50 U.S.C. App. 530) provides that a captive's dependents shall not be evicted from their dwelling if the rental is minimal, except upon leave of a court. If it is proved that inability to pay rent is a result of being in captivity, the court is authorized to stay eviction proceedings for not longer than 3 months. An amendment extends relief to owners of the premises with respect to payment on mortgage and taxes.

(m) *Contract and Mortgage Obligations.* As provided by sections 301 and 302 of the Act (50 U.S.C. App. 531 and 532), as amended, contracts for the purchase of real and personal property, which originated prior to the period of captivity, may not be rescinded, terminated, or foreclosed, or the property repossessed, except as provided in section 107 (50 U.S.C. App. 517), unless by an order of a court. The mentioned sections give the court wide discretionary powers to make such disposition of the particular case as may be equitable in order to conserve the interests of both the captive and the creditor. The cited sections further provide that the court may stay the proceedings for the period of captivity and 3 months thereafter, if in its opinion the ability of the captive to perform the obligation is materially affected by reason of captivity. Section 303 (50 U.S.C. App. 533) provides that the court may appoint appraisers and, based upon their report, order such sum as may be just, if any, paid to captives or their dependents, as a condition to foreclosing a mortgage, resuming possession of property, and rescinding or terminating a contract.

(n) *Termination of a Lease.* Section 304 (50 U.S.C. App. 534) provides, in general, that a lease covering premises occupied for dwelling, business, or agricultural purpose, executed by persons who subsequently become captives, may be terminated by a notice in writing given to the lessor, subject to such action as may be taken by a court on application of the lessor. Termination of a lease providing for monthly payment of rent shall not be effective until 30 days after the first date on which the next rental payment is due, and, in the case of other leases, on the last day of the month following the month when the notice is served.

(o) *Assignment of Life Insurance Policy.* Section 305 (50 U.S.C. App. 535) provides that the assignee of a life insurance policy assigned as security, other that the insurer in connection with a policy loan, except upon certain conditions, shall not exercise any right with respect to the assignment during period of captivity of the insured and one year thereafter, unless upon order of a court.

(p) *Storage Lien.* Section 305 (50 U.S.C. App. 535) provides that a lien for storage of personal property may not be foreclosed except upon court order. The court may stay proceedings or make other just disposition.

(q) *Extension of Benefits to Dependents.* Section 306 (50 U.S.C. App. 536) extends the benefits to section 300 through 305 to dependents of a captive.

(r) *Real and Personal Property Taxes.* Section 500 (50 U.S.C. App. 560) forbids sale of property, except upon court leave, to enforce collection of taxes or assessments (other than taxes on income) on personal property or real property owned and occupied by the captive or dependents thereof at the commencement of captivity and still occupied by the captive's dependents or employees. The court may stay proceedings for a period not more than 6 months after termination of captivity. When by law such property may be sold to enforce collection, the captive will have the right to redeem it within 6 months after termination of captivity. Unpaid taxes or assessments bear interest at 6 percent.

(s) *Income Taxes.* Section 513 provides for deferment of payment of income taxes.

(t) *Certification of Captive.* Section 601 provides that a certificate signed by the agency head shall be prima facie evidence that the person named has been a captive during the period specified in the certification.

(u) *Interlocutory Orders.* Section 602 (50 U.S.C. App. 582) provides that a court may revoke an interlocutory order it has issued pursuant to any provision of the Soldiers' and Sailors' Civil Relief Act of 1940.

(v) *Power of Attorney.* Section 701 (50 U.S.C. App. 591) provides that certain powers of attorney executed by a captive which expire by their terms after the person was captured shall be automatically extended for the period of captivity. Exceptions are made with respect to powers of attorney which by their terms clearly indicate they are to expire on the date specified irrespective of captive status. (Section 701 applies to American captives notwithstanding paragraph (c) thereof which states that it applies only to powers of attorney issued during the "Vietnam era").

§ 192.23 Administration of benefits.

(a) The Director General of the Department of State or Agency Head will issue certifications or other documents when required for purposes of the Civil Relief Act.

(b) The Director General of the Department of State or Agency Head shall whenever possible promptly inform the chief legal officer of each U.S. State in which captives maintain residence of all persons determined to be captives eligible for assistance under this subpart.

Subpart D—Medical Benefits for Captive Situations

§ 192.30 Eligibility for benefits.

A person designated as a captive or family member of a captive under subpart A of this subchapter, shall be eligible for benefits under this subpart.

§ 192.31 Applicable benefits.

A person eligible for benefits under this part shall be eligible for authorized physical and mental health care at U.S. Government expense (through either or advancement or reimbursement), and for payment of other authorized expenses related to such care or for obtaining such care for any illness or injury, to the extent, as determined by the Secretary of State or Agency Head, that such care is incident to an individual being held captive and is not covered by—

(a) Any other Government health or medical program, including, but not limited to, the programs administered by the Secretary of Defense, the Secretary of Labor and the Secretary of Veteran Affairs; or

(b) Reimbursement by any private or Government health insurance or comparable plan. In the case of coverage by a private or Government health insurance plan, that carrier will be designated as the primary carrier, and benefits under this subpart will serve only to supplement expenses not paid by the primary carrier.

§ 192.32 Administration of benefits.

(a) (1) A person eligible due to hostile action abroad, who desires medical or health care under this subpart or any person acting on behalf thereof, shall submit an application to the Office of

Medical Services, Department of State, Washington, DC 20520 (hereafter referred to as the "Office"). That office will handle and process medical applications and claims using the criteria in this subpart. Persons eligible in connection with domestic situations shall make application with the Agency Head, and the Agency Head shall apply the following procedures in a similar manner in administering medical benefits in domestic situations involving the respective agency.

(2) The applicant shall supply all relevant information, including insurance information, requested by the Director of the Office. An eligible person may also submit claims to the Office for payment for emergency care when there is not time to obtain prior authorization as prescribed by this paragraph.

(b) The Office shall evaluate all requests for care and claims for reimbursement and determine, on behalf of the Secretary of State, whether the care in question is authorized under § 192.31 of this subpart. The Office will authorize care or payment of care, when it determines the criteria of § 192.31 are met. Authorization shall include a determination as to the necessity and reasonableness of medical or health care.

(c) The Office will refer applicants eligible for benefits under other Government health programs to the Government agency administering those programs. Any portion of authorized care not provided or paid for under another Government program or private insurance will be reimbursed under this subpart, subject to a determination of the reasonableness of charges. Such determination shall be made by applying the fee schedule established by the Office of Workers' Compensation Programs (OWCP), Department of Labor, which is used in paying medical benefits for work-related injuries to employees who are fully covered by OWCP.

(d) Eligible persons may obtain authorized care from any licensed facility or health care provider of their choice approved by the Office. To the extent possible, the Office will attempt to arrange for authorized care to be provided in a Government facility at no cost to the patient.

(e) Authorized care provided by a private facility or health care provider will be paid or reimbursed under this subpart to the extent that the Office determines that costs do not exceed reasonable and customary charges for similar care in the locality.

(f) All bills for authorized medical or health care covered by insurance shall be submitted to the patient's insurance carrier for payment prior to submission to the Office for payment of the balance authorized by this part. The Office will request the health care providers to bill the insurance carrier and the Department of State for authorized care, rather than the patient.

(g) Eligible persons will be reimbursed by the Office for authorized travel to obtain an evaluation of their claim under paragraph (b) of this section and for other authorized travel to obtain medical or health care authorized by this subpart.

§ 192.33 Dispute.

Any dispute between the Office and eligible persons concerning whether medical or health care is required in a given case, whether required care is incident to the captivity, or whether the cost for any authorized care is reasonable and customary, shall be referred to the Medical Director, Department of State, for a determination. If the person bringing the claim is not satisfied with the decision of the Medical Director, the dispute shall be referred to a medical board composed of three physicians, one appointed by the Medical Director, one by the eligible person and the third by the first two members. A majority decision by the board shall be binding on all parties.

Subpart E—Educational Benefits for Captive Situations

§ 192.40 Eligibility for benefits.

(a) A spouse or unmarried dependent child (including an unmarried dependent stepchild or adopted child) under 21 years of age of a captive as determined under Subpart A of the subchapter shall be eligible for benefits under 192.41 of this subpart. (Certain limitations apply, however, to persons eligible for direct assistance through other programs of the Department of Veterans' Affairs under Chapter 35 of Title 38, United States Code).

(b) A Principal designated as a captive under Subpart A of this subchapter, who intends to change jobs or careers because of the captive experience and who desires additional training for this purpose, shall be eligible for benefits under § 192.42 of this part, unless the Secretary of the Department of Veterans' Affairs determines that such person is eligible to receive educational assistance for the additional training under either chapters 30, 32, 34, or 35, title 38 U.S.C.

§ 192.41 Applicable family benefits.

(a) An eligible spouse or child shall be paid (by advancement or reimbursement) for expenses incurred for subsistence, tuition, fees, supplies, books and equipment, and other educational expenses while attending an educational or training institution approved in accordance with procedures established by the Department of Veterans' Affairs, which shall be comparable to procedures established pursuant to Chapters 35 and 36 of Title 38 U.S.C.

(b) Except as provided in paragraph (c) or (d) of this section, payments shall be available under this subsection for an eligible spouse or child for educational training which occurs—

(1) 90 days after the Principal is placed in a captive status, and

(i) Through the end of any semester or quarter which begins before the date on which the Principal ceases to be in a captive status, or

(ii) If the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the sixteen-week period following that date.

(c) In special circumstances and within the limitation of § 192.44, the Secretary of State, under the criteria and procedures set forth in § 192.43, may approve payments for education or training under this subsection which occurs after the date determined under paragraph (b) of this section.

(d) In the event a Principal dies and the death is determined by the Agency Head to be incident to that individual being a captive, payments shall be available under this subsection for education or training of a spouse or child of the Principal which occurs after the date of death, up to the maximum that may be authorized under § 192.44.

(e) Family benefits under this subsection shall not be available for any spouse or child who is eligible for assistance under Chapter 35 of Title 38 U.S.C., or similar assistance under any other law.

§ 192.42 Applicable benefits for captives.

(a) When authorized by the Agency Head, a Principal, following release from captivity, may be paid (by advancement or reimbursement) for expenses incurred for subsistence, tuition, fees, supplies, books and equipment, and other educational expenses while attending an educational or training institution approved in accordance with procedures established pursuant to Chapter 35 and 36 of Title 38 U.S.C. Payments shall be available under this subsection for education or training which occurs on or before—

(1) The end of any semester or quarter (as appropriate) which begins before the date which is 10 years after the day on which the Principal ceases to be in a captive status, or

(2) If the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the sixteen-week period following that date.

(b) A person eligible for benefits under this subsection shall not be required to separate from Government service in order to undertake the training or education. However, no educational assistance allowance shall be paid to any eligible person who is attending a course of education or training paid for under the Government Employees' Training Act and whose full salary is being paid to such person while so training.

§ 192.43 Administration of benefits.

(a) Any person desiring benefits under this part, shall apply in writing to the Director General of the Foreign Service, Department of State, Washington, DC 20502. The application shall specify the benefits desired and the basis of eligibility for those benefits. The Director General of the Foreign Service, on behalf of the Secretary of State, shall make determinations of eligibility for benefits under this part, and shall forward certified applications to the Department of Veterans' Affairs and advise the applicant of the name and address of the office in the Department of Veterans' Affairs that will counsel the eligible persons on how to obtain the benefits that have been approved. Persons whose applications are disapproved shall be advised in writing of the reason for the disapproval. Applications for foreign service nationals and their dependents shall be made with the Office of Foreign Service National Personnel, Department of State. That office will handle the administrative details and benefits using the criteria specified in this subchapter.

(b) The Department of Veterans' Affairs shall provide the same level and kind of assistance, including payments (by advancement or reimbursement) for authorized expenses up to the same maximum amounts, to spouses and children of captives, and to Principals following their release from captivity as it does to eligible spouses and children of veterans and to eligible veterans, respectively, under Chapters 35 and 36 of Title 38 U.S.C. The Department of Veterans' Affairs shall, under procedures it has established to administer section 1724 of Title 38, U.S.C., discontinue assistance for any individual whose conduct or progress is unsatisfactory under standards consistent with those established pursuant to such section 1724.

(c) An Advisory Board shall be established to advise on eligibility for benefits under paragraphs (c) and (d) of § 192.41. The Board shall be composed of the Under Secretary of State for Management as Chair, the Director of the Office of Medical Services of the Department of State, the Executive Director of the regional bureau of the Department of State in whose region the relevant hostile action occurred, the Director of Personnel or other designee of the applicable employing agency, and a representative of the Department of Veterans' Affairs designated by the Secretary.

(d) If an application is received from a spouse or child for extended training under § 192.41(c), the Director General of the Foreign Service of the Department of State shall determine with the advice of the Advisory Board whether the Principal, following release from captivity, is incapacitated by the captive experience—

(1) To the extent that he or she has not returned to full-time active duty and is unlikely to be able to resume the normal duties of his or her position or career, or

(2) In the event of a separation from Government service, that the Principal is unable to assume a comparable position or career, for at least six months from the date of release from captivity. If the Secretary makes such a determination, he or she may approve, within the limits of § 192.44, an application under § 192.41(c) for up to one year of education or training. If the Principal remains incapacitated, the Secretary may approve additional training or education up to the maximum authorized under 192.44.

§ 192.44 Maximum limitation on benefits.

(a) In no event may assistance be provided under this subpart for any individual for a period in excess of 45 months, or the equivalent thereof in part-time education or training.

(b) The eligibility of a spouse for benefits under paragraph (c) or (d) of § 192.41 shall expire on a date which is 10 years after the date of the release of the captive or the death of the captive while in captivity, respectively. The eligibility of a dependent child for benefits under § 192.41 (c) and (d) shall expire on the 21st birthday of such child.

Subpart F—Compensation for disability or death

§ 192.50 Eligibility for benefits.

(a) (1) The Federal Employees' Compensation Act (5 U.S.C. 8101 et seq.) provides for medical coverage and the payment of compensation for wage loss and for permanent impairment of specified members and functions of the body incurred by employees as a result of an injury sustained while in the performance of their duties to the United States. The Office of Workers' Compensation Programs (OWCP), Department of Labor, administers the program. All individuals employed by the U.S. Government as defined by 5 U.S.C. 8101(1) are eligible to apply for wage-loss and medical benefits under the FECA. Family members of such employees may apply for death benefits. An application must be made with OWCP by such individual or on behalf of such individuals, prior to the determination of eligibility or payment of any benefits under this subpart.

(2) In the case of foreign service national employees covered for work related injury or death under the local compensation plan established pursuant to 22 U.S.C. 3968, such applications should be filed with the organizational authority in the country of employment which provides such coverage. Benefit levels payable to foreign service national employees under this subpart shall be no less than comparable benefits payable to U.S. citizen employees under FECA. Eligibility determination and payment of supplemental benefits, if any, is the responsibility of the Director General of the Foreign Service for the State Department.

(b) Any death or disability benefit payment made under this section shall be reduced by the amount of any other death or disability benefits funded in whole or in part by the United States, except that the amount shall not be reduced below zero. The cash payment under § 192.11(b) of Subpart B is excluded from the offset requirement.

(c) Compensation under this section may include payment (whether advancement or reimbursement) for any medical or health expenses relating to the death or disability involved to the extent that such expenses are not covered under Subpart D of these regulations. Procedures of Subpart D of these regulations shall apply in making such determinations.

§ 192.51 Death benefit.

(a) The Secretary of State or Agency Head may provide for payment, by the

employing agency, of a death benefit to the surviving dependents of any eligible individual under § 192.1(a) who dies as a result of injuries caused by hostile action whose death was the result of the individual's relationship with the Government.

(b) The death benefit payment for an employee shall be equal to one year's salary at the time of death. Such death benefit is subject to the offset provisions under § 192.50(b) including the Federal Employees' Compensation Act. The death benefit for an employee's spouse and other eligible individuals under § 192.1(b) of Subpart A shall be equal to one year's salary of the principal at the time of death.

(c) A death benefit payment for an adult under this section shall be made as follows:

(1) First, to the widow or widower.

(2) Second, to the dependent child, or children in equal shares, if there is no widow or widower.

(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or dependent child.

(4) Fourth, to adult, non-dependent children in equal shares.

If there is no survivor entitled to payment under this paragraph (c), no payment shall be made.

(d) A death benefit payment for a child under this section shall be made as follows: To the surviving parents or legal guardian. If there are no surviving parents or legal guardian, no payment shall be made.

(e) As used in this section—each of the terms "widow", "widower", and "parent" shall have the same meaning given such term by section 8101 of title 5, U.S.C.; "child" has the meaning given in § 192.3(b)(2).

§ 192.52 Disability benefits.

(a) Principals who qualify for benefits under § 192.1 and are employees of the U.S. Government are considered for disability payments under programs administered by the Office of Workers' Compensation Programs (OWCP), Department of Labor, or in the case of foreign service national employees, the programs may be administered by either OWCP or the organizational authority in the country of employment which provides similar coverage under the local compensation plan established pursuant to 22 U.S.C. 3968. Normal filing procedures as specified by either OWCP or the local organizational authority which provides such coverage should be followed in determining eligibility. Duplicate benefits may not be received from both OWCP and the local organizational authority for the same claim. Additional benefits to persons qualifying for full FECA or similar benefits would not normally be payable under this subpart, except to foreign service national employees whose benefit levels are below comparable benefits payable to U.S. citizen employees under FECA. Foreign service national employees whose benefit levels are below comparable benefits payable to U.S. citizens under FECA may receive benefits under this subpart so that total benefits received are comparable to the benefits payable to U.S. citizen employees under FECA.

(b) Family members who do not qualify for either OWCP benefits or benefits from the organizational authority in the country of employment which provides similar coverage, and anyone eligible under § 192.1(a) who does not qualify for full benefits from OWCP, must file an application for disability benefits with the Office of Medical Services, Department of State, for a determination of eligibility under this subpart, if connected with hostile action abroad. Applications made in connection with hostile action in domestic situations will be directed to the Agency Head. Such applications for disability payments will be considered using the same criteria for determination as established by OWCP.

(c) Family members who are determined to be disabled by the Office of Medical Services, or Agency Head using the OWCP criteria, are eligible to receive a lump-sum payment based on the following guidelines:

(1) Permanent total disability rate. A lump-sum payment equal to two year's salary of the Principal at the time of the qualifying incident.

(2) Temporary total disability rate. A lump-sum payment computed at 66⅔ percent of the monthly pay rate of the Principal for each month of temporary total disability, not to exceed one year's salary of the Principal.

(3) Partial disability rate. A lump-sum payment authorized in accordance with 5 U.S.C. 8106, equal to 66⅔ percent of the difference between the monthly pay at the time of the qualifying incident and the monthly wage-earning capacity of the family member after the beginning of the partial disability, not to exceed one year's salary of the Principal. For family members with no wage-earning history, a lump-sum payment equal to 6⅔ percent of the difference between the estimated monthly wage-earning capacity of the family member at the time of the qualifying incident and the monthly wage-earning capacity after the beginning of the partial disability, not to exceed one year's salary of the Principal may be authorized, using the criteria established by OWCP for such determination.

(4) Special loss schedule. In addition to the temporary disability benefits payable in accordance with this subsection, if there is permanent disability involving the loss, or loss of use, of a member or function of the body or involving disfigurement, a lump-sum payment may be authorized at the rate of 25 percent of the payment authorized in accordance with the schedule and procedures in 5 U.S.C. 8107 and 20 CFR 10.304. The Director General of the Foreign Service of State or the Agency Head, may at their discretion, authorize payments under this subpart in addition to payments for those organs and members of the body specified in 5 U.S.C. 8107 and in 20 CFR 10.304. The provisions of 20 CFR Part 10, Subpart D, which prevent the payment of disability compensation and scheduled compensation simultaneously, shall not apply to these regulations.

Cash payments under this subpart are the responsibility of the employing agency.

George S. Vest,

Director General of the Foreign Service and Director of Personnel.

[FR Doc. 89-7282 Filed 3-27-89; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco And Firearms

27 CFR Part 9

[T.D. ATF-286; Re: Notice No. 653]

Santa Clara Valley Viticultural Area, CA

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision; Final rule.

SUMMARY: This final rule establishes a viticultural area located in west central California, immediately south of San Francisco Bay. This final rule is based on a notice of proposed rulemaking published in the **Federal Register** on February 4, 1988, at 53 FR 3214, Notice No. 653. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of viticultural areas as appellations of origins will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Specialist, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, Room 6237, Washington, DC 20226 (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in Title 27, Code of Federal Regulations, Part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added to Title 27 a new Part 9 providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1) of Title 27, Code of Federal Regulations, Part 4, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition shall include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundary of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundary prominently marked.

Petition

ATF received a petition proposing a viticultural area in Santa Clara, San Benito, San Mateo and Alameda Counties that extends from lower San Francisco Bay from the cities of San Jose, Santa Clara, Menlo Park, Mountain View and Fremont on the north to Gilroy and Morgan Hill on the southern end. The area proposed was approximately 550 square miles or 352,000 acres. Most of the proposed area was in Santa Clara County. In recent years rapid growth in population in this region has forced out most of the former large bonded wineries and vineyards from the northern end of the Valley to other areas in California. Lying amidst the suburban development at the northeastern end of the Santa Clara Valley at Warm Springs in Alameda County (near Mission San Jose and Fremont) is one of the original wineries established in the Valley. This 400 acre winery now known as the Weibel Vineyards was formerly the Leland Stanford Winery established in 1869.

Historical records document that this northeast portion of the viticultural area has long been considered a part of the Santa Clara Valley. Because this land in Alameda County meets the viticultural area evidence requirements it is included as part of the Santa Clara Valley viticultural area.

The boundary description in the notice of proposed rulemaking (No. 653, published February 4, 1988) included a small part of San Mateo County (Redwood City, Atherton, Menlo Park and Woodside).

This final rule does not include the approximately 30 square miles in San Mateo County that was proposed in the notice of proposed rulemaking. The approved viticultural area boundary does not include any land in San Mateo County because it was determined that the area north of the Santa Clara County/San Mateo County (Los Trancos Creek/San Francisquito Creek) boundary is not locally and or nationally known as being part of the Santa Clara Valley. The evidence showed that this small area is more closely associated with another region north and west of the valley. The evidence showed that the Redwood City, Atherton and Menlo Park areas are more closely associated with the City of San Francisco and the San Francisco Bay communities. Those cities immediately south of San Francisco running along the San Francisco Bay have long been known as "peninsula communities" of San Francisco and they are not part of the named area, known as the Santa Clara Valley, which is to the south. The evidence also showed that Woodside to the extreme west of the Santa Clara Valley is more closely associated with the nearby Santa Cruz Mountains. Other evidence that supports the establishment of the northwest boundary of the Santa Clara Valley in Santa Clara County shows that another named valley known as the Portola Valley, is located to the southeast of Palo Alto in San Mateo County. This final rule excludes this area in San Mateo County (Redwood City, Atherton, Menlo Park and Woodside) from being part of the Santa Clara Valley viticultural area. The northwest boundary has been redrawn to include an area as far north as Palo Alto in Santa Clara County. The approved northwest boundary is defined by the natural boundaries of San Francisquito Creek and Los Trancos Creek which also represent the San Mateo County/Santa Clara County boundary.

The Santa Clara Valley viticultural area is protected from the Pacific Ocean by the Santa Cruz Mountains on the west and separated from the San Joaquin Valley by the Diablo Mountain Range on the east. To the north of the Santa Clara Valley is the San Francisco Bay and surrounding Bay communities. There are approximately 40 bonded wineries in the viticultural area with an estimated total of 1,500 acres of grapes. The approved viticultural area is approximately 530 square miles or 339,200 acres.

Name

The term "Santa Clara Valley" has been used in local books written from 1871 to present. The area has a long history as a grape-growing area. As stated by Mr. Leon Adams in his book, *The Wines of America*, "Santa Clara is the oldest of northern California wine districts." The tourist pamphlet *San Jose-Santa Clara County, California (with full information on the Santa Clara Valley)* published by the San Jose Chamber of Commerce (circa 1905) described the geographical features and local agriculture of the Santa Clara Valley. The best evidence of the area's identification as the Santa Clara Valley is indicated on the United States Geological Survey (U.S.G.S.) maps that depict and name the entire valley area from a topographic viewpoint.

Boundaries

U.S.G.S. maps with the boundaries of the viticultural area (and vineyards and bonded wineries) appropriately marked were submitted with the petition. A few small mountain vineyards exist north and west of San Jose, but the bulk of the valley's northernmost grape growing has faded under urban development.

Most of the wineries in the Santa Clara Valley viticultural area are located where the valley narrows south

of San Jose in the Morgan Hill, Gilroy and Hecker Pass areas.

In 1982, the Santa Cruz Mountains viticultural area was approved by ATF (T.D. ATF-98, 46 FR 59240). This grape growing area is located immediately to the west of the Santa Clara Valley viticultural area. Much of the western boundary of the proposed Santa Clara Valley viticultural area is commonly shared with the eastern boundary of the Santa Cruz Mountains viticultural area.

Geographic Features

(a) Climate

All references to the Santa Clara Valley in early publications made mention of the rich fertile soil of the valley floor which was protected from the colder ocean conditions by the nearby Santa Cruz Mountains located to the west and from the much hotter interior temperatures of the San Joaquin Valley with the Diablo Range to the east. The climate of the Santa Clara Valley is moderate, with warm, dry summers, mild wet winters, and prevailing northwest winds. Summer temperatures can rise above 100 degrees F. at times. The annual average temperature is 58 to 60 degrees F. The growing season between killing frosts is fairly long, ranging from 250 to 300 days. The area falls into climate region II (cool) with a heat summation of 2,700 degree days. Heavy frosts do not occur in the viticultural area, although temperatures often get below freezing in winter. Most of the days are sunny, although in summer a high fog often hangs over the valley in the morning hours.

The nearby Santa Cruz Mountains (to the west) fall into climate Region I (very cool) having 2,500 or fewer degree days. The Santa Cruz Mountains are characterized by a climate which is greatly influenced in the western portion by the Pacific Ocean breezes and fog movements, and in the eastern portion by the moderating influences of the San Francisco Bay. The Santa Cruz Mountains are characterized by a growing season in excess of 300 days. This is due to cool air coming down the mountains forcing warmer air upward, thereby lengthening the season in which the necessary conditions for grape-growing are present.

Temperatures in the slopes of the hillsides of the Santa Cruz Mountains where most of the vineyards are located appear to vary from that at the lower elevations of the vineyards in the Santa Clara Valley. This is caused by the marine influence coming off the Pacific Ocean which cools the Santa Cruz Mountains at night, much more so than the farther inland Santa Clara Valley floor.

The rich San Joaquin Valley located on the east side of the Diablo Range is in Region V (very warm climate). The Livermore Valley (an American viticultural area) located 15 miles northeast of the Santa Clara Valley viticultural area is mostly in Region III (moderately cool climate).

(b) Rainfall and Winds

The average rainfall in the Santa Clara Valley is between 16 to 20 inches. The rainy season, when 80% of the rain falls, extends from November through March. Annual precipitation to the west averages over 28 inches annually at coastal Santa Cruz and over 58 inches annually at Ben Lomond in the elevated areas of the Santa Cruz Mountains. In the Diablo Range, to the east, precipitation is as much as 30 inches annually. Rainfall in the mountainous portions increases rapidly with elevations, although much less so in the Diablo Range than in the Santa Cruz Mountains. There is a greater amount of rainfall in the Santa Cruz Mountains because they are located close to the Pacific Ocean. Rainfall in the Livermore Valley (to the northeast) averages only 14 inches annually.

During the summer, the cool temperatures and the prevailing moderate to strong, west and northwest offshore winds move into the San Francisco Bay area at low elevations, thus, the effect of the marine air is felt in the Santa Clara Valley mainly late in afternoon and the evenings.

Surface winds enter the south part of the Santa Clara Valley via the Coyete Narrows and pass through Pajaro Gap. Prevailing wind direction is from the north over most of the southern portion of the valley, with winds blowing mostly from the south just below Gilroy, due to the Pajaro Gap. In the vicinity of Gilroy, however, winds are variable, because the currents from north and south meet there. Winter winds associated with the low pressure cyclonic storms which visit the region are more changeable in direction and velocity. Wind speeds are greatest during summer, when they average ten miles per hour.

(c) Soils

The soil associations present in the Santa Clara Valley are areas dominated by very deep soils on alluvial plains, fans, stream benches and terraces. The soils most predominant in the Santa Clara Valley are the Yolo and Zamora-Arbuckle-Pleasanton Associations.

The soils in the Santa Cruz Mountains to the east are Franciscan shale which is unique to this particular area south of San Francisco. The soils of the Santa Cruz Mountains are basically residual materials from the decomposition of bedrock and the soil types in the area differ depending on the type of underlying bedrock. Generally, these residual soils tend to be thin and stony, and somewhat excessively drained. This contrasts with the soils of the Santa Clara Valley, which are primarily alluvium and more fertile. The soils of the Livermore Valley also differ from those of the Santa Clara Valley because they are gravelly as opposed to the gravel free Santa Clara Valley soils.

(d) Physiology and Geology

The Santa Clara Valley ranges in elevation from 100 to 800 feet above sea level as compared with the Santa Cruz Mountains and Diablo Range which surround the valley on the west and east side, respectively. The Santa Cruz Mountains elevation is approximately 1,000 to 3,500 feet above sea level. The Diablo Range elevation averages approximately 1,000 to 3,500 feet above sea level. The Santa Cruz Mountains are geologically different than the Santa Clara Valley because this mountain area is composed of formations of granite, marble, sandstone, lava, quartzite and schist.

The Santa Clara Valley floor consists chiefly of a number of confluent alluvial fans and flood plains formed by deposits from the numerous streams that enter the valley from both mountain systems. An imperceptible alluvial divide at Morgan Hill separates the drainage of the valley into a north-flowing system and a south-flowing system. The former drains into San Francisco Bay at the north end of Santa Clara County, and the latter leads to the Pajaro River south of Gilroy and eventually flows into Monterey Bay.

The oldest rocks found within eastern Santa Clara Valley are the Franciscan-Knoxville Group of Upper Jurassic age. These rocks form the largest single geologic unit in the area. Along the margins of the Santa Clara Valley, Pliocene strata are exposed and the valley floor itself is composed of an accumulation of Quaternary clay, sand, and gravel.

Notice of Proposed Rulemaking

On February 4, 1988, Notice No. 653 was published in the**Federal Register** with a 30-day comment period. In that notice, ATF invited comments regarding the proposal to establish "Santa Clara Valley" as an American viticultural area. ATF requested comments for the proposed name and boundaries for the Santa Clara Valley. ATF specifically

asked for comments on the proposed northern and southern boundaries. No comments were received during the 30-day comment period on the name Santa Clara Valley or on the boundaries.

Miscellaneous

ATF does not wish to give the impression by approving "Santa Clara Valley" as viticultural area that it is approving or endorsing the quality of the wine derived from this area. ATF is approving this area as being distinct and not better than other areas. By approving this viticultural area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes.

Any commercial advantage gained can only come from consumer acceptance of wines from "Santa Clara Valley."

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

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

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

27 CFR Part 9, American Viticultural Areas is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.126 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.126 Santa Clara Valley.

* * * * *

Par. 3. Subpart C is amended by adding § 9.126 to read as follows:

§ 9.126 Santa Clara Valley.

(a) Name. The name of the viticultural area described in this section is "Santa Clara Valley."

(b) Approved Maps. The appropriate maps for determining the boundaries of the "Santa Clara Valley" viticultural area are 25 U.S.G.S. Quadrangle (7.5 Minute Series) maps. They are titled:

(1) Calaveras Reservoir, Calif., 1961 (photorevised 1980);

(2) Castle Rock Ridge, Calif., 1955 (photorevised 1968), photoinspected 1973;

(3) Chittenden, Calif., 1955 (photorevised 1980);

(4) Cupertino, Calif., 1961 (photorevised 1980);

(5) Gilroy, Calif., 1955 (photorevised 1981);

(6) Gilroy Hot Springs, Calif., 1955 (photorevised 1971), photoinspected 1973;

(7) Lick Observatory, Calif., 1955 (photorevised 1968), photoinspected 1973;

(8) Loma Prieta, Calif., 1955 (photorevised 1968);

(9) Los Gatos, Calif., 1953 (photorevised 1980);

(10) Milpitas, Calif., 1961 (photorevised 1980);

(11) Mindego Hill, Calif., 1961 (photorevised 1980);

(12) Morgan Hill, Calif., 1955 (photorevised 1980);

(13) Mt. Madonna, Calif., 1955 (photorevised 1980);

(14) Mt. Sizer, Calif., 1955 (photorevised 1971), photoinspected 1978;

(15) Mountain View, Calif., 1961 (photorevised 1981);

(16) Newark, Calif., 1959 (photorevised 1980);

(17) Niles, Calif., 1961 (photorevised 1980);

(18) Pacheco Peak, Calif., 1955 (photorevised 1971);

(19) Palo Alto, Calif., 1961 (photorevised 1973);

(20) San Felipe, Calif., 1955 (photorevised 1971);

(21) San Jose East, Calif., 1961 (photorevised 1980);

(22) San Jose West, Calif., 1961 (photorevised 1980);

(23) Santa Teresa Hills, Calif., 1953 (photorevised 1980);

(24) Three Sisters, Calif., 1954 (photorevised 1980);

(25) Watsonville East, Calif., 1955 (photorevised 1980); and

(c) The boundaries of the proposed Santa Clara Valley viticultural area are as follows:

(1) The beginning point is at the junction of Elephant Head Creek and Pacheco Creek (approx. .75 mile southwest of the Pacheco Ranger Station) on the Pacheco Peak, Calif. U.S.G.S. map.

(2) From the beginning point the boundary moves in a northerly direction up Elephant Head Creek approx. 1.2 miles until it intersects the 600 foot elevation contour line;

(3) Then it meanders in a northwesterly direction along the 600 foot contour line approx. 55 miles until it intersects Vargas Road in the northwest portion of Sec. 25, T4S/R1W on the Niles, Calif. U.S.G.S. map;

(4) Then it travels in a northwesterly direction approx. .6 mile to the intersection of Morrison Canyon Road in the eastern portion of Sec. 23, T4S/R1W;

(5) Then it follows Morrison Canyon Road west approx. 1.5 miles to Mission Boulevard (Highway 238) at Sec. 22, T4S/R1W;

(6) Then it moves northwest on Mission Boulevard (Highway 238) approx. .6 mile to the intersection of Mowry Avenue just past the Sanatorium at Sec. 22, T4S/R1W;

(7) It then goes in a southwesterly direction on Mowry Avenue approx. 3.6 miles to the intersection of Nimitz Freeway (Highway 880) (depicted on the map as Route 17) at Sec. 5, T5S/R1W, on the Newark, Calif. U.S.G.S. map;

(8) It then moves along the Nimitz Freeway (Highway 880) in a southeasterly direction for approx. 9 miles to the intersection of Calaveras Boulevard (Highway 237) at Milpitas on the Milpitas, Calif. U.S.G.S. map;

(9) Then it follows Highway 237 in a westerly direction approx. 7.2 miles to intersection of Bay Shore Freeway (Highway 101) at Moffett Field on the Mt. View, Calif. U.S.G.S. map;

(10) Then in a northwest direction follow Bay Shore Freeway (Highway 101) for approx. 6.5 miles to the intersection of the San Francisquito Creek (Santa Clara County/San Mateo County boundary) at Palo Alto T5S/R2W, on the Palo Alto, Calif. U.S.G.S. map;

(11) Then it heads west on San Francisquito Creek (Santa Clara County/San Mateo County boundary) approx. 7 miles until it converges with Los Trancos Creek (Santa Clara County/San Mateo County boundary) near Bench Mark 172, approx. 100 feet east of Alpine Road;

(12) It travels south approx. 4 miles along Los Trancos Creek (Santa Clara County/San Mateo County boundary) until it intersects the 600 foot elevation contour line at El Corte De Madera, approx. .5 mile north of Trancos Woods on the Mindego Hill, Calif. U.S.G.S. map;

(13) It moves along the 600 foot elevation contour line in a southeasterly direction approx. 10 miles to Regnart Road at Regnart Creek on the Cupertino, Calif. U.S.G.S. map;

(14) It goes northeast along Regnart Road, approx. .7 mile to the 400 foot elevation contour line (.3 mile southwest of Regnart School);

(15) It travels along the 400 foot elevation contour line southeast approx. 1.4 miles to the north section line of Section 36, T7S/R2W at Blue Hills, CA;

(16) The boundary goes east on the section line approx. .4 mile to Saratoga Sunnyvale Road (Highway 85);

(17) It travels south on Saratoga Sunnyvale Road (Highway 85) approx. 1 mile to the south section line of Section 36, T7/8S R2W;

(18) Then it goes west on the section line approx. .75 mile to the first intersection of the 600 foot elevation contour line;

(19) It follows the 600 foot elevation contour line southeast approx. .75 mile to Pierce Road south of Calabazas Creek;

(20) It then travels south on Pierce Road approx. .4 mile to the first intersection of the 800 foot elevation contour line;

(21) Then it runs scutheast approx. 28 miles on the 800 foot elevation contour line to the east section line of Sec. 25, T10S/R2E/R3E approx. .5 mile north of Little Arthur Creek on the Mt. Madonna, Calif. U.S.G.S. map;

(22) Then it goes south on the section line approx. .5 mile to the 800 foot elevation contour line approx. .2 mile south of Little Arthur Creek;

(23) Then it goes southeast along the 800 foot elevation contour line approx. 2.7 miles to Hecker Pass Road (Highway 152) approx. 1.25 miles east of Hecker Pass on the Watsonville East, Calif. U.S.G.S. map;

(24) The boundary goes northeast on Hecker Pass Road (Highway 152) approx. .75 mile to the intersection of the 600 foot elevation contour line just west of Bodfish Creek;

(25) It travels southeast along the 600 foot elevation contour line approx. 7.3 miles to the first intersection of the western section line of Sec. 30, T11S/R3E/R4E on the Chittenden, Calif. U.S.G.S. map;

(26) Then it follows south along the section line approx. 1.9 miles to the south township line at Sec. 31, T11S/T12S, R3E/R4E;

(27) It moves in an easterly direction along the township line approx. 12.4 miles to the intersection of T11S/T12S and R5E/R6E on the Three Sisters, Calif. U.S.G.S. map;

(28) Then it goes north along R5E/R6E range line approx. 5.3 miles to Pacheco Creek on the Pacheco Creek, Calif. U.S.G.S. map;

(29) Then it moves northeast along Pacheco Creek approx. .5 mile to Elephant Head Creek at the point of beginning.

Signed: February 21, 1989.

Stephen E. Higgins,

Director.

March 3, 1989.

Approved:

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 89-7216 Filed 3-27-89; 8:45 am]

BILLING CODE 4810-31-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 20, 22, 194, 231, and 240

[T.D. ATF-285]

Fill Tolerance for Wine, and Technical Corrections Concerning Occupational Taxes Relating to Alcohol

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule implements certain provisions of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). Those provisions amended the Internal Revenue Code of 1986 (IRC) to (1) authorize a fill tolerance for wine filled into bottles or other containers and (2) exempt certain types of businesses or organizations relating to alcohol from having to pay special (occupational) tax. The businesses or organizations affected by the exemption are: (1) Agencies and instrumentalities of the United States who procure specially denatured alcohol or tax-free alcohol, (2) proprietors of taxpaid wine bottling houses only in regard to special tax imposed on them for making wholesale or retail sales at their taxpaid wine bottling house premises or at their principal business office, (3) wholesale (or retail) dealers in beer who subsequently become wholesale (or retail) liquor dealers at the same location in the same tax year, (4) certain educational institutions who procure less than 25 gallons of specially denatured alcohol per year for experimental or research use, and (5) proprietors of small alcohol fuel plants who produce not more than 10,000 proof gallons of alcohol per year. This action should result in the elimination of special tax on a significant number of special taxpayers who meet the defined criteria.

EFFECTIVE DATES: Amendments made by this Treasury decision to regulations in 27 CFR Part 240 are made retroactive to January 1, 1989. Amendments to regulations in 27 CFR Parts 22, 194 and 231 are made retroactive to January 1, 1988. Amendments to regulations in 27 CFR Part 19 become effective on July 1, 1989. In regard to 27 CFR Part 20: paragraphs (a) and (d) of § 20.38, § 20.241, and the removal of § 20.241a are made retroactive to January 1, 1988. Paragraph (e) of § 20.38 becomes effective on July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jim Hunt, Robert White or Steve Simon, Wine and Beer Branch (202-566-7626), Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Fill Tolerance for Wine

Under present law, 26 U.S.C. 5041, there is imposed on several classes of wine a Federal excise tax based on such wines' respective alcohol content. The tax rates range from 17¢ per gallon (14 percent or less alcohol content by volume) to $3.40 per gallon for champagne and other sparkling wines.

The tax liability is calculated on the wine removed in bottles or other containers from the winery. Due to the bottling process, there is the possibility that a certain bottle or other container of wine may contain a quantity of wine in excess of the particular standard of fill (bottle or other container size). Currently, there are no tolerances permitted in the determination of wine excise taxes as a result of a particular bottle or other container of wine exceeding its standard of fill.

The Technical and Miscellaneous Revenue Act of 1988, Title VI, Subtitle E, Section 6101, amends 26 U.S.C. 5041 by adding a new subsection which authorizes the Secretary of the Treasury to issue regulations prescribing tolerances (but no greater than one–half of 1 percent) for bottles or other containers of wine, where the Secretary finds that the revenue will not be endangered thereby. If such tolerances are prescribed, no assessment shall be made and no tax collected for any excess wine in any case where the contents of bottles or other containers are within the limit of the tolerance prescribed. A similar rule with respect to tolerances currently applies to the excise tax on beer in 26 U.S.C. 5051(a)(3).

The present regulation will amend 27 CFR 240.578 to prescribe a tolerance. Specifically, the regulation will require that each proprietor set the fill level as nearly as possible to the correct quantity of wine for the bottle or other container but in no case shall the overfill average for any six consecutive tax return periods exceed one-half of 1 percent. The proprietor will be liable for tax on the entire amount of wine removed, without benefit of tolerance, when the fill of bottles or other containers for a tax class exceeds the tolerance for six consecutive tax return periods or when filling is not conducted in compliance with good commercial practice.

Special (Occupational) Tax Amendments

Special (occupational) tax is imposed under the IRC on persons engaged in certain specified occupations. The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended the IRC by increasing the tax on these proprietors and by imposing new special tax on proprietors who did not previously have to pay special tax. The provisions of Pub. L. 100–203 concerning special tax became effective January 1, 1988.

Recently, Congress further amended the IRC to exempt certain taxpayers from having to pay special tax. These changes to the IRC were brought about by passage of the Technical and Miscellaneous Revenue Act of 1988.

The Technical and Miscellaneous Revenue Act of 1988 makes the following changes to the IRC in regard to special (occupational) taxes:

(a) Amends 26 U.S.C. 5276 by excepting from the payment of special tax all agencies or instrumentalities of the United States that hold permits issued under section 5271 authorizing them to procure tax-free alcohol or specially denatured alcohol. This provision is made retroactive to January 1, 1988.

(b) Amends 26 U.S.C. 5113(a) to provide that the proprietor of a taxpaid wine bottling house shall not be required to pay special (occupational) tax as a wholesale or retail dealer on account of sales made at the proprietor's principal business office or at the taxpaid wine bottling house in accordance with the provisions of section 5113(a). However, no such proprietor shall have more than one place of sale, as to each taxpaid wine bottling house, that shall be exempt from special taxes. This provision is made retroactive to January 1, 1988.

(c) Clarifies the application of the wholesale and retail liquor dealer special (occupational) tax in cases where a retail dealer in beer subsequently becomes a retail dealer in liquors (or a wholesale dealer in beer subsequently becomes a wholesale dealer in liquors) in a year for which special (occupational) tax as a dealer in beer has already been paid. The law amends 26 U.S.C. 5113 and 5123 to provide that the wholesale (or retail) liquor dealer tax shall not be imposed with respect to a person's activities at any place during a year if the person has already paid special (occupational) tax as a wholesale (or retail) dealer in beer with respect to that place for that year. This provision of law only applies to a retail beer dealer who subsequently becomes a retail liquor dealer during the same tax year at the same location, or a wholesale beer dealer who subsequently becomes a wholesale liquor dealer during the same tax year at the same location. This provision is made retroactive to January 1, 1988.

(d) Amends 26 U.S.C. 5276 to exempt, under certain circumstances, scientific universities, colleges of learning, or institutions of scientific research that hold permits issued under section 5271(a)(2) (authorizing them to procure, deal in, or use specially denatured alcohol), from the payment of the $250 per year special (occupational) tax that is currently imposed on all persons holding permits under section 5271. Specifically, these institutions are exempt from the payment of special tax if they procure less than 25 gallons of specially denatured alcohol in any calendar year for experimental or research use but not for consumption (other than organoleptic tests) or sale. This provision is effective on July 1, 1989.

(e) Amends 26 U.S.C. 5081 (relating to the imposition and rate of special (occupational) tax for proprietors of distilled spirits plants, bonded wine cellars, etc.) to exempt from the payment of special tax any person who is the proprietor of an "eligible distilled spirits plant," as defined in section 5181(c)(4). This section defines such a plant as one that produces distilled spirits exclusively for fuel use, the production of which does not exceed 10,000 proof gallons per year. This provision is effective on July 1, 1989.

As indicated above, the amendments to the IRC stated in paragraphs (d) and (e) do not take effect until July 1, 1989. Educational institutions using specially denatured alcohol currently must pay $250 per year in special tax. Alcohol fuel plants currently must pay $1,000 per year in special tax unless their gross receipts for the preceding taxable year are less than $500,000. In that case, the alcohol fuel plant is allowed to pay at a reduced rate of $500 per year. Persons conducting operations under their specially denatured alcohol permit or their alcohol fuel plant permit, who qualify for an exemption from special tax due to the recent law change, remain subject to special tax until July 1, 1989.

Refund of Special (Occupational) Tax

The amendments to the IRC shown in paragraphs (a), (b), and (c) above were all made retroactive to January 1, 1988. They all take effect as if they were originally part of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). This means that certain taxpayers may be eligible for a refund. In particular, all agencies or instrumentalities of the United States who have paid special tax as users of or dealers in specially denatured alcohol, or who have paid special tax as users of tax-free alcohol, are entitled to a full refund of tax.

In addition, retail beer dealers who have subsequently become retail liquor dealers during the same tax year (subsequent to January 1, 1988) at the same location do not owe special tax for such a change in tax class. If a retail beer dealer paid additional special tax for such a change in tax class subsequent to January 1, 1988, and if the change occurred during the same tax

year at the same location, then the retail beer dealer would be entitled to a tax refund for the additional payment. This same procedure would hold true for a wholesale beer dealer who subsequently became a wholesale liquor dealer during the same tax year at the same location.

Furthermore, proprietors of taxpaid wine bottling houses who have paid special tax (for a liability commencing after December 31, 1987) as either a wholesale or retail dealer on account of sales made at their principal business office or at the taxpaid wine bottling house (in accordance with the provisions of 26 U.S.C. 5113(a)) are entitled to a refund of such tax payment. However, this exemption from paying wholesale or retail dealer tax only applies at one place of sale as to each taxpaid wine bottling house.

Claim Form for Filing for Refund

Persons who are entitled to file for a refund of tax should submit a completed ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, to the ATF regional office of the region in which they are located.

This same ATF office can be contacted if forms are needed or if questions arise concerning the completion of the form. The office addresses and telephone numbers for the various ATF regional offices are listed on the back of ATF Form 5630.5 (Special Tax Registration and Return).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable to this final rule because no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule," since it will not result in:

(a) An annual effect on the economy of $100 million or more;

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

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

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Administrative Procedure Act

Because this final rule merely implements a law which provides an exemption to certain designated alcohol proprietors from paying special (occupational) tax and provides a wine fill tolerance, and because immediate guidance is necessary to implement the changes made by the law, it is found to be unnecessary and impracticable to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal authors of this document are Robert White, Steve Simon and Jim Hunt of the Wine and Beer Branch, Bureau of Alcohol, Tobacco. and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Cosmetics, Excise taxes.

27 CFR Part 22

Administrative practice and procedure, Advertising, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 231

Administrative practice and procedure, Authority delegations (Government agencies), Labeling, Packaging and containers, Reporting requirements, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar. Warehouses, Wine.

Issuance

Title 27 CFR is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.49 [Amended]

Par. 2. Section 19.49(a)(1) is amended by replacing the first word of the first sentence ("Every") with the following: "Except as provided in § 19.906, every".

Par. 3. Section 19.906 is amended by designating the existing material as paragraph "(a) *General rule.*" and by adding new paragraph (b), to read as follows:

§ 19.906 Special (occupational) tax.

(a) *General rule.* * * *

(b) *Exemption for small plants (effective July 1, 1989).* On and after July 1, 1989, paragraph (a) of this section shall not apply to small alcohol fuel plants as defined in § 19.907. If the annual production (including receipts) of a small plant exceeds 10,000 proof gallons in any calendar year, special tax is due as provided in § 19.49(a)(1) for the special tax year (July 1 through June 30) commencing during that calendar year, regardless of whether an application for change of plant type under § 19.921(a) has been filed or approved. If a medium or large plant produces 10,000 or fewer proof gallons (including receipts) in any calendar year, the plant shall be exempt

from special tax under this paragraph, as for a small plant, for the special tax year (July 1 through June 30) commencing during that calendar year, regardless of whether an application under § 19.921(c) has been filed or approved.

(26 U.S.C. 5081)

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Par. 4. The authority citation for Part 20 continues to read as follows:

Authority: 26 U.S.C. 5001, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 5607, 6055, 6061, 6065, 6109, 6151, 6806, 7011, 7805.

Par. 5. The table of sections for Part 20 is amended to reflect the removal of § 20.241a.

Par. 6. Section 20.38 is amended by revising the first sentence of paragraph (a) and by adding new paragraphs (d) and (e), to read as follows:

§ 20.38 Liability for special tax.

(a) *Industrial alcohol permittee.* Except as otherwise provided in this section, every person required to hold a permit under 26 U.S.C. 5271 to procure, use, sell, and/or recover denatured distilled spirits for industrial purposes shall pay a special (occupational) tax at the rate of $250 per year. * * *

* * * * *

(d) *Exception for United States.* Agencies and instrumentalities of the United States are not required to pay special tax under this subpart.

(e) *Exemption for certain educational institutions (effective July 1, 1989).*—(1) On and after July 1, 1989, a scientific university, college of learning, or institution of scientific research, which holds a permit to procure and use specially denatured spirits under this part, is exempt from payment of special tax under this subpart if—

(i) The university, college, or institution procures less than 25 gallons of specially denatured spirits per calendar year; and

(ii) Such spirits are procured for use exclusively for experimental or research use and not for consumption (other than organoleptic tests) or sale.

(2) A scientific university, college of learning, or institution of scientific research, which holds a permit under this part, and which does not operate as described in paragraphs (e)(1)(i) and (ii) of this section during any calendar year, shall pay special tax as provided in § 20.38(a) for the special tax year (July 1 through June 30) commencing during that calendar year.

(26 U.S.C. 5143, 5276)

Par. 7. The last sentence and the informational statutory citation of § 20.241 are revised to read as follows:

§ 20.241 General.

* * * Payment of special (occupational) tax and filing of a bond are not required for any Governmental agency of the United States to procure specially denatured spirits.

(26 U.S.C. 5214, 5271, 5272, 5276)

§ 20.241a [Removed]

Par. 8. Section 20.241a is removed.

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Par. 9. The authority citation for Part 22 continues to read as follows:

Authority: 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

Par. 10. The table of sections for Part 22 is amended to reflect the removal of § 22.171a.

§ 22.37 [Amended]

Par. 11. The first sentence of § 22.37(a) is amended by inserting, after the words "Every person", the following: ", except an agency or instrumentality of the United States,".

Par. 12. Section 22.171 is amended by revising the last sentence of paragraph (a) and the informational statutory citation, to read as follows:

§ 22.171 General.

(a) * * * Payment of special (occupational) tax and filing of a bond are not required for any Governmental agency of the United States to procure tax-free spirits.

* * * * *

(26 U.S.C. 5214, 5271, 5272, 5276)

§ 22.171a [Removed]

Par. 13. Section 22.171a is removed.

PART 194—LIQUOR DEALERS

Par. 14. The authority citation for Part 194 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

Par. 15. The table of sections for Part 194 is amended to reflect the addition of new § 194.183a immediately after § 194.183, and new § 194.187b immediately after § 194.187a, to read as follows:

* * * * *

194.183a Proprietors of taxpaid wine bottling houses selling certain wines.

* * * * *

194.187b Coordination of taxes under 26 U.S.C. 5111 and 5121.

* * * * *

Par. 16. Section 194.72 is revised to read as follows:

§ 194.72 Dealer in beer and dealer in liquors at the same location.

(a) *Rule in effect prior to January 1, 1988.* Any person who was required to pay special tax as a wholesale or retail dealer in beer, who entered business as such, and who thereafter, in the same or a subsequent month prior to January 1, 1988, began to sell distilled spirits or wine shall, in addition, pay the special tax as a wholesale or retail dealer in liquors before commencing the sale, or offering for sale, of distilled spirits or wine.

(b) *Rule in effect on January 1, 1988, and thereafter.* Any person who pays special tax as a retail dealer in beer for a period beginning on or after January 1, 1988, (including one who pays such tax under the transition rule of § 194.103(b)) is exempt from additional special tax as a retail dealer in liquors with respect to sales of distilled spirits or wine at the place and during the period for which the tax as a retail dealer in beer was paid. Similarly, any person who pays special tax as a wholesale dealer in beer for a period beginning on or after January 1, 1988, (including one who pays such tax under the transition rule of § 194.103(b)) is exempt from additional special tax as a wholesale dealer in liquors with respect to sales of distilled spirits or wine at the place and during the period for which the tax as a wholesale dealer in beer was paid.

(26 U.S.C. 5113, 5143)

Par. 17. New § 194.183a is added to read as follows:

§ 194.183a Proprietors of taxpaid wine bottling houses selling certain wines.

(a) *Exemption of proprietor.* No proprietor of a taxpaid wine bottling house shall be required to pay special tax as a wholesale or retail dealer in liquors for a period beginning on or after January 1, 1988, (including such tax under the transition rule of § 194.103(b)) on account of sales of wine transacted at the proprietor's principal business office, as designated in writing to the regional director (compliance), or at the proprietor's taxpaid wine bottling house. However, this exemption applies only to wines which, at the time of sale, are either stored at the taxpaid wine bottling house or had been removed therefrom to a taxpaid storeroom whose operations are integrated with those of the taxpaid wine bottling house and which is contiguous or adjacent to, or in

the immediate vicinity of, the taxpaid wine bottling house. Moreover, no such proprietor shall have more than one place of sale, as to each taxpaid wine bottling house, that shall be exempt from special tax under this section.

(b) *Place of exemption.* Unless the exemption is claimed elsewhere, it will be presumed that the exemption is claimed at the taxpaid wine bottling house where the wines are stored. If the proprietor wishes to be exempt from special tax with respect to sales at the proprietor's principal office rather than at the proprietor's taxpaid wine bottling house, the proprietor shall so notify the regional director (compliance) of the region in which the taxpaid wine bottling house is located. The notice shall be in writing, on letter size paper, and shall be submitted in triplicate. On approval, two copies will be returned to the proprietor, one to be filed at the proprietor's principal office, and the original will be retained by the regional director (compliance). Where the exemption is claimed for a place other than the taxpaid wine bottling house, special tax shall be paid at the taxpaid wine bottling house if sales are made there.

(c) *Exception.* Where the proprietor of a taxpaid wine bottling house consummates sales of wines to other dealers at the purchasers' places of business, through a delivery route salesman or otherwise, the proprietor of the taxpaid wine bottling house is required to pay special tax as a wholesale dealer in liquors at each place from which the proprietor conducts such selling operations.

(26 U.S.C. 5113)

Par. 18. New § 194.187b is added to read as follows:

§ 194.187b Coordination of taxes under 26 U.S.C. 5111 and 5121.

Effective January 1, 1988, special tax is not imposed concurrently under both 26 U.S.C. 5111(a) (relating to wholesale liquor sales) and 26 U.S.C. 5111(b) (relating to wholesale beer sales), nor under both 26 U.S.C. 5121(a) (relating to retail liquor sales) and 26 U.S.C. 5121(b) (relating to retail beer sales), with respect to a taxpayer's activities at a single place during a single tax year. (See § 194.72.)

(26 U.S.C. 5113(g), 5123(c))

PART 231—TAXPAID WINE BOTTLING HOUSES

Par. 19. The authority citation for Part 231 continues to read as follows:

Authority: 26 U.S.C. 5062, 5081, 5111, 5112, 5121, 5122, 5142, 5143, 5172, 5178, 5352, 5356, 5363, 5367, 5368, 5369, 5552, 5661, 6065, 7011, 7342, 7606, 7805.

Par. 20. The table of sections for Part 231 is amended to reflect the revision of the title of § 231.35, to read as follows:

* * * * *

231.35 Exemption from dealer's special taxes.

* * * * *

§ 231.32 [Amended]

Par. 21. Paragraph (a) of § 231.32 is amended by removing the second sentence.

Par. 22. The title, paragraph (a), and the informational statutory citation of § 231.35 are revised to read as follows:

§ 231.35 Exemption from dealer's special taxes.

(a) *Sales from taxpaid wine bottling house.* A proprietor of a taxpaid wine bottling house is not required to pay special (occupational) tax as a wholesale or retail dealer because of sales, at the proprietor's principal business office or at the taxpaid wine bottling house, of wine which at the time of sale is stored at the taxpaid wine bottling house or which had been removed therefrom and stored in a taxpaid storeroom operated in conjunction with the taxpaid wine bottling house. The proprietor shall have only one exemption from dealer's special tax for each taxpaid wine bottling house. The proprietor may designate, in writing to the regional director (compliance) that the proprietor's principal business office will be exempt from dealer's special tax; otherwise, the exemption will apply to the taxpaid wine bottling house.

* * * * *

(26 U.S.C. 5113)

PART 240—WINE

Par. 23. The authority citation for Part 240 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 24. Section 240.578 is revised to read as follows:

§ 240.578 Contents of packages and bottles.

(a) *General.* Proprietors of bonded wine cellars shall be held strictly responsible for the correct determination of the quantity and alcohol content of wine removed. As required by § 240.173, appropriate and accurate measures and instruments for measuring and testing the wine must be provided at each wine cellar.

(b) *Bottle or other container fill.* Proprietors shall fill bottles or other containers as nearly as possible to conform to the amount shown on the label or blown in the bottle or marked on any container other than a bottle; but in no event may the amount of wine contained in any individual bottle, due to lack of uniformity of the bottles, vary more than two percent from the amount stated to be contained therein; and further in such case there shall be substantially as many bottles overfilled as there are bottles underfilled for each lot of wine bottled.

(c) *Tax tolerance.* The net contents of bottles or other containers of wine in the same tax class filled during six consecutive tax return periods, as determined from the proprietor's fill test records, shall not vary by more than 0.5 percent from the net contents as stated on the bottles or other containers. The proprietor is liable for the tax on the entire amount of wine in the same tax class when that wine is removed from bond, without benefit of tolerance, when the fill of bottles or other containers exceeds such 0.5 percent for a period which consists of six consecutive tax returns, or when filling is not conducted in compliance with good commercial practice.

Signed: February 13, 1989.

Stephen E. Higgins,

Director.

Approved: March 2, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-7215 Filed 3-27-89; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 210, and 212

43 CFR Part 3480

Coal Product Valuation Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Announcement of training seminars.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it will conduct two training seminars at the location and on the dates identified below, on the new coal product valuation regulations that were

published in the **Federal Register** on January 13, 1989 (54 FR 1492). All solid mineral payors on Federal and Indian leases were informed of these training seminars in a letter dated March 23, 1989.

DATES: The seminars will be held from 8:30 a.m. to 4:30 p.m. each day on April 11, 1989, and April 25, 1989, at the Sheraton Hotel, 360 Union Boulevard, Lakewood, Colorado 80228, (303) 987–2000.

ADDRESS: See under **DATES** for location of seminars.

FOR FURTHER INFORMATION CONTACT: Milton K. Dial, Chief, Royalty Valuation and Standards Division, (303) 231–3184, FTS 326–3184, or Dennis C. Whitcomb, Chief, Rules and Procedures Branch (303) 231–3432, FTS 326–3432.

SUPPLEMENTARY INFORMATION: The new coal valuation regulations that were published in the **Federal Register** on January 13, 1989, amended and clarified existing regulations governing the valuation of coal for royalty computation purposes. The regulations govern the methods by which value is determined when computing coal royalties under Federal and Indian (tribal and allotted) coal leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

The training seminars will include discussions on the following topics:

- Impact of the new regulations on coal valuation.
- Impact of the new regulations on coal transportation and washing allowances.
- Information collection requirements and reporting forms (MMS–4292, "Coal Washing Allowance Report," and MMS–4293, "Coal Transportation Allowance Report") required to support coal transportation and washing allowance deductions from royalties due. The forms will be reviewed in a "how-to-complete," step-by-step process.

Reservations

The training seminars are open to the public. Persons interested in attending one of these seminars should make a reservation by telephone on or before April 3, 1989, to Ms. Glenda Simpson, (303) 231–3549 or FTS 326–3549.

Telephone reservations should be confirmed in writing to Ms. Glenda Simpson, Minerals Management Service, Royalty Valuation and Standards Division, P.O. Box 25165, MS–653, Denver, Colorado 80225.

Persons requesting reservations should specify the seminar that they are interested in attending and the number of attendees. Due to space limitations, the number of attendees may be limited at each seminar.

(Likewise, if insufficient interest is shown in attending either of the training sessions, such session may be canceled and alternate arrangements will be made for those who expressed interest.)

Reservations will be provided on a first-come-first-served basis.

Date: March 22, 1989.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 89–7252 Filed 3–27–89; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 72

[CGD 88–105]

Mariners/Light Lists

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is making an editorial change to the Marine Information regulations in Part 72 of Title 33 CFR to clarify the description of those aids to navigation contained in the Coast Guard Light Lists.

EFFECTIVE DATE: March 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Parker, Navigation Rules and Information Branch, U.S. Coast Guard (202) 267–0357.

SUPPLEMENTARY INFORMATION: The purpose of this rulemaking is to clarify the description of those aids to navigation listed in the Coast Guard Light Lists. This editorial change, providing more accurate information concerning the contents of the Coast Guard Light Lists, is merely an administrative clarification. In accordance with 5 U.S.C. 553(a), therefore, a notice of proposed rulemaking was not published for these regulations. Further, since the editorial change is not a substantive rule, it will become effective upon publication.

Basis and Purpose

The editorial change removes the word "all" from the current regulation. The Light Lists provide a comprehensive listing of the official names, locations, characteristics, and general descriptions of aids to navigation maintained by or under authority of the U.S. Coast Guard. However, not all aids to navigation are listed in the Light Lists. Mooring buoys and special marks having no lateral significance such as fish net, dredging and racing buoys are not listed in the Light Lists. Additionally, those private aids to navigation maintained under the authority of the U.S. Coast Guard, that are placed in navigable waters not used by general navigation are not included in the Light List. Therefore, in addition to removing the word "all", a new sentence is added to describe the types of aids to navigation which are not included in the Light List publications.

Drafting Information

The principle persons involved in drafting this rulemaking are Mr. Frank Parker, Project Manager, and Mrs. Christena Green, Project Attorney, Office of the Chief Counsel.

Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 72

Government publications, Notice to Mariners and Light Lists, Navigation (water).

PART 72—[AMENDED]

In consideration of the foregoing, Part 72 of Title 33 Code of Federal Regulations is amended as follows:

1. The authority citation for Part 72 is revised to read as follows:

Authority: 14 U.S.C. 93, 49 CFR 1.46.

2. Section 72.05–1 is amended by revising paragraph (b) to read as follows:

§ 72.05–1 Purpose.

* * * * *

(b) The Light Lists contain the official name, location, characteristics, and general description of federal, state, and private aids to navigation maintained by or under authority of the U.S. Coast Guard, which are placed in navigable waters used by general navigation. The Light Lists do not contain information concerning private aids to navigation maintained under the authority of the U.S. Coast Guard, which are placed in navigable waters not used by general navigation; nor do they contain information concerning mooring buoys and some special marks having no lateral significance such as fish net, dredging, and racing buoys.

* * * * *

Dated: March 21, 1989.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-7366 Filed 3-27-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Western Alaska Regulation 89-02]

Safety Zone Regulations; 54°12'30" N., 165°37'39" W., Lost Harbor, Akun Island, AK

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard has previously established a safety zone for the M/V AOYAGI MARU currently grounded at position latitude 54° 12' 30" N., longitude 165° 37' 39" W., Lost Harbor, Akun Island, for fifty (50) yards around the vessel. That distance is hereby extended to one and one-half miles (1.5MI) around the vessel. The zone is needed to protect persons and property from a safety hazard associated with the pollution removal actions being conducted under section 311 of the Federal Water Pollution Control Act which includes use of explosives on the M/V AOYAGI MARU. The use of explosives is anticipated on or about March 19, 1989. Two hours prior to the planned detonation, the M/V KRYSTAL SEA, call sign WRA6054 will begin to broadcast safety alerts every 30 minutes on channel 16. Vessels transiting the Lost Harbor, Akun Island area on March 19, 1989, should monitor channel 16. The safety zone will be effective two (02) hours prior to the detonation of the fuel on the M/V AOYAGI MARU. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP).

EFFECTIVE DATE: This regulation becomes effective on March 19, 1989, two (02) hours prior to the detonation of the fuel on the M/V AOYAGI MARU. It terminates on April 15, 1989, unless sooner cancelled by the COTP by a broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: CWO3 V.P. Sarmiento, 907-271-5137.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent death or injury to unauthorized personnel or vessels.

Drafting Information

The drafters of this regulation are CWO3 V.P. Sarmiento, project officer for the Captain of the Port, and LCDR R. Nelson, project attorney, Seventeenth Coast Guard District Legal Office.

Discussion of Regulation

The initial regulation regarding this incident was published in the **Federal Register**, Volume 54, No. 44 at page 9775 dated March 8, 1989. The circumstances requiring this regulation resulted from the grounding of the M/V AOYAGI MARU on December 10, 1988. The vessel has approximately 52,598 gallons of diesel, bunker C and lube oil in breached tanks and approximately 47,632 gallons of diesel, bunker C, and lube oil remaining in its unruptured tanks. This poses a major pollution threat. The Federal government has taken over the removal action under the Federal Water Pollution Control Act which includes using explosives to ignite the remaining oil aboard. This action is anticipated to occur on or about March 19, 1989. The safety zone will be effective two (02) hours prior to the detonation of the fuel on the M/V AOYAGI MARU. Two hours prior to the planned detonation, the M/V KRYSTAL SEA, call sign WRA6054 will begin to broadcast safety alerts every 30 minutes on channel 16. Vessels transiting the Lost Harbor, Akun Island area on March 19, 1989, should monitor channel 16 for safety broadcast. A Coast Guard safety broadcast Notice to Mariners will also be issued announcing this event. All personnel or vessels not directly involved with the Federal removal action may not approach within one and one-half miles (1.5MI) of the M/V AOYAGI MARU. After the detonation is completed and the resultant fire has subsided, the safety zone will be reduced, possibly in stages, down to fifty (50) yards.

This regulation supersedes COTP Western Alaska Regulation 89-01, published March 8, 1989 (54 FR 9775).

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new 165.T1702 is added to read as follows:

§ 165.T1702 Safety Zone; Lost Harbor, Akun Island, Alaska.

(a) *Location:* The following area is a safety zone:

54° 12' 30" N., 165° 37' 39" W., Lost Harbor, Akun Isl, Alaska, one and one-half mile (1.5MI) radius around M/V AOYAGI MARU.

(b) *Effective Date.* This regulation supersedes COTP Western Alaska Regulation 89-01. This regulation becomes effective on March 19, 1989, two hours prior to the planned detonation of fuel on board the M/V AOYAGI MARU. It terminates on April 15, 1989, unless sooner cancelled by the COTP by a broadcast Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The safety zone will be effective two (02) hours prior to the detonation of fuel on the M/V AOYAGI MARU. Two hours prior to the planned detonation, the M/V KRYSTAL SEA, call sign WRA6054 will begin to broadcast safety alerts every thirty (30) minutes on channel 16. Vessels transiting the Lost Harbor, Akun Island area on March 19, 1989, should monitor channel 16 for safety broadcasts. Personnel or vessels not involved with the Federal removal actions may not approach the area within one and one-half miles (1.5MI)

(3) A Coast Guard safety broadcast Notice to Mariners will be issued announcing this event. After the detonation is completed and the resultant fire has subsided, COTP Western Alaska will reduce the safety zone, possibly in stages, down to fifty (50) yards by a broadcast Notice to Mariners.

Dated: March 17, 1989.

R.N. Roussel,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 89-7368 Filed 3-27-89; 8:45 am]

BILLING CODE 4910-14-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Parts 301, 302, 305, and 308

[CRT Docket No. 88-3-RM]

Modification of Rules of Procedure

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Tribunal is amending several of the rules of procedure governing the conduct of Tribunal rate adjustment and distribution proceedings, as well as other agency procedures. These amendments are a result of the agency's internal review of its regulations and are intended to improve the efficiency of the proceedings, and in certain cases, to conform to changes in U.S. law.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION: On October 31, 1988, the Copyright Royalty Tribunal published in the **Federal Register** a notice proposing to amend several of the rules of procedure governing the conduct of Tribunal rate adjustment and copyright royalty distribution proceedings, as well as other agency procedures. The notice was a result of an internal agency review of its regulations and was intended to improve the efficiency of the proceedings, or, in some cases, to conform with changes in U.S. law. 53 FR 43902.

The public was invited to submit comments to the Tribunal by December 15, 1988. The Tribunal received comments from the following organizations: the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), the Joint Sports Claimants (composed of Major League Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association), the Motion Picture Association of America, Inc. (MPAA), the National Association of Broadcasters (NAB), the National Cable Television Association (NCTA), the National Music Publishers Association (NMPA), National Public Radio (NPR) and the Public Broadcasting Service (PBS).

In general, the comments supported the changes proposed by the Tribunal. In particular, there were many comments of a technical nature which expressed concern about the actual wording of some of the proposed regulations, and in most cases the commenters offered substitute language which would take care of their concerns. The final disposition of the Tribunal's proposed changes are as follows:

Sections 301.7, 301.14, 301.22. Adopted as proposed.

Section 301.44(a). The Tribunal agrees with the concerns expressed by PBS regarding the second sentence of § 301.44(a) as proposed, and has deleted it. That sentence was not intended to create two levels of participation in Tribunal proceedings, but was simply a transfer of the language in the current § 301.52 to the new § 301.44. As PBS points out, the new placement of the language could create uncertainty. We agree with PBS that the Tribunal can deal with the specific facts and circumstances of a late-filed notice of intent or a request to participate outside of the rules on an *ad hoc* basis.

Section 301.44(b). The Tribunal agrees with NAB's editorial comment and has inserted the word "direct" prior to the last word of the sentence.

Section 301.44(c). Adopted as proposed.

Section 301.44(d). The Tribunal agrees with PBS' comment that percentage claims or requested rates should be permitted to be revised only up to the proposed findings of fact and conclusions of law, and not up to the reply proposed findings, and has made the appropriate change.

Section 301.44(e). The Tribunal agrees with NPR's comment that administrative flexibility should be provided for in this section and has added, "or for good cause shown."

Section 301.44(f). Adopted as proposed. The Tribunal believes that the concerns of PBS and Joint Sports are not warranted. The phrase "Unless otherwise structured by the Tribunal," which PBS fears is intended to limit opportunity for rebuttal, is only intended to modify the phrase "in the same form and manner as the direct case," so that the Tribunal may ask for rebuttal cases in a different form or manner than the direct case. It is not intended to state that the Tribunal will not have a rebuttal phase in its proceedings.

We agree with NPR's reply to Joint Sports that whether the rebuttal case properly rebuts the direct cases can be handled by objections at the proper time.

Section 301.45 (a) and (b). Adopted as proposed.

Section 301.45(c). The Tribunal agrees with NPR's comment that a declaration made pursuant to 28 U.S.C. 1746 would be as equally valid as an affidavit in Tribunal proceedings, and has made the appropriate change.

Section 301.45(d). The Tribunal has corrected the typographical errors which were noted by ASCAP, BMI, NPR and PBS.

Section 301.45(e). The Tribunal agrees with NAB's comment that in cases where response time is short, service by first-class mail has been insufficient. We have added a sentence which will require such service to be by means no slower than overnight express mail. This is intended to include all the other faster means of delivery such as hand delivery, telecopy, or facsimile transmission.

Section 301.46(a). Adopted as proposed.

Section 301.46(b). To cure the possible uncertainty between proposed § 301.46(b) and proposed § 301.48(f), as noted by NPR, the Tribunal has added the language suggested by NPR.

Section 301.46(c). BMI expressed concern that this section does not provide for discovery for amendments to the written case, and NAB expressed concern that this section would disallow amending the written case for factual correction or typographical errors. The section has been modified to take care of their concerns.

Section 301.47 (a) and (b). Adopted as proposed.

Section 301.47(c). ASCAP believed that the provision concerning the case where two Commissioners are sitting should be expanded to include whenever an even number of Commissioners are sitting. The Tribunal agrees and has modified the section. The Tribunal does not agree with the comment offered by BMI that the words "or overrule" should be added to the section, because that would defeat our intended meaning. The Tribunal has added another sentence to the section to make clear that it would not take a majority vote to overrule an objection, only a split vote. However, the Tribunal agrees with BMI that § 301.47(c)(6) is redundant and unnecessary and has deleted it.

Section 301.47(d). The Tribunal agrees with BMI's proposed modification and has implemented it. The Tribunal disagrees with Joint Sports that § 301.47(d) implies that the Tribunal has subpoena powers.

Section 301.48(a). Adopted as proposed.

Section 301.48(b). Comments filed by PBS demonstrated that the wording of § 301.48(b) was ambiguous. It has been re-worded to clarify its meaning.

Section 301.48 (c) and (d). Adopted as proposed.

Section 301.48(e). Joints Sports' comment that referring to the "scope" of

the witness' written testimony might allow too much leeway to introduce facts not included in the written case is well-taken. The language Joints Sports proposed has been adopted.

Section 301.48(f). The Tribunal has followed NPR's suggestion to clarify the relationship between §§ 301.46(b) and 301.48(f). This action should take care of the concerns of BMI and NAB which were quite similar to NPR's concern.

Section 301.48 (g), (h) and (i). Adopted as proposed.

Section 301.48(j). NPR commented that this section might act to restrict the discretion of the Tribunal to expand the scope of the questions the Tribunal could itself raise of the witness on cross-examination. While § 301.47(d) already states that a Commissioner may examine any witness at any time, another sentence has been added to state again that the Tribunal retains full discretion on cross-examination. NAB commented that cross-examination should be allowed of the witness' direct case, as well as the witness' direct testimony. The Tribunal intended the phrase "matters raised on direct examination" to include the direct case, so that NAB's suggested amendment is unnecessary.

Section 301.48(k). The Tribunal accepts NAB's recommendation to add the phrase "prior to being shown to the witness" to this section.

Section 301.48(l). BMI, NMPA, and NPR expressed concerns about the mandatory nature of this section. The Tribunal has made modifications, accordingly.

Sections 301.49 through 301.55. Adopted as proposed.

Sections 301.63 and 301.64. Adopted as proposed. At NCTA requests, the Tribunal wishes to make clear that this change is not intended in any way to limit or supersede the twelve month period prescribed by the Copyright Act for filing petitions for rate adjustments during the "window" years applicable for cable, mechanical and jukebox.

Sections 301.66 and 301.74. Adopted as proposed. NPR and PBS took opposite views on this proposed change. NPR believed that it was necessary for the Tribunal to publish proposed determinations. PBS believed that even making the publication of proposed determinations an option for the Tribunal was unnecessary, because the additional administrative hearings such a publication might engender would rarely prove useful. ASCAP supported the rule change as written. The Tribunal has decided to make the publishing of proposed determinations optional, as proposed.

Sections 301.70, 302.1, 302.10 and 308.2. Adopted as proposed.

Sections 301.80, 301.81, 301.82, and 301.83. Adopted as proposed.

Sections 302.2, 302.3 and 302.6. Adopted as proposed.

Section 302.7. BMI suggested that if the Tribunal wants to make the regulations for the filing of claims in both jukebox and cable consistent, the provision from the jukebox regulation allowing performing rights societies to file without a separate authorization from its members or affiliates should be included in the cable regulation as well. The Tribunal agrees and has made the appropriate modification.

Section 302.8. ASCAP supported this proposed rule change, BMI, NAB and PBS thought that the change made the rule too restrictive, and the other commenters expressed no opinion. The Tribunal does not believe that our insistence that either a claim be received in our office during July or that it bear a July U.S. postmark is too restrictive. The claim itself is easy to prepare. No government forms are necessary. The information that is required can be put on one page. Further, the claimant has six months from the close of the calendar year to prepare it, and the entire month of July to submit it to the Tribunal. Our proposed rule provides a bright line test which should end all questions of fact regarding the timeliness of the claim. The Tribunal adopts the section as proposed, except that the word "only" is added at ASCAP's suggestion.

Section 305.2. The Tribunal has inserted the word "year." Its omission was a typographical error spotted by BMI.

Section 305.3. The Tribunal has decided not to delete paragraph (c). ASCAP was correct when they observed that the provision is required by Section 116 of the Copyright Act.

Section 305.4. Adopted as proposed, except for the insertion of the word "only," as ASCAP suggested. The Tribunal has decided not to reconsider its decision not to require the claimant to identify itself as a performing rights society or as a copyright owner. That information can be obtained at a later date in the proceeding.

List of Subjects

37 CFR Part 301

Administrative practice and procedure, Freedom of information, Sunshine Act.

37 CFR Part 302

Cable television, Claims, Copyright.

37 CFR Part 305

Claims, Copyright, Jukeboxes.

37 CFR Part 308

Cable television, Copyright, Rates.

For the reasons set forth in the preamble, the Tribunal amends 37 CFR Part 301 as follows:

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

1. The authority citation for Part 301 continues to read as follows:

Authority: 17 U.S.C. 803(a).

2. In § 301.7, paragraph (b) is revised as follows:

§ 301.7 Proceedings.

* * * * *

(b) *Quorum.* A majority of the sitting members of the Tribunal constitutes a quorum.

* * * * *

3. In § 301.14, paragraph (b) and introductory text of paragraph (c) are revised as follows:

§ 301.14 Procedure for closing meetings.

* * * * *

(b) Before a discussion to close a meeting or withhold information, the General Counsel must certify that, in his or her opinion, such a step is permissible, and the General Counsel shall cite the appropriate exemption under § 301.13. This certification shall be included in the announcement of the meeting and be maintained as part of the Tribunal's records.

(c) Following such a vote, and by the end of the working day, the General Counsel must transmit the following information to the **Federal Register** for publication:

* * * * *

4. Section 301.22 is revised as follows:

§ 301.22 Public access.

(a) *Requesting information.* Information may be requested from the Tribunal in person, by telephone, or by mail. If the material sought is not a Tribunal record, is exempted, or for some reason is unavailable, the person requesting it will be so informed and, in the case of an "exempted record," will be explained the reason for the exemption and the procedure for appeal under the Freedom of Information Act, § 301.13.

(b) *Fees.* Fees for copies of Tribunal records are $.20 per page; $20 for each hour or fraction thereof spent searching for records; $5 for certification of each document; and the actual costs to the Tribunal for any other costs incurred.

(c) *Imposition of fees.* (1) Commercial use requests—Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Tribunal personnel in searching for the requested document and in reviewing the record to determine whether it should be disclosed, and for the cost of each page of duplication. "Commercial use" is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request in made. Commercial users include all claimants or petitioners for rate adjustments whose interest in the information is to further their case preparation before the Tribunal.

(2) Requests from representatives of news media—Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category if such person can demonstrate a solid basis for expecting publication by a news organization.

(3) Requests from educational and noncommercial scientific institutions—Where a request seeks disclosure of records to an educational or noncommercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or noncommercial scientific research programs. To that extent, educational or noncommercial scientific institutions which are claimants or petitioners before the agency are considered "commercial users." "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education which operates a program or programs of scholarly research. "Noncommercial scientific institution" refers to an institution that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular products or industry.

(4) All other requests—Where a request seeks disclosure of records to a person or entity other than paragraphs (c) (1), (2), or (3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(d) *Aggregating of requests.* If there exists a substantial basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(e) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in section 3717 of Title 31, United States Code.

(f) *Advance payments.* If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than $250, the requester may be required to pay the fees in advance. If a requester has previously failed to make timely payment of fees, the requester may be required to pay such fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request.

(g) *Nonpayment.* In the event of nonpayment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982, including disclosure to consumer credit reporting agencies and referral to collection agencies, may be utilized to obtain payment.

(h) *Waiver or reduction of charges.* The Tribunal shall waive the fee, or grant a fee reduction, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester. The Tribunal will not charge if the costs of routine collection and processing of the fee is likely to equal or exceed the amount of the fee. However, the Tribunal has determined that the cost of writing up the invoice and transmitting the fees to the Treasury Department is *de minimis* and is not a basis for not collecting a fee.

5. In Subpart E of Part 301, the table of contents is revised as follows:

Subpart E—Procedures and Regulations

Sec.
301.40 Scope.
301.41 Formal Hearings.
301.42 Suspension, amendment, or waiver of rules.
301.43 Notice of proposed rulemaking.
301.44 Written cases.
301.45 Filing and service of written cases and pleadings.
301.46 Discovery.
301.47 Conduct of proceedings—role of Commissioners.
301.48 Conduct of proceedings—witnesses and counsel.
301.49 Rules of evidence.
301.50 Transcript and record.
301.51 Declaratory rulings.
301.52 Closing the hearing.
301.53 Proposed findings and conclusions.
301.54 Promulgation of rules or orders.
301.55 Reopening of proceedings, modification or setting.
301.56 Public suggestions and comments.

§§ 301.44, 301.46, 301.49, 301.52, and 301.53 [Removed].

6. Sections 301.44, 301.46, 301.49, 301.52 and 301.53 are removed.

§§ 301.45, 301.47, 301.48, 301.50, 301.51, 301.54, 301.55 [Redesignated as 301.51, 301.50, 301.52, 301.55, 301.49, 301.53, 301.54, respectively]

7. Sections 301.45, 301.47, 301.48, 301.50, 301.51, 301.54, and 301.55 are redesignated 301.51, 301.50, 301.52, 301.55, 301.49, 301.53, and 301.54, respectively.

8. A new § 301.44 is added as follows:

§ 301.44 Written cases.

(a) Unless otherwise structured by the Tribunal, rate adjustment proceedings and royalty fee distribution proceedings shall begin with the filing of the written direct cases of the parties who have filed a notice of intent to participate in the hearing.

(b) The written direct case shall include all testimony, including each witness' background and qualifications, along with all the exhibits to be presented in the direct case.

(c) Each party may designate a portion of past records which it wants included in its direct case. Complete testimony of each witness whose

testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of the proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where official notice is proper or in the case of incorporation by reference of past records, or for good cause shown.

(f) Unless otherwise structured by the Tribunal, written rebuttal cases of the parties shall be filed at a time designated by the Tribunal upon the conclusion of the hearing of the direct case in the same form and manner as the direct case, except that the claim or the requested rate shall not have to be included if it has not changed from the direct case.

9. A new § 301.45 is added as follows:

§ 301.45 Filing and service of written cases and pleadings.

(a) *Copies.* In all filings with the Tribunal, the party shall file an original plus two copies plus a copy for each sitting Commissioner. In the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, the Tribunal may reduce the number of required copies.

(b) *English language translations.* In all filings with the Tribunal, each submission which is in a language other than English shall be accompanied by an English language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English language translation, similarly verified.

(c) *Affidavits.* The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony.

(d) *Subscription and Verification.* (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney's address and telephone number. All copies shall be conformed. Except for English language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification by him that he has read the document, that to the best of his knowledge and belief there is good ground to support it, and that it has not been interposed for delay.

(2) The original of all documents filed by a party not represented by counsel shall be both signed and verified by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with intent to defeat the purpose of this section, may be stricken as sham and false and the matter proceed as though the document had not been filed.

(e) *Service.* In all filings with the Tribunal, a copy shall be served upon the counsel of all other parties identified in the Tribunal's service list, or if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing with the Tribunal. If a party files a pleading that requests or would require action by the Tribunal within ten or fewer days after the filing, it must serve the pleading upon all other counsel by means no slower than overnight express mail on the same day its pleading is filed.

10. A new § 301.46 is added as follows:

§ 301.46 Discovery.

(a) Unless otherwise structured by the Tribunal, a period shall be designated following the filing of the written direct and rebuttal cases in which parties may request of an opposing party non-privileged underlying documents related to the written exhibits and testimony.

(b) Any party may file pre-hearing objections to any portion of another party's written case on any proper ground, including, without limitation, relevance, competency, and failure to provide underlying documents. If an objection is apparent from the face of the party's written case, that objection must be raised or the party may thereafter be precluded from raising such an objection.

(c) Within this period, each party may amend its direct evidence to meet the objections raised by the other parties or to respond to requests by the Tribunal, or as otherwise permitted by the Tribunal. Such amendments must be filed with the Tribunal and exchanged with all parties. All parties will be given a reasonable opportunity to conduct discovery on such amended cases prior to commencement of the hearing.

11. A new § 301.47 is added as follows:

§ 301.47 Conduct of proceedings—role of Commissioners.

(a) At the opening of the proceeding, the Chairman shall announce the subject under consideration.

(b) Only Commissioners of the Tribunal, authorized Tribunal staff, or counsel as provided in this chapter shall question witnesses.

(c) Subject to the vote of the Tribunal, the Chairman will have the responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the Tribunal's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In all cases, whether there are an even or odd number of Commissioners sitting at hearing, it takes a majority vote to grant a motion or sustain an objection. A split vote will result in the denial of the motion or the overruling of the objection.

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial;

(5) Announcing the schedule of subsequent hearing;

(d) Each Commissioner may examine any witness or call upon any party for the production of additional evidence at any time. Further examination, cross-examination, or redirect examination by counsel relevant to the inquiry initiated by a Commissioner may be allowed by the Tribunal but only to the limited extent that it is directly responsive to the inquiry of the Commissioner.

12. A new § 301.48 is added as follows:

§ 301.48 Conduct of proceedings—witnesses and counsel.

(a) With all due regard for the convenience of the witnesses, proceedings shall be conducted as expeditiously as possible.

(b) In each distribution or rate adjustment proceeding, each party may present its opening statement with the presentation of its direct case.

(c) All witnesses at Tribunal proceedings shall be required to take an oath or affirmation before testifying; however attorneys who do not appear as witnesses shall not be required to do so.

(d) Witnesses shall first be examined by their attorney and by opposing attorneys for their competency to support their written testimony and exhibits (voir dire).

(e) Witnesses may then summarize, highlight or read their written testimony. However, witnesses may not materially supplement or alter their written testimony except to correct it, unless the Tribunal expands the witness' testimony to complete the record.

(f) Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including that an opposing party has not furnished non-privileged underlying documents. However, they may not raise objections which could have been raised prior to the hearing without leave from the Tribunal. *See* § 301.46(b).

(g) All written testimony and exhibits will be received into the record, except that to which the Tribunal sustains an objection; no separate motion will be required.

(h) If the Tribunal rejects or excludes testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(i) Cumulative evidence will be discouraged by the Tribunal and the Tribunal may limit the number of witnesses that may be heard in behalf of any one party on any one issue.

(j) Parties are entitled to cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The Tribunal, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay. Conversely, this subsection does not restrict the discretion of the Tribunal to expand the scope of cross-examination or redirect examination.

(k) Documents which have not been exchanged in advance may be shown a witness on cross-examination. However, copies of such documents must be distributed to the Tribunal and to other participants or their counsel at hearing prior to being shown to the witness at the time of cross-examination, unless the Tribunal directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness' direct testimony and cannot itself be relied upon in findings of fact as rebutting the witness' direct testimony. However, upon leave from the Tribunal, the document can be admitted as evidence without a sponsoring witness if official notice is proper, or if in the Tribunal's view, the cross-examined witness is the proper sponsoring witness.

(l) The Tribunal will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination for them. However, if there is no agreement on the selection of a representative, then each individual or group will be allowed to conduct its own examination and cross-examination, but only on issues affecting its particular interests, provided that the questioning is not repetitive or cumulative of the questioning of other parties within the group.

§ 301.49 [Amended]

13. In newly redesignated § 301.49, paragraphs (e), (f), (g), (j), (k) and (l) are removed, and paragraphs (h) and (i) are redesignated (e) and (f), respectively.

§ 301.53 [Amended]

14. In newly redesignated § 301.53, paragraph (d) is removed.

15. Section 301.63 is revised as follows:

§ 301.63 Consideration of petition.

To allow time for parties to settle their differences regarding rate adjustments, the Tribunal may delay considering any petition before the expiration of 90 days from the start of the calendar year specified in § 301.61(b) or 90 days from the effective date of the Federal Communications Commission action mentioned in § 301.61(c). Similar petitions may be joined together by the Tribunal for the purpose of determining "significant interest," and the Tribunal may permit written comments or a hearing on pending petitions.

16. Section 301.64 is revised as follows:

§ 301.64 Disposition of petition.

At the end of the 90-day period, if the Tribunal has not already done so, the Tribunal shall determine as expeditiously as possible if one or more petitioner's interest is "significant"; and shall publish in the **Federal Register** a notice of its determination and the reasons therefor, together with a notice of the commencement of proceedings if it has been determined to commence a proceeding. Any commencement notice shall, to the extent feasible, describe the general structure and schedule of the proceeding.

17. In § 301.66, paragraph (a) is revised as follows:

§ 301.66 Publication of proposed rate determination.

(a) Following the conclusion of the hearings, the Tribunal may publish in the **Federal Register** a notice of its proposed findings and conclusions in the rate adjustment proceeding. The Tribunal shall afford all parties a reasonable opportunity to submit written comments on the proposed determination. The Tribunal may, if necessary, conduct additional hearings.

* * * * *

§ 301.70 [Amended]

18. In § 301.70, the section citation "17 U.S.C. 111(d)(5)" is removed, and the section citation "17 U.S.C. 111(d)(4)" is added in its place.

19. In 301.74, paragraph (a) is revised as follows:

§ 301.74 Publication of proposed royalty distribution determination.

(a) Following the conclusion of the hearings, the Tribunal may publish in the **Federal Register** a notice of its proposed findings and conclusions in the royalty distribution proceeding. The Tribunal shall afford all claimants a reasonable opportunity to submit written comments on the proposed determination. The Tribunal may, if necessary, conduct additional hearings.

* * * * *

20. Subpart H, consisting of §§ 301.80 through 301.83, is added as follows:

Subpart H—Appeals of Tribunal Decisions

Sec.
301.80 Purpose.
301.81 Notice of petition for review of Tribunal decisions.
301.82 Judicial Panel on Multidistrict Litigation.
301.83 Filing of proceeding records.

Subpart H—Appeals of Tribunal Decisions

§ 301.80 Purpose.

The purpose of this subpart is to implement the provisions of Pub. L. 100-236, an amendment to Title 28 of the United States Code to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order.

§ 301.81 Notice of petition for review of Tribunal decisions.

Immediately following the filing by a party of a petition for review of a Tribunal's decision, a copy of such petition for review shall be filed with the General Counsel of the Tribunal and shall include: The date of the relevant decision, the case name of the petition for review, the circuit court of appeals in

which the petition for review is pending, the appellate docket number of the petition for review, and the date of filing by the court of appeals of the petition for review.

§ 301.82 Judicial Panel on Multidistrict Litigation.

(a) If, within ten days after issuance of a final Tribunal decision, the General Counsel receives notice of two or more petitions for review with respect to proceedings in at least two courts of appeals, the General Counsel shall, promptly after the expiration of the ten-day period, so notify the Judicial Panel on Multidistrict Litigation, according to Rules 20–23 of the Panel's Procedures.

(b) Upon notification from the Judicial Panel on Multidistrict Litigation that the Panel has consolidated the petitions for review in the court of appeals for the circuit that was randomly selected, the General Counsel shall promptly serve the Panel's consolidation order on all other parties in all petitions for review included in the Panel's consolidation order, and shall promptly submit a proof of that service to the Clerk of the Panel.

§ 301.83 Filing of proceeding records.

(a) In the case of two or more appeals filed within ten days after issuance of a final Tribunal decision, the General Counsel shall file the record of the proceeding in the court of appeals for the circuit named by the Judicial Panel on Multidistrict Litigation.

(b) In the case of fewer than two appeals filed within ten days after issuance of a final Tribunal decision, the General Counsel shall file the record of the proceeding in the court of appeals where the first appeal was filed.

PART 302—FILING OF CLAIMS TO CABLE ROYALTY FEES

For the reasons set forth in the preamble, the Tribunal amends 37 CFR Part 302 as follows:

21. The authority citation for Part 302 is amended to read as follows:

Authority: 17 U.S.C. 111(d)(4)(A).

§ 302.1 [Amended]

22. In § 302.1, the section citation "17 U.S.C. 111(d)(5)(A)" is removed, and the section citation "17 U.S.C. 111(d)(4)(A)" is added in its place.

§ 302.2 [Removed and Reserved]

23. Section 302.2 is removed and reserved.

§ 302.3 [Removed and Reserved]

24. Section 302.3 is removed and reserved.

§ 302.6 [Removed and Reserved]

25. Section 302.6 is removed and reserved.

26. In Section 302.7, paragraph (a) and the introductory text of paragraph (b) are revised as follows:

§ 302.7 Filing of claims to cable royalty fees.

(a) During the month of July of each year, every person claiming to be entitled to compulsory license fees for secondary transmissions during the preceding calendar year shall file a claim to such fees in the office of the Copyright Royalty Tribunal. No royalty fees shall be distributed to copyright owners for secondary transmissions during the specified period unless such owner has filed a claim to such fees during the following calendar month of July. For purposes of this clause claimants may file claims jointly or as a single claim. Such filing shall include such information as the Copyright Royalty Tribunal may require. A joint claim shall include a concise statement of the authorization for the filing of the joint claim. A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard agreements, for purposes of this filing and fee distribution.

(b) Claims shall include the following information:

* * * * *

27. Section 302.8 is revised as follows:

§ 302.8 Compliance with statutory dates.

Claims filed with the Copyright Royalty Tribunal shall be considered timely filed only if:

(a) They are received in the offices of the Copyright Royalty Tribunal during normal business hours during the month of July, or

(b) They are properly addressed to the Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036 and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

§ 302.10 [Amended]

28. In § 302.10, the section citation "17 U.S.C. 111(d)(5)(c)" is removed, and the section citation "17 U.S.C. 111(d)(4)(C)" is added in its place.

PART 305—CLAIMS TO PHONORECORD PLAYER (JUKEBOX) ROYALTY FEES

For the reasons set forth in the preamble, the Tribunal amends 37 CFR Part 305 as follows:

29. The authority section for Part 305 continues to read as follows:

Authority: 17 U.S.C. 116(c)(2).

30. Section 305.2 is revised as follows:

§ 305.2 Time of filing.

During the month of January in each year every person claiming to be entitled to coin-operated phonorecord player fees for performances of nondramatic musical works during the preceding calendar year shall file a claim with the Copyright Royalty Tribunal. No royalty fees shall be distributed to any person during the specified period unless such person has filed a claim to such fees during the following calendar month of January. Claimants may file jointly or as a single claim. A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements, for purposes of this filing and fee distribution.

31. Section 305.4 is revised as follows:

§ 305.4 Compliance with statutory dates.

Claims filed with the Copyright Royalty Tribunal shall be considered timely filed only if:

(a) They are received in the offices of the Copyright Royalty Tribunal during normal business hours during the month of January, or

(b) They are properly addressed to the Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036 and they are deposited with sufficient postage with the United States Postal Service and bear a January U.S. postmark.

PART—308 ADJUSTMENT OF ROYALTY FEE FOR COMPULSORY LICENSE FOR SECONDARY TRANSMISSION BY CABLE SYSTEM

For the reasons set forth in the preamble, the Tribunal amends 37 CFR Part 308 as follows:

32. The authority citation for Part 308 continues to read as follows:

Authority: 17 U.S.C. 801(b)(2) (A) and (D).

§ 308.2 [Amended]

33. In paragraph (a) of § 308.2, the section citation "17 U.S.C. 111(d)(2)(B)" is removed, and the section citation "17 U.S.C. 111(d)(1)(B)" is added in its place, and in paragraph (b) of § 308.2, the section citation "17 U.S.C. 111(d)(2)(C) and (D)" is removed, and the section citation "17 U.S.C. 111(d)(1)(C) and (D)" is added in its place.

Dated: March 23, 1989.

Mario F. Aguero,

Acting Chairman.

[FR Doc. 89-7259 Filed 3-27-89; 8:45 am]

BILLING CODE 1410-09

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL-3543-7]

Revision of PM_{10} Grouping For Three Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revised listing.

SUMMARY: In an August 7, 1987 notice (52 FR 29383), EPA categorized areas of the Nation into three groups based on each area's probability of violating the newly promulgated particulate matter standards. This grouping was done in accordance with standards, policies, and regulations published on July 1, 1987 for particulate matter with an aerodynamic diameter of 10 micrometers or less (PM_{10}) (see 52 FR 24634 and 52 FR 24672). The EPA based its groupings on the most current data available in 1987 and on an evaluation of other available information. After reevaluation of existing data and other information, EPA has modified the groupings for three areas, Porter County, Indiana; Mono Basin, California; and Sandpoint, Idaho; and placed those areas into Group II.

ADDRESSES: Information supporting the modified grouping for each area can be obtained from the respective EPA Regional Office which services the particular State. The addresses of the Regional Offices are:

For Porter County, Indiana: Air and Radiation Branch, EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

For Mono Basin, California: Air Programs Branch, EPA Region IX, 215 Fremont Street, San Francisco, California 94105.

For Sandpoint, Idaho: Air Programs Branch, EPA Region X, 1200 6th Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Martha Smith, Sulfur Dioxide Particulate Matter Programs Branch, (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Telephone: (919) 541-5314, FTS 629-5314.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24672), EPA promulgated revisions to regulations in 40 CFR Parts 51 and 52 and announced policies by which it would implement the PM_{10} national ambient air quality standards (NAAQS). The EPA's policies for developing and revising State implementation plans (SIP's) to account for the revised NAAQS for particulate matter, are discussed fully in section IV.C of one of the notices (52 FR at 24679).

The EPA adopted a policy by which it divided all areas of the country into three categories: (1) Areas with a strong likelihood of violating the PM_{10} NAAQS and requiring substantial SIP adjustment (Group I), (2) areas where attainment of the standards is possible and existing SIP's probably need less adjustment (Group II), and (3) areas with a strong likelihood of attaining the PM_{10} NAAQS and therefore needing only adjustments to the applicable prevention of significant deterioration/new source review (PSD/NSR) and monitoring provisions in their SIP's (Group III).

As a result of reevaluating the existing data and information and entering into a settlement agreement with Bethlehem Steel Corporation with respect to Porter County, EPA has decided to reclassify three areas. These areas are Porter County, Indiana; Mono Basin, California; and Sandpoint, Idaho.

II. Description of Actions

Porter County, Indiana, was changed from Group I to Group II as a result of a settlement agreement negotiated with Bethlehem Steel Corporation. The effective date for this change was November 29, 1988, the date the settlement agreement was filed with the court. Mono Basin, California, was regrouped from Group III to Group II following review of the information used for the initial classification. The change was effective on June 8, 1988, the date of the letter notifying the State of California about this change. Sandpoint, Idaho, was regrouped from Group I to Group II following a determination that the area lacked sufficient data to justify a Group I classification. The State of Idaho was notified of the revision by letter dated August 31, 1987, the effective date for this change.

III. Conclusion

Porter County, Indiana; Mono Basin, California; and Sandpoint, Idaho; have been changed to Group II areas. This grouping requires intensive monitoring which will permit rapid collection of data. Data from this collection effort will be used to determine the attainment status of these areas. Areas found to be in violation of the standards will be required to develop a SIP demonstrating attainment of the NAAQS (52 FR 24680-82).

Authority: Sections 110 and 301 of the Clean Air Act give the Administrator authority to adopt policies necessary to implement NAAQS.

Date: March 21, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-7315 Filed 3-27-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3542-5]

Approval and Promulgation of Implementation Plans, Ohio

AGENCY: Environmental Protection Agency.

ACTION: Rescission of final rule.

SUMMARY: USEPA is rescinding its January 9, 1989, final rulemaking (54 FR 612), which (1) disapproves Ohio's Carbon Monoxide (CO) State Implementation Plan (SIP) for Cuyahoga County, Ohio and (2) imposes Federal highway and air quality program funding restrictions under sections 176(a) and 176(b) of the Clean Air Act and a major stationary source construction moratorium for CO under sections 173(4) and 110(a)(2)(I) of the Act. The January 9, 1989 rulemaking was to have become effective on March 15, 1989.[1]

On March 14, 1989, the State of Ohio legislature passed legislation which authorized implementation and funding for a vehicle tailpipe inspection and maintenance (I/M) program to control CO in Cuyahoga County. This is a significant concrete step towards implementation of the require I/M program. EPA has been assured that the Governor of Ohio will sign the adopted measure. The State of Ohio should therefore be able to shortly submit a vehicle tailpipe I/M program as one portion of its CO SIP for Cuyahoga County. Thus, the circumstances in which USEPA took its January 9, 1989, actions no longer exist. Consequently,

[1] The original effective date for the January 9, 1989 rulemaking was March 10, 1989. On March 9, 1989, however, the USEPA Administrator signed a notice deferring the effective date until March 15, 1989, based on the adoption by one house of the Ohio legislature of the required remedial measure and the expectation that the other house would adopt that measure by March 15, 1989. [Note: That notice was not published in the **Federal Register**.]

USEPA is rescinding its January 9,1989, rulemaking. USEPA will rulemake on the revised I/M Program and the overall Cuyahoga CO plan in future Federal Register notice(s).

EFFECTIVE DATE: Rescission of the January 9, 1989, rulemaking is effective as of March 28, 1989.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: This rescission of the January 9, 1989 rulemaking is effective as of March 28, 1989. The Administrative Procedure Act (APA), 5 U.S.C. 553(d), permits the effective date of a substantive rule to be less than thirty days after the publication of the rule if the rule "relieves a restriction". Since USEPA's rescission of the January 9, 1989 rulemaking is a substantive rule that relieves the restrictions outlined in that notice (funding and growth sanctions, and CO SIP disapproval), the rescission may be made effective upon signature by the USEPA Administrator.

Beyond that, the APA, 5 U.S.C. 553(b)(B) and (c), permits an agency to forgo the notice-and-comment process that normally attends informal rulemaking, "when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." USEPA is invoking this exemption as the ground for foregoing additional notice and an opportunity to comment on the agency's rescission of the January 9, 1989 rulemaking. It would make little sense and create needless havoc for USEPA to impose the funding and growth sanctions and CO SIP disapproval after the State had already remedied the inaction that formed the basis for those restrictions. It would thus be contrary to the public interest to open a notice-and-comment process that would allow the restrictions to take effect. (Alternatively, it would have been impracticable for USEPA to complete a notice-and-comment proceeding between the Ohio legislature's action on March 14, 1989 and the March 15, 1989, effective date of the restrictions.) Moreover, the rulemaking leading to the January 9, 1989 notice provided the public ample notice of, and opportunity to coment on, the fact that the restrictions were based solely on the state legislature's previous failure to adopt a tailpipe I/M program. Thus, it is unnecessary for USEPA to open a new notice-and-comment process on whether the Ohio legislature's adoption of that very type of program justifies rescinding the restrictions.

Therefore, USEPA is rescinding its January 9, 1989 rule.

Authority: 42 U.S.C. 7401–7642.

Dated: March 14, 1989.

William K. Reilly,

Administrator.

Accordingly, 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C 7401–7642.

§ 52.1887 [Amended]

2. Section 52.1887 is amended by removing paragraph (d).

[FR Doc. 89–6981 Filed 3–27–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD–FRL–3448–3]

Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 21, 1983, among other actions, EPA proposed to add Methods 1A, 2C, and 2D to Appendix A of 40 CFR Part 60 (48 FR 48932). Today's action promulgates those test methods. This promulgation action for Methods 1A, 2C, and 2D is required because on May 30, 1984, EPA promulgated Subpart VV—Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry, which specified these methods for potential application for the measurement of stack flows (49 FR 22607).

This addition to Appendix A provides methods needed for sampling in small stacks and ducts. Methods 1A, 2C, and 2D will apply to Subpart VV and other stationary source categories where sampling in small stacks and ducts is necessary.

EFFECTIVE DATE: March 28, 1989.

Under Section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this notice. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A–88–15, containing information considered by EPA in development of the promulgated rulemaking, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. William Grimley or Mr. Roger T. Shigehara, Emission Measurement Branch, Technical Support Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Methods 1A, 2C, and 2D are being added to Appendix A of 40 CFR Part 60 for the sampling and measurement of particulate matter (PM) and flow rates in small stacks and ducts. Subpart VV of Part 60 specifies these methods for potential application for the determination of the exit velocity of a flare, and these methods will also be needed for future source category rulemaking actions.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply add methods for the achievement of emission testing requirements that would apply irrespective of this rulemaking.

II. Public Participation

The proposed amendment to 40 CFR Part 60 that contained proposed Methods 1A, 2C, and 2D was published in the Federal Register on October 21, 1983 (48 FR 48932). Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed action, a public hearing was held, as scheduled, on November 15, 1983, beginning at 10:00 a.m. No comments that pertained to the proposed methods were made at the public hearing. The public comment period was from October 21, 1983, to January 3, 1984. One comment letter was received that contained two comments

concerning the proposed methods. The two comments have been considered carefully, and, in the instance where it was determined to be appropriate by the Agency, a change has been made to the proposed rulemaking.

III. Comments and Changes to the Proposed Standards

One comment letter was received on the proposed methods from a manufacturer of packaged products. The manufacturer's first comment was that Method 1A should be changed to allow the pitot tube for velocity measurement to be placed upstream of the PM sampling probe in order to place everything within a 12 to 14 diameter-length of suitable duct, rather than an 18 duct diameter-length.

The method presently states "* * * if such locations are not available, select an alternative PM sampling site that is at least 2 equivalent stack or duct diameters downstream and 2½ diameters upstream from any flow disturbance." Thus, the proposed method allows PM sampling to be accomplished within a minimum of a total of 4½ duct diameter-lengths, and the suggested change is, therefore, not necessary.

The manufacturer's second and last comment was that Method 1A should be changed to indicate that when steady-state flow exists, the same sample port could be used for both velocity and PM traverses by preceding and following the PM traverse with velocity traverses that demonstrate steady flow.

The EPA believes this suggested procedure is reasonable if some limit is placed on the allowable variation between the two velocity traverses. Section 2.1.2 of Method 1A has been revised to describe this procedure, with a stipulation that the PM sampling is acceptable if the final flow rate, derived from the final velocity traverse, does not deviate from the initial flow rate by more than 10 percent.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated methods, and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [Clean Air Act, Section 307(d)(7)(A)].

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, but, instead, provides methods for performing emission measurement requirements that would apply irrespective of this rulemaking. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a regulatory flexibility analysis (RFA) in those instances where small business impacts are possible. Because these methods impose no adverse economic impacts, and RFA has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have any economic impact on small entities, because the rule does not add either to the existing requirement for flow rate measurements, or increase their associated performance cost.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Synthetic Organic Chemicals Manufacturing Industry, Reporting and recordkeeping requirements, and Incorporation by reference.

Date: March 20, 1989.

William K. Reilly,

Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. In Appendix A, Test Methods 1A, 2C, and 2D are added to read as follows:

Appendix A

* * * * *

Method 1A—Sample and Velocity Traverses for Stationary Sources with Small Stacks or Ducts

1. Applicability and Principle

1.1 The applicability and principle of this method are identical to Method 1, except this method's applicability is limited to stacks or ducts less than about 0.30 meter (12 in.) in diameter or 0.071 m^2 (113 $in.^2$) in cross-sectional area, but equal to or greater than about 0.10 meter (4 in.) in diameter or 0.0081 m^2 (12.57 $in.^2$) in cross-sectional area.

1.2 In these small diameter stacks or ducts, the conventional Method 5 stack assembly (consisting of a Type S pitot tube attached to a sampling probe, equipped with a nozzle and thermocouple) blocks a significant portion of the cross section of the duct and causes inaccurate measurements. Therefore, for particulate matter (PM) sampling in small stacks or ducts, the gas velocity is measured using a standard pitot tube downstream of the actual emission sampling site. The straight run of duct between the PM sampling and velocity measurement sites allows the flow profile, temporarily disturbed by the presence of the sampling probe, to redevelop and stabilize.

1.3 The cross-sectional layout and location of traverse points and the verification of the absence of cyclonic flow are the same as in Method 1, Sections 2.3 and 2.4, respectively. Differences from Method 1, except as noted, are given below.

2. Procedure

2.1 Selection of Sampling and Measurement Sites.

2.1.1 PM Measurements. Select a PM sampling site located preferably at least 8 equivalent stack or duct diameters downstream and 10 equivalent diameters upstream from any flow disturbances such as bends, expansions, or contractions in the stack, or from a visible flame. Next, locate the velocity measurement site 8 equivalent diameters downstream of the PM sampling site. See Figure 1A–1. If such locations are not available, select an alternative PM sampling site that is at least 2 equivalent stack or duct diameters downstream and 2½ diameters upstream from any flow disturbance. Then, locate the velocity measurement site 2 equivalent diameters downstream from the PM sampling site. Follow Section 2.1 of Method 1 for calculating equivalent diameters for a rectangular cross section.

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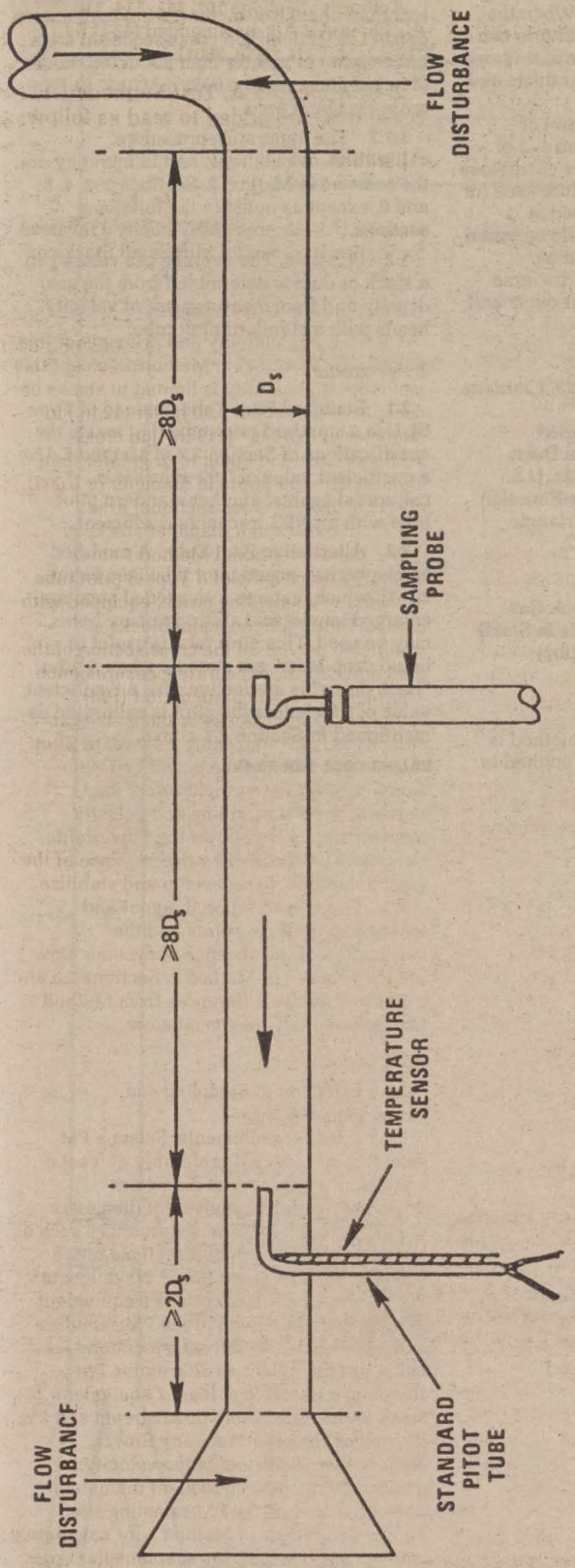

Figure 1A-1. Recommended sampling arrangement for small ducts.

BILLING CODE 6560-50-C

2.1.2 PM Sampling (Steady Flow) or only Velocity Measurements. For PM sampling when the volumetric flow rate in a duct is constant with respect to time, Section 2.1 of Method 1 may be followed, with the PM sampling and velocity measurement performed at one location. To demonstrate that the flow rate is constant (within 10 percent) when PM measurements are made, perform complete velocity traverses before and after the PM sampling run, and calculate the deviation of the flow rate derived after the PM sampling run from the one derived before the PM sampling run. The PM sampling run is acceptable if the deviation does not exceed 10 percent.

2.2 Determining the Number of Traverse Points.

2.2.1 PM Sampling. Use Figure 1–1 of Method 1 to determine the number of traverse points to use at both the velocity measurement and PM sampling locations. Before referring to the figure, however, determine the distances between both the velocity measurement and PM sampling sites to the nearest upstream and downstream disturbances. Then divide each distance by the stack diameter or equivalent diameter to express the distances in terms of the number of duct diameters. Next, determine the number of traverse points from Figure 1–1 of Method 1 corresponding to each of these four distances. Choose the highest of the four numbers of traverse points (or a greater number) so that, for circular ducts, the number is a multiple of four, and for rectangular ducts, the number is one of those shown in Table 1–1 of Method 1. When the optimum duct diameter location criteria can be satisfied, the minimum number of traverse points required is eight for circular ducts and nine for rectangular ducts.

2.2.2 PM Sampling (Steady Flow) or Velocity Measurements. Use Figure 1–2 of Method 1 to determine the number of traverse points, following the same procedure used for PM sampling traverses as described in Section 2.2.1 of Method 1. When the optimum duct diameter location criteria can be satisfied, the minimum number of traverse points required is eight for circular ducts and nine for rectangular ducts.

3. Bibliography

1. Same as in Method 1, Section 3, Citations 1 through 6.

2. Vollaro, Robert F. Recommended Procedure for Sample Traverses in Ducts Smaller Than 12 Inches in Diameter. U.S. Environmental Protection Agency, Emission Measurement Branch, Research Triangle Park, North Carolina. January 1977.

* * * * *

Method 2C—Determination of Stack Gas Velocity and Volumetric Flow Rate in Small Stacks or Ducts (Standard Pitot Tube)

1. Applicability and Principle

1.1 Applicability.

1.1.1 The applicability of this method is identical to Method 2, except this method is limited to stationery source stacks or ducts less than about 0.30 meter (12 in.) in diameter or 0.071 m^2 (113 $in.^2$) in cross-sectional area, but equal to or greater than about 0.10 meter (4 in.) in diameter or 0.0081 m^2 (12.57 $in.^2$) in cross-sectional area.

1.1.2 The apparatus, procedure, calibration, calculations, and biliography are the same as in Method 2, Sections 2, 3, 4, 5, and 6, except as noted in the following sections.

1.2 Principle. The average gas velocity in a stack or duct is determined from the gas density and from measurement of velocity heads with a standard pitot tube.

2. Apparatus

2.1 Standard Pitot Tube (instead of Type S). Use a standard pitot tube that meets the specifications of Section 2.7 of Method 2. Use a coefficient value of 0.99 unless it is calibrated against another standard pitot tube with an NBS-traceable coefficient.

2.2 Alternative Pitot Tube. A modified hemispherical-nosed pitot tube (see Figure 2C–1), which features a shortened stem and enlarged impact and static pressure holes, may be used. This pitot tube is useful in liquid drop-laden gas streams when a pitot "back purge" is ineffective. Use a coefficient value of 0.99 unless the pitot is calibrated as mentioned in Section 2.1 above.

BILLING CODE 6560-50-M

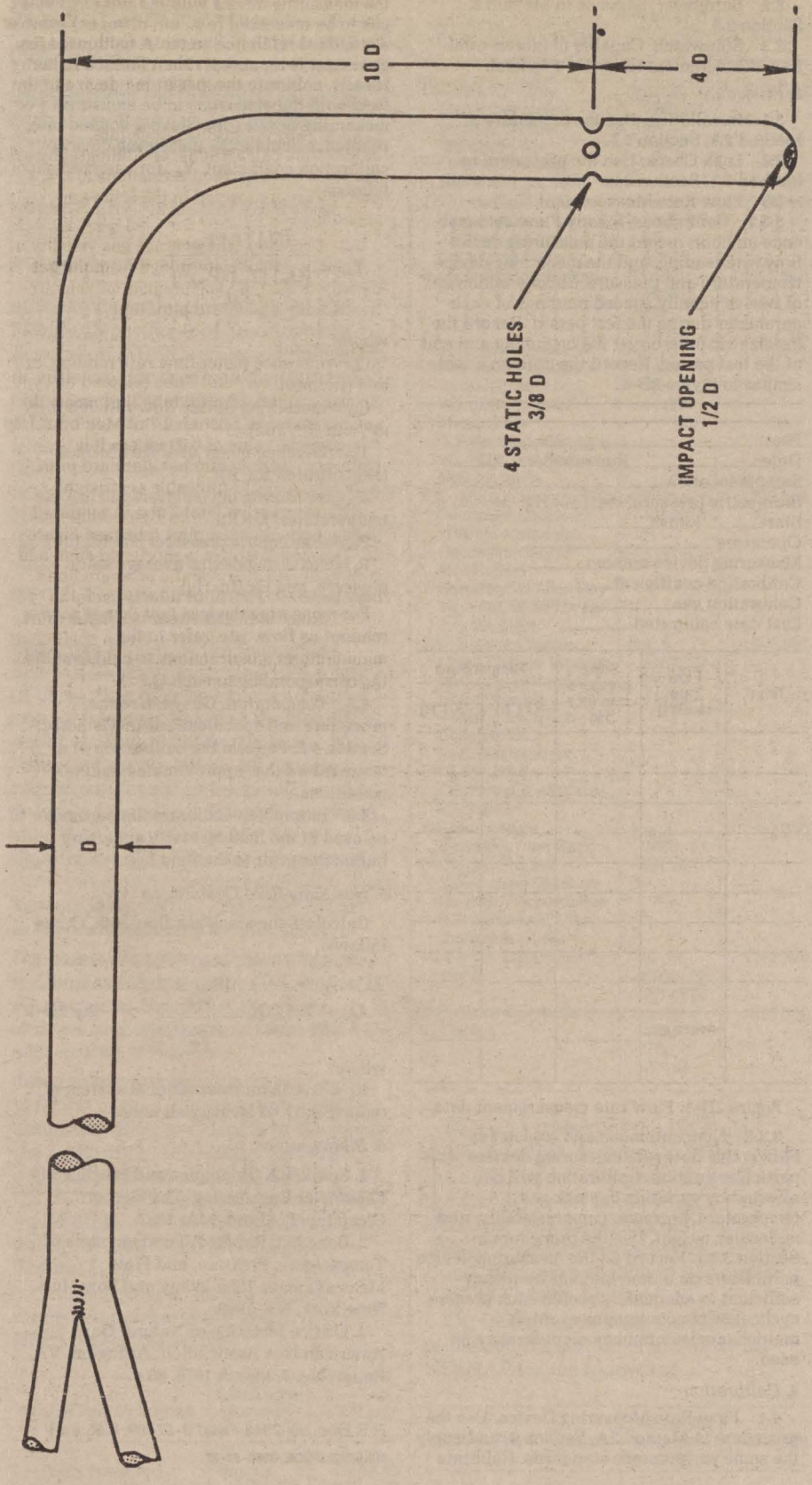

Figure 2C-1. Modified hemispherical-nosed pitot tube.

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3. Procedure

Follow the general procedures in Section 3 of Method 2, except conduct the measurements at the traverse points specified in Method 1A. The static and impact pressure holes of standard pitot tubes are susceptible to plugging in PM-laden gas streams. Therefore, the tester must furnish adequate proof that the openings of the pitot tube have not plugged during the traverse period; this proof can be obained by first recording the velocity head (Δp) reading at the final traverse point, then cleaning out the impact and static holes of the standard pitot tube by "back-purging" with pressurized air, and finally by recording another Δp reading at the final traverse point. If the Δp reading made after the air purge is within 5 percent of the reading during the traverse, then the traverse is acceptable. Otherwise, reject the run. Note that if the Δp at the final traverse point is so low as to make this determination too difficult, then another traverse point may be selected. If "back purging" at regular intervals is part of the procedure, then take comparative Δp readings, as above, for the last two back purges at which suitable high Δp readings are observed.

Method 2D—Measurement of Gas Volumetric Flow Rates in Small Pipes and Ducts

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of gas flow rates in small pipes and ducts, either before or after emission control devices.

1.2 Principle. To measure flow rate or pressure drop, all the stack gas is directed through a rotameter, orifice plate or similar flow rate measuring device. The measuring device has been previously calibrated in a manner that insures its proper calibration for the gas or gas mixture being measured. Absolute temperature and pressure measurements are also made to calculate volumetric flow rates at standard conditions.

2. Apparatus

Specifications for the apparatus are given below. Any other apparatus that has been demonstrated (subject to approval of the Administrator) to be capable of meeting the specifications will be considered acceptable.

2.1 Flow Rate Measuring Device. A rotameter, orifice plate, or other flow rate measuring device capable of measuring all the stack flow rate to within 5 percent of its true value. The measuring device shall be equipped with a temperature gauge accurate to within 2 percent of the minimum absolute stack temperature and a pressure gauge accurate to within 5 mm Hg. The capacity of the measuring device shall be sufficient for the expected maximum and minimum flow rates at the stack gas conditions. The magnitude and variability of stack gas flow rate, molecular weight, temperature, pressure, compressibility, dew point, corrosiveness, and pipe or duct size are all factors to consider in choosing a suitable measuring device.

2.2 Barometer. Same as in Method 2, Section 2.5.

2.3 Stopwatch. Capable of incremental time measurement to within 1 second.

3. Procedure

3.1 Installation. Use the procedure in Method 2A, Section 3.1.

3.2 Leak Check. Use the procedure in Method 2A, Section 3.2.

3.3 Flow Rate Measurement.

3.3.1 Continuous, Steady Flow. At least once an hour, record the measuring device flow rate reading, and the measuring device temperature and pressure. Make a minimum of twelve equally spaced readings of each parameter during the test period. Record the barometric pressure at the beginning and end of the test period. Record the data on a table similar to Figure 2D-1.

Plant_____
Date_____ Run number_____
Sample location_____
Barometric pressure, mm (in.) Hg
Start_____ Finish_____
Operators_____
Measuring device number_____
Calibration coefficient_____
Calibration gas_____
Last date calibrated_____

Time	Flow rate reading	Static pressure mm (in.) Hg	Temperature	
			°C (°F)	°K (°R)
	Average...			

Figure 2D-1. Flow rate measurement data.

3.3.2 Noncontinuous and Nonsteady Flows. Use flow rate measuring devices with particular caution. Calibration will be affected by variation in stack gas temperature, pressure, compressibility, and molecular weight. Use the procedure in Section 3.3.1. Record all the measuring device parameters on a time interval frequency sufficient to adequately profile each process cyclical or noncontinuous event. A multichannel continuous recorder may be used.

4. Calibration

4.1 Flow Rate Measuring Device. Use the procedure in Method 2A, Section 4, and apply the same performance standards. Calibrate the measuring device with the principal stack gas to be measured (e.g., air, nitrogen) against a standard reference meter. A calibrated dry gas meter is an acceptable reference meter. Ideally, calibrate the measuring device in the field with the actual gas to be measured. For measuring devices that have a volume rate readout, calculate the measuring device calibration coefficient, Y_m, for each run as follows:

$$Y_m = \frac{(Q_r)(T_r)P_{bar}}{(Q_m)(T_m)\left(P_{bar} + \frac{}{P_g}\right)} \qquad \text{Eq. 2D-1}$$

where:

Q_r = reference meter flow rate reading, m^3/min (ft^3/min).

Q_m = measuring device flow rate reading, m^3/min (ft^3/min).

T_r = reference meter average absolute temperature, °K (°R).

T_m = measuring device average absolute temperature, °K (°R).

P_{bar} = barometric pressure, mm Hg (in. Hg).

P_g = measuring device average static pressure, mm Hg (in. Hg).

For measuring devices that do not have a readout as flow rate, refer to the manufacturer's instructions to calculate the Q_m corresponding to each Q_r.

4.2 Temperature Gauge. Use the procedure and specifications in Method 2A, Section 4.2. Perform the calibration at a temperature that approximates field test conditions.

4.3 Barometer. Calibrate the barometer to be used in the field test with a mercury barometer prior to the field test.

5. Gas Flow Rate Calculation

Calculate the stack gas flow rate, Q_s, as follows:

$$Q_s = K_1 Y_m Q_m \frac{\left(P_{bar} + \frac{}{P_g}\right)}{T_m} \qquad \text{Eq. 2D-2}$$

where:

K_1 = 0.3858 for international system of units (SI); 17.64 for English units.

6. Bibliography

1. Spink, L.K. Principles and Practice of Flowmeter Engineering. The Foxboro Company. Foxboro, MA. 1967.

2. Benedict, Robert P. Fundamentals of Temperature, Pressure, and Flow Measurements. John Wiley and Sons, Inc. New York, NY. 1969.

3. Orifice Metering of Natural Gas. American Gas Association. Arlington, VA. Report No. 3. March 1978. 88 p.

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[FR Doc. 89-7313 Filed 3-27-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[FRL-3544-6]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On December 6, 1988, the Florida Department of Environmental Regulation (FDER) requested delegation of authority for the implementation and enforcement for various new and/or revised standards in 40 CFR Part 60 (Standards of Performance for New Stationary Sources (NSPS)) and 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP)). On January 20 and March 2, 1989, these standards were delegated to Florida.

DATES: The effective dates of delegation are January 20 and March 2, 1989.

ADDRESS: Copies of the request for delegation of authority and EPA's letters of delegation may be examined during normal business hours at the Agency's regional office, 345 Courtland St., NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (identified below) should be submitted to Mr. Steve Smallwood, P.E., Director, Division of Air Resources Management/FDER, Twin Towers Office Bldg., 2600 Blair Stone Road, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: R. Douglas Neeley of the EPA Region IV Air Programs Branch at the above address and telephone number 404-347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR Part 60, NSPS. The state may enforce an NSPS under State law and in state court, not under section 113(b) of the CAA in Federal Court.

On December 6, 1988, the FDER requested delegation of authority of NSPS for the following:

40 CFR Part 60 Subpart	Latest EPA promulgation	FDER rule
D—Fossil Fuel Fired Steam Generators for Which Construction is Commenced after August 17, 1971.	Nov. 26, 1986, 51 FR 42841	17-2.660
Da—Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.	Nov. 26, 1986, 51 FR 42842	17-2.660
Db—Industrial-Commercial-Institutional Steam Generating Units.	Nov. 26, 1986, 51 FR 42841	17-2.660
J—Petroleum Refineries	Nov. 26, 1986, 51 FR 42842	17-2.660
K—Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and Prior to May 19, 1978.	Apr. 8, 1987, 52 FR 11429	17-2.660
Ka—Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	Apr. 8, 1987, 52 FR 11429	17-2.600
Kb—Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	Apr. 8, 1987, 52 FR 11429	17-2.660
Na—Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	Jan. 2, 1986, 51 FR 161	17-2.660
HH—Lime Manufacturing Plants.	Feb. 17, 1987, 52 FR 4773	17-2.660
TT—Metal Coil Surface Coating.	Jan. 24, 1986, 51 FR 22938	17-2.660

Section 112(d)(1) of the CAA also authorizes EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR Part 61, NESHAP. The state may enforce a NESHAP under State law and in State Court, not under section 113(b) of the CAA in Federal Court.

On December 6, 1988, the FDER requested delegation of authority for NESHAP for the following:

40 CFR Part 61 Subpart	Latest EPA promulgation	FDER rule
E—Mercury	Mar. 19, 1987, 52 FR 8726	17-2.670
F—Vinyl Chloride	Sept. 30, 1986, 41 FR 34908	17-2.670
N—Inorganic Arsenic Emissions from Glass Manufacturing Plants.	Oct. 3, 1986, 51 FR 35355	17-2.670
O—Inorganic Arsenic Emissions from Primary Copper Smelters.	Aug. 4, 1986, 51 FR 28029	17-2.670
P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.	Oct. 3, 1986, 51 FR 35355	17-2.670
V—Equipment Leaks (Fugitive Emission Sources).	Sept. 30, 1986, 51 FR 34915	17-2.670

After thorough review of the request, the Regional Administrator determined that such delegation was appropriate with all the conditions set forth in the initial delegation letter of June 10, 1982.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant impact on a substantial number of small entities.

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

Authority: Sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Date: March 17, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 89-7314 Filed 3-27-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-19

[FPMR Amendment D-88]

Uniform Federal Accessibility Standards

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This document amends the Uniform Federal Accessibility Standards which establish standards for access to publicly owned and leased buildings by physically handicapped people. This document is not a change in policy or interpretation, but a technical amendment concerning signage.

EFFECTIVE DATE: March 28, 1989.

FOR FURTHER INFORMATION CONTACT: Steve McCormick, Office of Real Property Development, Public Buildings Service, General Services Administration, Room 3329, 18th and F Streets NW., Washington, DC 20405, telephone (202) 566–0989. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The General Services Administration published and adopted the Uniform Federal Accessibility Standards on August 7, 1984 (49 FR 31528, 49 FR 31620 and 49 FR 31625). The standards were amended on November 29, 1985 (50 FR 49039 and 50 FR 49045).

The signage section, § 4.30 in the Uniform Federal Accessibility Standards (UFAS) adopted as Appendix A in 24 CFR Part 40 and in 41 CFR 101–19.6, states that all signs required to be accessible by § 4.1 Minimum Requirements shall comply with § 4.30. Section 4.30.4 requires that signs be tactile by either raised or indented characters. It was never the intent of UFAS that all signs be tactile. Neither the ANSI A117.1–1980, on which UFAS was based, nor the new ANSI A117.1–1986, requires that all signs be tactile. It was intended that the UFAS would require all signs to comply with the requirements in § 4.30.2, Character proportion, § 4.30.3, Color contrast, and should also comply with § 4.30.5, Symbols of accessibility, when accessible features are provided.

Section 4.1.1(7) should have included specific scoping provisions for § 4.30, Signage, rather than requiring that all signs comply with § 4.30. This is supported by the way in which § 4.1.2(15) is written, which indicates that the provisions of §§ 4.30.4 and 4.30.6 apply only to certain signs; thus, signs not specifically cited in § 4.1.1(7) or § 4.1.2(15) were not required to be tactile.

Section 4.1.2(15) should have specified scoping provisions for § 4.30, Signage, rather than requiring that all signs comply with § 4.30.

In addition, a conforming change is needed in § 4.30.4 to delete the words "indented" and "incised" where they appear so that § 4.30.4 conforms with the language in §§ 4.10.5 and 4.10.12, which language does not provide for indented or incised letters for elevator hoistway entrance floor designations and car control panels. (The inclusion of the word "indented" in § 4.30.4 was a drafting error in the original UFAS.)

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

List of Subjects in 41 CFR Part 101–19

Federal buildings and facilities, Government property management, Handicapped.

Accordingly, Title 41 CFR Part 101–19 is amended as set forth below:

1. The authority citation for 41 CFR Part 101–19 continues to read as follows:

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

2. In 41 CFR Subpart 101–19.6, Appendix A is amended as follows:

1. Section 4.1.1(7) is revised to read as follows:

4.1.1 Accessible Sites and Exterior Facilities:

* * * * *

(7) All signs shall comply with §§ 4.30.1, 4.30.2, and 4.30.3. Elements and spaces of accessible facilities which shall comply with § 4.30.5 and shall be identified by the International Symbol of Accessibility are:

(a) Parking spaces designated as reserved for physically handicapped persons;

(b) passenger loading zones;

(c) accessible entrances;

(d) accessible toilet and bathing facilities.

2. Section 4.1.2(15) is revised to read as follows: The Exception remains unchanged and is not published here.

4.1.2 Accessible Buildings: New Construction.

* * * * *

(15) If signs are provided, they shall comply with §§ 4.30.1, 4.30.2 and 4.30.3. In addition, permanent signage that identifies rooms and spaces shall also comply with §§ 4.30.4 and 4.30.6.

* * * * *

3. Section 4.30.1 is revised to read as follows:

4.30.1 * General. Signage shall comply with § 4.30 as specified in § 4.1.

* * * * *

4. Section 4.30.4 is revised as follows:

4.30.4 * Raised Characters or Symbols. Letters and numbers on signs shall be raised 1/32 in (0.8 mm) minimum and shall be sans serif characters. Raised characters or symbols shall be at least 5/8 in (16 mm) high, but no higher than 2 in (50 mm). Symbols or pictographs on signs shall be raised 1/32 in (0.8 mm) minimum.

Dated: October 3, 1988.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–7351 Filed 3–27–89; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF TRANSPORTATION

46 CFR Parts 30, 98, 151, and 153

[CGD 81–101]

RIN 2115–AA73

Pollution Rules for Ships Carrying Hazardous Liquids

AGENCY: Coast Guard, DOT.

ACTION: Adoption of interim rule.

SUMMARY: The Coast Guard is making some changes to its regulations that implement Annex II of the 1978 Protocol to the International Convention for the Prevention of Pollution of Ships, 1973 (MARPOL 73/78). An interim rule was published on August 1, 1988 to correct some errors and discrepancies between the regulations and Annex II of MARPOL 73/78. This document adopts without change the interim rule.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas J. Felleisen, Office of Marine Safety, Security, and Environmental Protection, Telephone (202) 267–1217 from 8:30 a.m. to 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: An interim rule with request for comments was published in the **Federal Register** (53 FR 28970), with an effective date of August 31, 1988. The interim rule invited comments for 45 days. The comment period ended on September 15, 1988. Two comments were received from industry organizations which are addressed below.

Drafting Information

The principal persons involved in drafting this document are Mr. Thomas J. Felleisen, Office of Marine Safety, Security, and Environmental Protection, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Discussion of Comments

The Coast Guard received two comments. The first was from an offshore operators association. The second was from a liquid terminal operators association.

1. One comment requested that low toxicity drilling muds and potassium or sodium chloride drilling brines be listed as not being noxious liquid substances (NLS's) in accordance with International

Maritime Organization guidelines. However, the scope of the interim rule did not include making additions to the substances listed in the tables which it amended. This change has been considered and is proposed in a Notice of Proposed Rulemaking (CGD 88–100) published in the December 5, 1988 **Federal Register** (53 FR 49018).

2. The other comment expressed concern about how the Coast Guard intends to list noxious liquid substances covered by Annex II of MARPOL 73/78. It recommended that the Coast Guard continue to list Annex II substances in Table 1 of Part 153, and requested that it not be combined with Table 30.25–1. Table 1 will continue to list Annex II substances subject to 46 CFR Part 153. It will not be combined with Table 30.25–1. As amended, Table 30.25–1 identifies whether cargoes listed are oils and, if subject to Annex II, the pollution category. The changes to Table 30.25–1 are informational and make the regulations easier to use.

Final Regulatory Evaluation

These regulations are not considered to be major under Executive Order 12291 nor significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). Since this document adopts the interim rule without change, and that document did not affect the arguments and conclusions in the Regulatory Evaluation for the final rule published in the March 12, 1987 **Federal Register** (52 CFR 7765), no further Regulatory Evaluation had to be made.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the adoption of the interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 USC 601), a Regulatory Flexibility Analysis which discusses the impact of the rule on small entities was contained in the Final Regulatory Analysis for the final rule. The corrections and changes in the interim rule do not materially affect that Regulatory Flexibility Analysis. The Coast Guard certifies that this adoption of the interim rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This adoption of the interim rule contains no new information collection or recordkeeping requirements.

Environmental Impact

The Coast Guard considered the environmental impact of these amendments for the interim rule and concluded that preparation of an impact statement was not necessary since the corrections and changes did not affect the environmental consequences of the final rule. Because no further changes are made by this adoption, that conclusion did not need to be reevaluated.

RIN Number

A regulatory information number is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous Materials Transportation, Penalties, Reporting and recordkeeping, Seamen.

46 CFR Part 98

Cargo vessels, Hazardous Materials Transportation, Marine Safety.

46 CFR Part 151

Cargo vessels, Hazardous Materials Transportation, Marine Safety, Reporting and recordkeeping requirements.

46 CFR Part 153

Cargo vessels, Hazardous Materials Transportation, Marine Safety, Reporting and recordkeeping requirements.

Affirmation of Interim Final Rule

In consideration of the preceding, the interim rule published in the **Federal Register** at 53 FR 28970–28976 on August 1, 1988 amending 46 CFR Parts 30, 98, 151, and 153 is hereby adopted as final without change.

Date: March 23, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–7367 Filed 3–27–89; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87–6]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission issues a Final Rule in Docket No. 87–6 finding unfavorable conditions to exist in the United States/Peru trade which arise from certain laws and decrees of the Government of Peru. Further, in order to meet or adjust the unfavorable conditions found, the Commission assesses fees for each voyage made by certain Peruvian-flag carriers after the effective date of the Final Rule. However, because of economic and political conditions present in Peru, the Commission has elected to suspend application of the rule's sanctions at this time.

EFFECTIVE DATE: March 28, 1989. Sections 586.2 and 586.3 are suspended March 28, 1989.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of section 19(1)(b), Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876(1)(b), as implemented by 46 CFR Part 585, the Federal Maritime Commission ("Commission" or "FMC") is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

The types of conditions which the Commission has found to be unfavorable to shipping in the foreign trade of the United States are set forth at 46 CFR 585.3. Among these are conditions which: (1) Preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; (2) reserve substantial cargoes to the national-flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in

the foreign trade of the United States; and (3) are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors, 46 CFR 585.3 (a), (b) and (d).

Background

In March 1986, the Commission received communications from shippers and shipper organizations expressing concern over the impact of Supreme Decree No. 009–86–TCl [1] (Decree 009–86), which became effective on February 28, 1986, and which reserved 100 percent of all imported and exported ocean freight generated by Peru's foreign trade for Peruvian-flag carriers. The FMC began its inquiry into this matter by publishing a Notice in the **Federal Register** on April 22, 1986 (51 FR 15069) ("April 1986 Notice"), wherein the Commission requested interested persons to submit views, arguments or data relating to the impact of the Government of Peru's ("GOP") enactment, implementation and enforcement of Decree 009–86 on the United States/Peru oceanborne trade ("Trade"), to determine whether action pursuant to section 19 was warranted.

The amount of cargo reserved by Decree 009–86 for Peruvian-flag carriers could be reduced as follows: (1) On the basis of strict reciprocity; [2] (2) pursuant to government or commercial agreement [3] among non-Peruvian and Peruvian/flag carriers, preferably including Compania Peruana de Vapores ("CPV"), the Peruvian state shipping line; or (3) when the Peruvian Director General of Maritime Transportation or Peruvian Consuls grant non-Peruvian-flag or non-associate carriers authorization to carry Peruvian export or import cargoes. Authorization for the use of non-Peruvian-flag or non-associate carriers may be granted in the form of a waiver or cargo manifest certification when Peruvian-flag or associate carriers are not available and in position within 12 days [4] following the proposed date of shipment of non-perishable products, or within 4 days in the case of perishable products, or when no Peruvian-flag carrier serves the relevant port.

Prior to the closing date for comments to the April 1986 Notice, the Commission received through the Department of State, a diplomatic note from the GOP requesting a six-month extension of the period allowed for submitting comments, along with guarantees from the GOP that there would be no interruption of services or disruption in the Trade and the procedures for better services would be expedited. Before acting on the GOP's request for a six-month extension the Commission sought clarification from the GOP regarding the status of U.S. and third-flag operations in the Trade, and the effect on those carriers of the guarantees referred to by the GOP. In August 1986, the Department of State transmitted a communique from the GOP in which it provided certain assurances regarding implementation of Decree 009–86 and clarified points made in its diplomatic note.

In its communique, the GOP assured that its regulations would allow third-flag carriers to operate in the Trade in accordance with established rules, and that over the six-month period it would not levy any fines on third-flag carriers operating in the Trade for noncompliance with Decree 009–86. Further, the GOP informed the Commission that the Government of Chile had on August 7, 1986, implemented Resolution No. 2 which excluded Peruvian-flag carriers from operating in certain Chile/third-country trades including the Chile/United States trade.[5]

On August 27, 1986, the Commission issued a Notice in the **Federal Register** (51 FR 30543) ("August 1986 Notice"), stating the following:

> By removing the threat of penalties for noncompliance with the waiver and cargo manifest certification requirements, the communique from the Government of Peru is taken by the Commission to mean, in effect, that shippers will be allowed to select the carrier of their choice and all carriers, including U.S. and third-flag, will have free and open access to the U.S./Peru trade. Based on this understanding, the Commission is hereby serving notice that it will defer any action pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, with respect to the implementation of the February Decree, for a period of six months from the date of publication of this Notice in the Federal Register provided the assurances given in the Peruvian communique transmitted to the Commission on August 19, 1986, are observed.

Further, the Commission's August 1986 Notice advised that it did not see a need for extending the comment period, as requested by the GOP, but noted that it would expect interested parties to advise the Commission promptly if they believe that conditions in the Trade warrant further Commission action.

Subsequent to the issuance of the August 1986 Notice, as well as after the six-month period had expired in February 1987, the Commission received communications from the Department of State, GOP, shippers, shipper organizations, freight forwarders and carriers. A number of the comments indicated that the GOP waiver system under Decree 009–86 did not allow shippers to select their preferred carriers and that the six-month deferral period failed to reopen the Trade to all non-Peruvian-flag carriers.

On the basis of all the information received the Commission published a Notice of Proposed Rulemaking in the **Federal Register** on April 13, 1987 ("Proposed Rule") (52 FR 11832), to address apparent conditions unfavorable to shipping in the Trade pursuant to Section 19. The Proposed Rule, which initiated this docketed proceeding, recognized the appearance of unfavorable conditions in the Trade, and proposed the suspension of tariffs of Peruvian-flag carriers unless such carriers within 25 days of the issuance of a final rule obtained authorized status by filing with the Commission a certificate from the GOP stating unequivocally that no law, regulation or practice precludes any non-Peruvian-flag vessel from competing in the Trade on the same basis as any other vessel. Comments on the Proposed Rule were requested.

Subsequent to issuance of the Proposed Rule, regulations ("Regulations") [6] were issued by the GOP pursuant to a Memorandum of Understanding ("MOU") signed by the United States Government ("USG") and the GOP on May 1, 1987. These Regulations set forth new requirements and procedures that shipping lines operating third-flag vessels must observe in order to obtain authorizations from the GOP Ministry of Transportation and Communications to participate in the Trade. The GOP advised through the Department of State, that the "authorization" system

[1] Decree 009–86 amended Supreme Decree No. 036–82–TC ("Decree 036–82"), effective September 1982. Decree 036–82 reserves Peruvian import and export cargoes for Peruvian-flag vessels and sets out waiver and cargo manifest certification requirements for non-Peruvian-flag carriers. The exact percentage of cargo reserved for Peruvian-flag carriers is not specified in Decree 036–82. Another decree states that 50 percent of Peruvian import and export cargo is reserved for Peruvian-flag carriers.

[2] E.g., U.S. carriers' access to Peruvian cargoes would be proportional to Peruvian carriers' access to U.S. cargoes.

[3] Non-Peruvian-flag carriers which become parties to such commercial agreements may be granted associate status upon approval by the GOP. Associate carriers are generally excepted from cargo manifest certification and waiver requirements under Decree Nos. 009–86 and 036–82.

[4] Supreme Decree No. 033–86–TC of June 11, 1986, modified Decree 009–86 by reducing the number of days a shipment must wait for a Peruvian-flag or associate carrier from 15 days to 12 days.

[5] On September 26, 1986, it was reported by the Department of State that the Government of Chile had implemented Resolution No. 2 because of the GOP's decision to apply Decree 009–86 to Chilean carriers. The Department further explained that on September 15, 1986, the GOP issued Ministerial Resolution No. 044–86–TC/AC ("Resolution 044–86"), which excluded Chilean-flag vessels from transporting cargo in certain Peru/third-country trades because of the Government of Chile's refusal to lift Resolution No. 2.

[6] These Regulations were contained in Ministerial Resolution No. 027–87–TC/AC ("Resolution").

under the Regulations totally replaced the existing "waiver" system for granting third-flag carriers access to the Trade.

Based on all the information received the Commission issued a Final Rule on December 7, 1987 ("December 1987 Final Rule") (52 FR 46356). In issuing its Final Rule the Commission explained that while it recognized the good faith efforts made by the USG and GOP to address the situation in the Trade through diplomatic means, the resultant Regulations which implement the MOU did not satisfactorily resolve that situation. The Commission stated that, in fact, the Regulations, in effect, would continue in place the very types of restrictions and impediments which prompted this proceeding in the first instance. Although third-flag carriers were no longer required to obtain "waivers" for individual shipments, they were to obtain "authorizations" to participate in the Trade. The Commission found this authorization process as inconsistent with free access to the Trade as was the waiver system it replaced. In this regard, the Commission also added that it was unknown whether Chilean-flag carriers would be granted authorizations and allowed to operate in the Trade, particularly in light of the existence of Peruvian Resolution 044–86 which excluded Chilean-flag carriers from certain Peru/third-country trades.

Finally, the Commission advised that it could not accept as a satisfactory resolution of this matter an accommodation which would permit the GOP to deny authorization to a third-flag operator in the Trade if the country of nationality of that operator bars participation to Peruvian flag carriers in any of its third-country trades. The Commission explained that to accept the proposition that the GOP can settle disputes with foreign nations by imposing burdens on U.S. commerce, in effect would allow the GOP to hold the U.S.-Peru trade hostage to obtaining concessions elsewhere.

Thus, the December 1987 Final Rule suspended the tariffs of the Peruvian-flag carriers operating in the Trade, with the exception of Naviera Amazonica Peruana, S.A. ("NAPSA"),[7] unless such carriers obtain authorized status from the Commission.[8] The suspension of these tariffs was to become effective March 7, 1988.

On February 4, 1988, the "Peruvian carriers", *i.e.*, CPV, Naviera Neptuno, S.A. ("Neptuno") and Empresa Naviera Santa ("Santa"), filed a Petition for Reconsideration ("Petition") requesting that the FMC reconsider its December 1987 Final Rule or stay its effective date on grounds that it was basically directed at Decree 009–86 of February 28, 1986, which had been rescinded by GOP Supreme Decree No. 004–88–TC ("Decree 004–88") of January 22, 1988.[9] They submitted that the Regulations which implemented the MOU also had been rescinded.[10] Further, the Peruvian carriers advised that while Decree 009–86 reserved 100 percent of all Peruvian import and export cargoes, Decree 004–88 reestablishes legislation in existence between 1970 and 1986 which reserves 50 percent of Peruvian cargoes to Peruvian-flag or associate carriers.[11]

Subsequently, the Commission issued its Notice of Reconsideration of Final Rule on March 8, 1988 (53 FR 7361) ("March 1988 Notice"). In that Notice the Commission discussed the GOP initiatives, noting that some action was necessary to recognize the changed status of the issues brought about by the GOP's action and, as a technical legal matter, because the rescission of Decree 009–86 and Resolution 044–86 appeared to have undermined the basis cited in the December 1987 Final Rule for the Commission's findings of conditions unfavorable to shipping in the Trade. The Commission withdrew the December 1987 Final Rule for reconsideration and again invited interested parties to comment. However, the Commission also pointed out that rescission alone may not resolve the unfavorable conditions which the December 1987 Final Rule addressed, and the Commission stated that, if the system remains discriminatory in the absence of Decree 009–86, it would be prepared to act to reinstate the December 1987 Final Rule on the basis of new findings that conditions unfavorable to shipping continue to exist.

Subsequent to the issuance of the Commission's March 1988 Notice, three agreements were filed with the Commission between Peruvian- and Chilean-flag carriers.[12] Pursuant to these agreements, the Chilean-flag carriers were granted associate status by the GOP and thereby given access to the Trade.

Based on comments received in response to its March 1988 Notice, the Commission announced on June 7, 1988 (53 FR 20847), that this proceeding would be held in abeyance and invited further comments and information from interested parties by August 31, 1988. The Commission, noting that all but one party had suggested that the Commission either terminate the proceeding or hold it in abeyance, elected then to give the parties time to assess the impact of certain actions taken by the GOP and the then recently-filed agreements entered into by Chilean- and Peruvian-flag carriers.

On October 6, 1988, the Commission issued a Notice of Further Proceedings (53 FR 39317) and invited interested parties to file replies to comments received on August 31, 1988, from Nedlloyd Lines ("Nedlloyd") alleging the continued existence of conditions unfavorable to shipping in the Trade affecting shippers as well as carriers. In particular, the Commission invited comments in reply to Nedlloyd's contentions that the Trade continues to be burdened by requirements that are discriminatory, result in uneconomic commercial circumvention, or adversely affect shippers' choice of carriers, as well as comments on the alternative remedial rule proposed by Nedlloyd.[13]

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[7] Under the Final Rule, NAPSA's tariff, FMC No. 3, covering the U.S./Iquitos, Peru trade, would not be suspended because the Commission found this subtrade distinguishable from the Trade generally, and, therefore, entitled to different treatment. The Final Rule noted that the Commission did not receive any complaints regarding this subtrade Further, it stated that there is no alternative to NAPSA s service in this subtrade. (*See* Docket No. 87–6, 52 FR 46362, December 7, 1987).

[8] The Final Rule states that authorized status shall be conferred upon a Peruvian-flag carrier upon that carrier's submitting to the Commission a certificate from the GOP stating unequivocally that no law, regulation or policy of the GOP will:

(i) Preclude any non-Peruvian-flag carrier from competing in the Trade on the same basis as any other carrier;

(ii) Result in less than meaningful and competitive access by any non-Peruvian-flag carrier, to cargo designated as reserved under Supreme Decree No. 009–86–TC; and

(iii) Impose any administrative burden, including but not limited to, the necessity to secure an authorization based on the national status of the carrier, or otherwise discriminate against any non-Peruvian-flag carrier in the Trade.

[9] Decree 004–88 was published in the Peruvian Official Gazette, "El Peruano," on January 25, 1988.

[10] In addition, Resolution No. 044–86 which excluded Chilean-flag carriers from certain Peru/third-country trades had been rescinded.

[11] The pre-1986 legal regime is based primarily on Decree 036–82.

[12] These agreements are: Agreement No. 212–011180 between Neptuno and CSAV, filed March 16, 1988, effective April 30, 1988; Agreement No. 212–011186, as amended by Agreement No. 212–011186.001, between Santa and Empresa Maritima de Estado, filed March 29, 1988, effective May 13, 1988; and Agreement No. 212–011189 between CPV and Compania Chilena de Navegacion Interoceanica, S.A., filed April 12, 1988, effective May 27, 1988.

[13] Nedlloyd's alternative proposed rule included sanctions which would require Peruvian-flag carriers to obtain waivers from the FMC for the carriage of cargo in the Trade, and to file periodic reports with the Commission.

Comments have now been received from the Executive Agencies; [14] Nedlloyd; Shippers for Competitive Ocean Transportation ("SCOT"); CPV, Neptuno, and Santa—jointly ("Peruvian carriers"); Compania Sud Americana de Vapores ("CSAV"); Lykes Bros. Steamship Co. ("Lykes"); American Chamber of Commerce of Peru ("Chamber"); and Georgetown Steel Corporation ("GSC"). These comments are summarized below.

Summary of Comments

A. Executive Agencies

The Executive Agencies state that although GOP maritime policies differ sharply from those of the United States, significant progress has been made in removing barriers to participation in the Trade by third-flag non-associate carriers. They, therefore, recommend that the Commission not impose sanctions on Peruvian-flag carriers.

The recommendation made by the Executive Agencies is based on responses from the GOP to questions posed by the Executive Agencies regarding access of foreign-flag non-associate carriers to the Trade. The Executive Agencies report that the following information was obtained from the GOP:

(1) The GOP waiver requirement for use of a foreign-flag non-associate carrier only applies to the 50 percent of the cargo that is reserved;

(2) Non-associate third-flag vessels may transport cargoes of exporters/importers which have already shipped 50 percent of their cargoes on Peruvian or associate-flag carriers, with the stipulation that these cases be accredited by the Transportation Ministry's Office of Water Transport ("Ministry");

(3) According to Ministerial Resolution No. 054–82–TC/AC ("Resolution 054–82"), a shipper must report quarterly to the Ministry on its maritime transport of cargoes;

(4) Once an exporter/importer has shipped 50 percent of its projected quarterly cargo on Peruvian or associate-flag vessels, it may submit sworn information to this effect to the Ministry and is then accredited by the Ministry to use any carrier it wishes with no further authorization;

(5) The Ministry issues an accreditation by telex saying that the exporter/importer is free to ship on any carrier it desires for the remainder of that calendar quarter with no further authorization from the Ministry;

(6) Information regarding the waiver process has been disseminated to users; and

(7) No rate quotations from potential providers of maritime services are necessary for obtaining waivers.

B. Nedlloyd

Nedlloyd contends that unfavorable conditions to shipping continue to exist in the Trade. It reports that its extensive efforts to resolve the question of its access to the Trade have been inconclusive. Nedlloyd believes that only the threat of sanctions by the FMC will have any impact on reducing impediments to access in the Trade.

Nedlloyd alleges that with the exception of foreign-flag carriers with associate status, non-Peruvian-flag carriers cannot carry any Peruvian cargo absent some action by the GOP. The GOP actions mentioned by Nedlloyd include GOP authorizations, waivers, certifications or accreditations. Nedlloyd asserts that given these requirements, it is "rank sophistry" to argue that there is no reason for concern because only 50 percent of the cargo in the Trade is reserved. Further, there is allegedly no direct mechanism for a *carrier* to gain access to the "free" 50 percent of the cargoes; *shippers* can gain access only by obtaining a GOP accreditation.

Nedlloyd contends that the only factual inquiry concerns the mechanics of how a shipper is granted permission by the GOP to employ non-Peruvian-flag carriers. Nedlloyd maintains that no matter how "onerous or perfunctory" the mechanics may be, it has not found a shipper that is willing to confront these mechanics. The GOP is said to control access to 100 percent of the Trade and that as a result, Nedlloyd is totally excluded from the Trade. Further, Nedlloyd believes that the current GOP reservation system is more onerous than the regulations drafted pursuant to the U.S./GOP Memorandum of Understanding that the Commission previously rejected.

Nedlloyd describes its operational experience in the Trade since August 31, 1988. It reports that it has not obtained any cargo in the Trade. This situation is contrasted with that of a previous new entrant, Santa, a Peruvian-flag carrier, which shortly after entering the Trade allegedly acquired a 25 percent market share. Nedlloyd explains that its lack of cargo is due to the laws which favor use of Peruvian-flag carriers.

While allegedly difficult to document, Nedlloyd finds credible reports of potential customers indicating that the GOP waiver and authorization requirements make it impossible for them to do business with Nedlloyd in the Trade. Further, Nedlloyd states that there are indications that the Peruvian cargo reservation laws are having an adverse impact on its ability to carry cargo in the United States/Chile trade.[15]

Nedlloyd reports that in October 1988, during its third mission to Peru, representatives met with affected Peruvian carriers to discuss barriers to entry.[16] Nedlloyd recounts that during that meeting it expressed willingness to enter into an agreement with the Peruvian carriers in order to obtain associate status as long as such agreement does not require it to set rates collectively and share revenues. It reports that the reaction of the Peruvian carriers was that Nedlloyd and other third-flag carriers would present a considerable competitive threat to them and that third-flag carrier access either should not be granted under any circumstances, or that Nedlloyd should be permitted access only if it compensated or contributed to the Peruvian carriers for the economic harm that its participation might cause. The Commission is further advised that after Nedlloyd discussed the adverse impact of the GOP waiver system, the Peruvian carriers stated that the waiver system was the method by which third-flag carrier access can be limited and that the waiver system should not be reviewed by the GOP unless Nedlloyd withdraws from the FMC proceeding. Nedlloyd expressed concern that should it withdraw from the proceeding, parties may no longer have incentive to negotiate. Nedlloyd concludes that the meeting did not resolve its access problem and notes that it has not received any further communication from the GOP or Peruvian carriers.

Based on its allegations regarding conditions in the Trade, Nedlloyd comments on the appropriateness of the Final Rule with modifications. Nedlloyd asserts that given the extensive comment period that the Commission has provided, it sees no procedural bar to immediate implementation of the Final Rule or related modifications based on subsequent events. It would not, however, disfavor reasonable modifications of sanctions to achieve more precise symmetry of conditions in the Trade than might be achieved under

[14] The U.S. Department of Transportation submitted comments on behalf of the Executive Agencies.

[15] This assertion is elaborated on in the affidavit attached to Nedlloyd's comments.

[16] Nedlloyd attaches to its comments a summary of the views expressed at this meeting. The attached affidavit also recounts the content of the meeting.¶

its August 31, 1988 proposed modifications. Further, Nedlloyd states that it would not object to SCOT's proposal that sanctions once promulgated, be delayed in order to permit the GOP or Peruvian carriers to remcve restrictions in the Trade.

Nedlloyd also addresses the November 9, 1988 comments filed by the Executive Agencies. It believes that the optimistic view of the Executive Agencies that sanctions are unnecessary due to the fact that significant progress has been made in liberalizing the Trade, destroys any hope for GOP actions to remove restrictions or for Nedlloyd to reach a commercial settlement. Nedlloyd asserts that the answers provided by the GOP to the Executive Agencies do not reasonably lead to the conclusion drawn by the Executive Agencies. Allegedly, the "off-book" nature of the GOP requirements creates the "chilling effect" previously found to exist by the Commission. Nedlloyd maintains that in contrast with the Executive Agencies' conclusion and recommendation, shippers are intimidated by the waiver system and 100 percent of all U.S. maritime cargo in the Trade requires some GOP action before there can be free carrier selection.

C. SCOT

SCOT takes the position that conditions in the Trade will remain unfavorab1e as long as the GOP requires a waiver/visa for every U.S. shipment on a non-associate third-flag vessel. The rescission of Decree 009–86 allegedly did not resolve the basic issues. SCOT states that there is evidence that the waiver/visa system is being imposed on shipments from all United States coasts to Peru. It asserts that implementation of this system has more than a "chilling" effect on the use of non-associate third-flag vessels. SCOT maintains that in the complex scheduling environment within which shippers must operate, it is very difficult for a shipper to gamble on a carrier which may be denied the right to lift cargo at any moment. The ultimate effect of imposition of the waiver/visa system is said to deny third-flag carrier access to all cargo in the Trade except for an occasional spot movement. Further, SCOT maintains that it is not practical for a shipper and a non-associate carrier to enter into a service contract since the carrier may be denied the right to carry cargo in the Trade by the GOP. It, therefore, concludes that conditions are unfavorable to U.S. shipper interests represented by SCOT.

SCOT explains that in its August 31, 1988 comments to the Commission, it intended to convey that, to its knowledge, the commerce of the United States is not immediately suffering, and if good faith negotiations between the United States and GOP show promise of a real resolution of the problems, a short delay in Commission action could be tolerated by U.S. shippers. SCOT notes, however, that third-flag carriers may not be able to tolerate such a delay.

SCOT believes that Nedlloyd has presented convincing evidence that it is being denied access to the Trade unless it enters into an agreement with Peruvian-flag carriers which would enable it to obtain associate status under terms dictated by the GOP. Commenting on Nedlloyd's proposed, modified final rule, SCOT states that it does not support the approach suggested by Nedlloyd because of the absence of details on how the rule would be implemented, the Commission's ability to implement it, and the apparent increase in the role of government to enforce such a rule.

SCOT states that it sees no evidence that conditions unfavorable to shipping in the Trade have been removed and supports action necessary to remove such conditions. SCOT submits that it does not object to imposition of an FMC final rule if such action appears essential. It suggests that another approach between immediate implementation of a final rule and an indefinite delay would be for the Commission to issue a final rule which describes sanctions which will be imposed at a specified time unless the unfavorable conditions to shipping are removed.

D. Peruvian Carriers

The Peruvian carriers take the position that there is no evidence of unfavorable conditions in the Trade. They contend that the GOP's cargo reservation system is "a justified and reasonable accommodation of the interests of shippers and carriers in the Trade and the national interest of Peru in maintaining its merchant fleet."

In justifying the GOP's reservation policies, the Peruvian carriers argue that small trades such as Peru's require control and rationalization of service to ensure the survival of small carriers and maintain stable, competitive service. They maintain that the GOP exercises a reasonable amount of control in the Trade. They contend, however, that even with such control, there is excess capacity in the Trade and the level of trade is declining.

Further, the Peruvian carriers contend that the GOP's 50 percent cargo reservation is less restrictive than the United Nations Code of Conduct for Liner Conferences' ("Code") 40–40–20 cargo sharing formula. They maintain that, while the U.S. has not accepted the Code, GOP laws are in accordance with generally accepted international practice. The Commission's Section 19 rules at 46 CFR 585.3(d), are said to recognize that discriminatory treatment of carriers is justified under generally accepted international agreements or practices. Comparisons are also drawn between GOP and U.S. cargo reservation laws.

The Peruvian carriers insist that the purpose of the Merchant Marine Act, 1920 "is to promote U.S. shipping interests, primarily the U.S. merchant fleet" and submit that Section 19 authorizes the Commission to take remedial action only when foreign laws or practices adversely affect U.S. shipping interests.

The Peruvian carriers provide a summary of the GOP's cargo reservation laws. They argue that Decree 036–82 does not "effectively" reserve 100 percent of import and export cargoes for Peruvian-flag vessels, as Nedlloyd contends, but rather reserves only 50 percent of the cargo leaving the remaining 50 percent free to be carried on any vessel. The Peruvian carriers state that Decree 036–82 in conjunction with Resolution 054–82 establish a system by which non-Peruvian or non-associate third-flag vessels could be used to carry reserved cargo. They explain that Resolution 05482 makes it clear that waivers or visas are required for shipments of reserved cargoes on non-associate-flag vessels and are not required for shipments of unreserved cargoes. The Peruvian carriers describe the system by which a shipper, once having shipped 50 percent of its cargo during a quarter of a year on Peruvian or associate-flag vessels, may use non-associate-flag vessels.[17]

The Peruvian carriers state that Nedlloyd's assertions are based on a misunderstanding of the GOP laws and are unsupported by the facts. The fact that Nedlloyd did not obtain Peruvian cargo on its first two voyages allegedly does not lead to the conclusion that the GOP laws are the reason. The Peruvian carriers argue that Nedlloyd's failure to obtain cargo was a result of start-up problems, "ineffective marketing or the chilling effect of its own marketing."[18]

[17] The system described by the Peruvian carriers tracks the description set forth in the Executive Agencies' comments.

[18] The Peruvian carriers advise that Nedlloyd's advertisements state that its service in the Trade is subject to GOP cargo reservation laws. Nedlloyd's failure to explain these restrictions in its advertisements allegedly could deter shippers from using Nedlloyd's services.

They believe that if Nedlloyd's marketing efforts included informing shippers of the procedure for employing it for the transportation of unreserved cargo, Nedlloyd could be more successful in obtaining cargo in the Trade.

The Peruvian carriers contend that conditions in the Trade are favorable and that Nedlloyd does not present any evidence to the contrary. Shippers in the Trade are said to have a wide range of service options at competitive rates and, therefore, there is allegedly no basis for the Commission to find that shippers' choices are unreasonably restricted merely because those choices do not include Nedlloyd or other third-flag carriers in every instance.[19] The Peruvian carriers submit that the complaints that originally formed the basis for these proceedings have been satisfied and, as a result, conclude that issuance of a rule imposing restrictions against Peruvian-flag carriers would be arbitrary and capricious and might result in severe disruption in the Trade.

The Peruvian carriers believe that Nedlloyd's alternate rule is not a mirror image of the GOP's cargo reservation laws and would create unfavorable conditions where none previously existed. They submit that the GOP cargo reservation laws limit access of third-flag carriers and not U.S.-flag carriers to the Trade. Further, they note that Nedlloyd's rule would shut Peruvian-flag carriers out of the total Trade unless a waiver is granted. This, it is argued, contrasts with the GOP action which restricts only 50 percent of the Trade.

E. CSAV

CSAV, a Chilean-flag carrier, asserts that Nedlloyd's suggested rule would be harmful to the shipping public and to third-flag carriers now serving the Trade. It explains that the suggested rule would harm third-flag carriers that are only able to serve the Trade through commercial agreements that they have entered into with Peruvian-flag carriers. In particular, CSAV points to that portion of the suggested rule which would prohibit cargo carriage by or impose penalties on other third-flag carriers for operating under their agreements with Peruvian-flag carriers.

[19] The Peruvian carriers state that it is their understanding that Great Lakes Transcaribbean Lines ("GLTL"), a third-flag carrier in the Trade, has been granted associated status by the GOP. GLTL, generally a commenter in these proceedings, did not submit comments to the Commission's Notice of Further Proceedings.

CSAV contends that the effective result of this provision would be to require CSAV either "(1) to cease serving the Trade because it could not lawfully load cargo under its agreement with Neptuno; (2) to violate its agreement to Neptuno by declining to carry cargo for Neptuno; or (3) to violate the Commission Rule if it complies with its agreement with Neptuno." CSAV, therefore, concludes that Nedlloyd is requesting the FMC to impose the burden and cost of its entry into the Trade on innocent third-flag carriers.

CSAV asserts that it would be particularly unjust for it to be prevented from operating under commercial agreements filed at the behest of the Executive Agencies. It, therefore, requests that the Commission not issue any rule that would force CSAV to suspend its operation under the Neptuno-CSAV Agreement.

F. Lykes

Lykes advises that conditions in the Trade have not adversely affected its services. It contends that service available in the Trade clearly provides substantial, if not excessive, shipping opportunities. Lykes states that based on its experience, it is not aware of any conditions unfavorable to shipping in the Trade.

With regard to Nedlloyd's suggested alternative rule, Lykes states that it does not believe that the rule would adversely affect its operations in the Trade. However, Lykes fears that any sanctions imposed by the Commission would result in retaliatory actions by the GOP which would be detrimental to both U.S.-flag carriers and the Trade in general. It maintains that Commission action which detrimentally affects U.S.-flag carriers would appear inconsistent with the intent and purpose of Section 19 and the Merchant Marine Act, 1920.

Lykes believes that the instant proceeding should be dismissed given the fact that the situation in the Trade has changed and those parties previously complaining are no longer doing so. It suggests that, if Nedlloyd desires, a new proceeding based on the issues raised by Nedlloyd could be instituted.

G. Chamber

The Chamber states that despite Nedlloyd's comments, its members continue to indicate that available services are satisfactory and that the GOP continues to apply its waiver system in as flexible a manner as possible in the Trade. It notes that Nedlloyd's August 31, 1988 comments do not state whether Nedlloyd had been able to obtain a waiver from the GOP for any particular shipment. The Chamber states that, based on its understanding, the GOP had not received waiver applications from shippers or users on behalf of Nedlloyd.

The Chamber concludes that it sees no justification for Commission action based on a situation that is satisfactory to its members and the progress already made as a result of the FMC proceeding. It, therefore, recommends that the proceeding be terminated.

H. GSC

GSC transmitted a letter to the Commission Chairman along with a copy of a letter to the Honorable Robin Tallon of the U.S. House of Representatives. GSC states that the GOP has told it that it can use foreign-flag vessels in 1989 with no problems. GSC further reports that the GOP has granted waivers to it whenever necessary. As an example, GSC notes that it used an Ecuadorian-flag vessel in 1988 to ship cargo from Peru to the U.S.

GSC concludes that it sees no justification for imposing restrictions against Peruvian-flag carriers and that any differences of opinions should be worked out between the parties concerned.

Discussion

Nedlloyd's contentions that the Trade continues to be burdened by requirements that are discriminatory, result in uneconomic commercial circumvention, and adversely affect shippers' choice of carriers, as well as its suggested alternative remedial rule, brought comments in reply from many of the parties who have previously participated in this proceeding. While most of these comments were simply consistent with the views earlier expressed in this proceeding by those same parties, a few shed additional light on the present conditions.

The Peruvian carriers once again argue that no evidence of conditions unfavorable to shipping has been presented, and that the GOP cargo reservation system is necessary and rational for the protection of GOP interests in the Trade. Lykes too argues that its service has not been adversely affected, and that no conditions unfavorable to shipping have been shown to exist in the Trade. Other parties similarly urging the Commission to conclude the proceeding without further action, stating that their interests in the Trade are being adequately

served, include the Chamber and GSC. The only Chilean-flag carrier to file comments in this round, CSAV, does not describe conditions in the Trade or their effects on its present service, but directs its concern to the sanctions proposed by Nedlloyd, urging the Commission not to take action against Peruvian-flag carriers which would affect its own status and service.

The Executive Agencies, based on information provided by the GOP regarding carrier access to the Trade, indicate that the present system appears to include significant progress in removing barriers to third-flag participation. While the rescission of Decree 009–86 and the re-entry of the Chilean-flag carriers as associate carriers in the Trade give the appearance at least of such progress, the continued reservation of a substantial proportion of both U.S. and Peruvian-origin cargo, and the implementation of the cargo reservation system belie that progress.

The means by which carriers and shippers may determine when and if they may deal together, as described by the GOP to the Executive Agencies, leave us greatly troubled. Thus, for at least some substantial part of each calendar quarter, a third-flag, non-associate carrier wishing to participate in the Trade must rely upon cargo from shippers willing and able to obtain waivers from the GOP for specific shipments, until shippers desiring to use its service have shipped half their cargo for the quarter on Peruvian-flag or associate carriers *and* have submitted documentation and obtained GOP accreditation of that fact. Only then can such a carrier and willing shipper freely do business together. These flag-based procedures do not appear to us to differ greatly in kind or burdensomeness from the original waiver system, or the short-lived authorization system, which formed the basis for the concerns we have expressed repeatedly in this proceeding.

The latest comments of affected shippers and carriers indicate not only that the direct effects of the GOP decrees are still being felt, but that the more subtle, indirect effects—the "chilling effect" described by Nedlloyd and SCOT—are taking their toll. Thus, as SCOT points out, the requirement that a shipper fulfill its obligation to ship half its cargo for each calendar quarter on Peruvian-flag or associate carriers prior to being able to obtain from the GOP documentary confirmation that it is free to use any carrier for its remaining cargo for the calendar quarter, effectively precludes shippers from seeking service contracts with non-associate carriers. The fact that service contracts are viable only with Peruvian-flag and associate carriers reinforces the reluctance of shippers to undertake the additional risks and procedures that accompany third-flag, non-associate service. These flag-based burdens make for uneconomic decision-making on the part of shippers which distorts the Trade.

We therefore conclude that the conditions unfavorable to shipping which the Commission found in the December 1987 Final Rule continue to exist. Although the specific GOP enactments which brought into being the unfavorable conditions the Commission sought to deal with in the December 1987 Final Rule have been repealed, they have been replaced by, or have reinstated by default, a cargo reservation system which continues to have an onerous and detrimental impact on shipping in the Trade. The fundamental basis for the December 1987 Final Rule and the final rule herein-issued is the same: the injurious effects on carriers, shippers and the Trade generally which result from laws, decrees and regulations of the GOP that impose burdens on non-Peruvian-flag carriers which are not experienced by Peruvian-flag carriers. These burdens are among the conditions described as unfavorable to shipping in the Commission's Section 19 rules at 46 CFR 585.3. We are convinced that Trade access by non-Peruvian-flag carriers and the concomitant ability of shippers to freely exercise their best commercial judgment in choosing a carrier in the Trade have not materially improved, despite the numerous changes in the amount of cargo putatively affected and the form of the burdens imposed, *e.g.*, waivers, authorizations, certifications.

The Commission's March 1987 Proposed Rule and its December 1987 Final Rule would have suspended the tariffs of the Peruvian-flag carriers. Almost all of the parties who subsequently commented in this proceeding, including Nedlloyd, expressed a desire to avoid disruption of the Trade.

In its comments filed in August 1988, Nedlloyd proposed alternative sanctions which would have required Peruvian-flag carriers to obtain waivers from the FMC for the carriage of cargo, and to file periodic reports with the Commission. Nedlloyd's purpose in proposing these sanctions was to construct a "mirror image" of the burdens imposed by the GOP decrees and to avoid the disruption of service in the Trade which would follow if the Commission suspended the tariffs of certain Peruvian-flag carriers, as earlier prescribed.

Comments filed in response to Nedlloyd's proposal pointed out that the alternative sanctions would burden not only the Peruvian-flag carriers but shippers and the FMC as well. While the Commission has in the past, whenever possible, sought to meet conditions unfavorable to shipping in the U.S. trades by mirroring the burdens imposed, we must agree with these commenters. The sanctions proposed by Nedlloyd, moreover, would require resources exceeding those available to the Commission.

Section 10002 of the Foreign Shipping Practices Act of 1988 ("1988 Act"), 102 Stat. 1570, Pub. L. 100–418, authorizes the Commission to assess fees of up to $1 million per voyage in proceedings conducted under section 19.[20] Based on the evident agreement among commenters that tariff suspension would unduly disrupt the Trade, and the impracticability of the alternative suggested by Nedlloyd, the Commission has elected to substitute a system of per voyage fees in the final rule as a means of meeting or countervailing the effects of the GOP cargo reservation system presently in effect under Decree 036–82.

The Commission notes the concern expressed by CSAV that the Chilean-flag carriers—the erstwhile victims of GOP cargo reservation under Decree 009–86—now operating in the Trade as associate carriers pursuant to agreements with Peruvian-flag carriers, not be victimized by the imposition of sanctions on the Peruvian-flag carriers. In order to avoid this possible result, the Commission has directed in the Final Rule that the fees assessed shall be paid by Peruvian-flag carriers from their own revenues, without affecting the revenue shares of non-Peruvian-flag carriers participating in joint operations

[20] The Foreign Shipping Practices Act, § 10002(e)(1) authorizes the Commission to take "such action as it considers necessary and appropriate" against a foreign carrier who has been found, or whose government has been found, to have created conditions which adversely affect the operations of United States carriers and do not exist for such foreign carriers in their operations in the United States, and states that such actions may include, among others enumerated, "a fee, not to exceed $1,000,000 per voyage". Section 10002(h) of the 1988 Act provides that the actions against foreign carriers authorized in subsection (e) may be used in the administration and enforcement of Section 19. Thus, the 1988 Act sets forth examples of actions which the Commission may take in proceedings under that Act or under Section 19, but neither limits the Commission to the actions enumerated or establishes standards for Commission determination of what constitutes "necessary and appropriate" action. These matters continue to be left to the Commission's discretion.

pursuant to agreements on file with the Commission.

We believe the level of the fees assessed herein would provide a means of adjusting the unfavorable conditions found but would also avoid serious disruption to the Trade generally. Therefore, in order to redress the detrimental competitive effects of the decrees and regulations of the GOP, the Commission herein assesses fees to be paid by the Peruvian-flag carriers—the chief beneficiaries of the GOP decrees—in connection with each voyage made by or on behalf of such a carrier in the Trade.

Although the Commission believes this action is justified under section 19 to meet or adjust the conditions described above, particularly given the passage of more than three years since these conditions were first brought to our attention, we also recognize that this Commission does not operate in a vacuum. As our general rules make clear, proceedings under section 19 necessarily touch upon, and are not themselves immune to, the concerns of U.S. foreign policy assigned by statute to other government entities. *See e.g.*, 46 CFR 585.8 and 585.13.

News articles recently appearing in a number of publications have made us aware that the shipping and foreign oceanborne trade with which we are concerned may also be affected by other events in Peru. Therefore, at the Commission's request, the Office of Andean Affairs of the Department of State ("Department" or "DOS") provided a briefing on current economic and political conditions in Peru. The briefing touched on the economic policies of the GOP, including its policies concerning foreign debt, and the effects of inflation; the role of the Peruvian military, particularly with respect to control of the guerilla insurgency; the outlook for Presidential elections which will next occur in May, 1990; and U.S. foreign policy with respect to Peru.

The Department brought to the Commission's attention economic and political concerns affecting U.S. foreign policy as well as, in the DOS' view, being likely to affect the Commission's assessment of the efficacy of measures to meet or adjust the conditions unfavorable to shipping found to exist in the U.S./Peru trade. The information provided did not address the merits of the issues directly before the Commission in this proceeding. The DOS did not present views on the existence of conditions unfavorable to shipping or whether particular types of Commission action would be appropriate to meet or adjust such conditions.

Notwithstanding the Commission's conclusion that action pursuant to section 19 is warranted in this proceeding, and its formulation of sanctions to meet or adjust the conditions found, the Commission is not putting those sanctions into effect at least at this time, because of the political and economic environment existing in Peru. As described to us in the DOS briefing, and as appears generally from reports we read in the press, economic and other conditions exist in Peru which threaten the stability of Peruvian institutions and the democratically elected government itself. We are concerned that our action might have undesirable side effects on foreign policy matters, outside of our own statutory focus on shipping, which affect national interests generally that are legitimately of concern to the U.S. Department of State. The detrimental effects of the GOP's cargo reservation decrees presently being experienced by U.S. shipping interests, as described to us by SCOT for example, arise from their exclusionary impact on a non-U.S.-flag and non-U.S.-owned carrier. In addition, these U.S. shippers, whose concerns led to the initiation of this proceeding, are not now advocating the immediate imposition of sanctions in the Trade. Therefore, it appears particularly prudent for us, in balancing the myriad of commercial and national considerations here, to take into account more general U.S. interests in determining the appropriate timing of our action in this proceeding.

Moreover, because of the unsettled internal situation in Peru, the desired financial impact of the Commission's Final Rule might well be lost among the other economic dislocations presently being experienced in that country by Peruvian-flag carriers and the GOP itself. As a result, it is likely that effecting such action at this time would, in any event, not bring about the desired easing of barriers to an open trade.

For reasons set forth above, the Commission is therefore deferring the effectiveness of the sanctions imposed in this proceeding until further notice. The Commission will continue to monitor these matters and will, when appropriate, issue a further order establishing an effective date for the final rule or taking such other action as appears advisable at the time. We will expect the parties who have previously commented in this proceeding, including Nedlloyd and SCOT, as well as the Department of State (whether through its Office of Andean Affairs or its participation in the comments of the Executive Agencies) to assist us by keeping us informed as to the changing state of affairs in Peru. The Commission will consider the request for action of any person but will determine, in its discretion, a propitious time to effectuate the final rule. In the interim we would, of course, continue to encourage the GOP to take whatever action is necessary to remove the unfavorable conditions herein found to exist in order to obviate any need for the Commission to put into effect countervailing remedies.

Final Rule

For the reasons stated above the Commission finds it necessary and appropriate to issue a rule, pursuant to section 19, to adjust or meet conditions described above which it finds unfavorable to shipping in the Trade ("Final Rule"). However, notwithstanding the issuance of the Final Rule at this time, the Commission for reasons also explained above, is deferring its effective date until further notice.

The Final Rule will require the Peruvian-flag carriers operating in the Trade, with the exception of NAPSA which operates only a U.S./Iquitos, Peru service, to pay a fee for each voyage completed in the Trade as a means of countervailing the detrimental conditions imposed on U.S. trade by the practices of the Government of Peru. NAPSA service in the U.S./Iquitos trade is not being subjected to these fees because the Commission has found this subtrade distinguishable from the Trade generally, and therefore entitled to different treatment. The considerations which underlay this determination in connection with the December 1987 Final Rule continue to apply to NAPSA's service in this subtrade.

The Final Rule will require that Peruvian-flag carriers pay to the Commission a fee of $50,000 for each voyage on which cargo is carried on a vessel owned or operated by or on behalf of a Peruvian-flag carrier, or under a Peruvian-flag carrier's bill of lading for service performed by another carrier pursuant to an agreement on file with the Commission. Such fees shall be paid to the Commission within 7 days of the completion of each voyage subject to this Rule. Each Peruvian-flag carrier shall, in addition, file a report with the Commission within 15 days of the end of each calendar quarter certifying that all penalties due have been paid and setting forth the dates of voyages made, amounts of cargo carried, and amounts of fees paid, for the calendar quarter. If

a Peruvian-flag carrier fails to pay the required fees, or to submit the required report and certification, within the prescribed time period, its tariffs on file with the Commission will be suspended 30 days subsequent to the end of the calendar quarter in which the fees or report were due.

List of Subjects in 46 CFR Part 586

Cargo vessels, Exports, Foreign relations, Imports, Maritime carriers, Penalties, Rates and fares; Reporting and recordkeeping requirements.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b); Section 15 of the Shipping Act of 1984, 46 U.S.C. app. 1714; Section 10002 of the Foreign Shipping Practices Act of 1988, Pub. L. No. 100–418; Reorganization Plan No. 7 of 1961, 75 Stat. 840; and 46 CFR Part 585; Part 586 to Title 46 of the Code of Federal Regulations is added to read as follows and §§ 586.2 and 586.3 are suspended.

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES PERU TRADE ("TRADE")

Sec.

586.1 Conditions unfavorable to shipping in the Trade.
586.2 Peruvian-flag carriers—assessment of fees.
586.3 Source of fees.
586.4 Effective date.

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1714; § 10002 of the Foreign Shipping Practices Act of 1988, Pub. L. No. 100–418; 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961.

§ 586.1 Conditions unfavorable to shipping in the Trade.

(a) The Federal Maritime Commission has determined that the Government of Peru ("GOP") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Peruvian-flag carriers from competing in the Trade on the same basis as Peruvian-flag carriers, and additionally deny to non-Peruvian-flag carriers effective and equal access to cargoes in the Trade. Moreover, the laws and regulations at issue unilaterally allocate and reserve export liner cargoes from the United States for carriage by Peruvian-flag carriers.

(b) GOP law provides that non-Peruvian-flag carriers must become associate carriers or obtain cargo from shippers who have secured waivers for individual shipments or certification of cargo shipped, to operate in the Trade. The enforcement of this system discriminates against U.S. shippers and exporters, restricts their opportunities to select a carrier of their own choice, and hampers their ability to compete in international markets.

§ 586.2 Peruvian-flag carriers—assessment of fees.

(a) "Voyage" means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States trade. Each inbound or outbound movement constitutes a separate voyage. For purposes of this part, the transportation of cargo by water aboard a single vessel inbound or outbound between ports in Peru and ports in the United States under one or more bills of lading issued by or on behalf of the Peruvian-flag carriers named in paragraph (b) of this section, whether on board vessels owned or operated by the named carriers or in space chartered by the named carriers on vessels owned or operated by others, or carried for the account of the named carriers pursuant to Agreements on file with the Federal Maritime Commission, under any of the tariffs enumerated in paragraph (d) of this section, shall be deemed to constitute a voyage.

(b) For each voyage completed after the effective date of this part, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of $50,000:

Compania Peruana de Vapores ("CPV"); Empresa Naviera Santa, S.A. ("Santa"); Naviera Neptuno, S.A. ("Neptuno"); and Naviera Universal, S.A. ("Uniline").

The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 7 calendar days of the completion of the voyage for which it is assessed.

(c) Each Peruvian-flag carrier named in paragraph (b) of this section shall file with the Federal Maritime Commission a report setting forth the date of each voyage completed, amount of cargo carried, and amount of fees assessed pursuant to paragraph (b) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Such reports shall be filed within 15 days of the end of each calendar quarter.

(d) If any Peruvian-flag carrier shall fail to pay any fee assessed by paragraph (b) of this section within the prescribed time for payment, or fail to file any quarterly report required by paragraph (c) of this section within the prescribed period for filing, the tariffs identified below, as applicable to such carrier, shall be suspended effective 30 calendar days after the expiration of the calendar quarter in which such fees or report were due:

(1)(i) Compania Peruana de Vapores (CPV)

FMC No. 14—Applicable BETWEEN United States Atlantic and Gulf Ports AND Ports in South America, Trinidad, and the Leeward and Windward Islands.

FMC No. 15—Applicable FROM United States West Coast Ports and Hawaii TO Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America.

FMC No. 16—Applicable FROM Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America TO United States West Coast Ports and Hawaii.

(ii) Empresa Naviera Santa, S.A.

FMC No. 3—Applicable FROM Rail Container Terminals at United States Pacific Coast Ports TO Ports in South America.

FMC No. 5—Applicable FROM Rail Terminals at United States Interior Ports and Points TO Peru and Chile.

FMC No. 7—Applicable BETWEEN United States Atlantic and Gulf Ports and Ports in Peru. -

(iii) Naviera Neptuno, S.A.

FMC No. 5—Applicable BETWEEN United States Pacific Ports AND Peru and Pacific Coast Ports in Chile, Colombia and Ecuador.

(iv) Naviera Universal, S.A. (Uniline)

FMC No. 2—Applicable BETWEEN United States Ports and Points AND Ports and Points in Central America, South America, Mexico, and the Caribbean.

(2) The following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points:

Atlantic & Gulf/West Coast of South America Conference

FMC No. 2—Applicable FROM United States Atlantic and Gulf Ports TO West Coast Ports in Peru and Chile via the Panama Canal.

FMC No. 3—Applicable FROM Points in the United States TO Points and Ports in Chile, Peru, and Bolivia moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 5—Applicable FROM Points and Ports in Chile, Peru and Bolivia TO Points and Ports in the United States, moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 6—Applicable FROM Chilean and Peruvian Ports of Call via the Panama Canal TO Ports of Call on the Atlantic and Gulf Coasts of the United States.

(3) Any other tariff which may be filed by or on beha1f of the carriers listed in paragraph (b) of this section.

(4) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject applicable remedies and penalties provided by law.

§ 586.3 Source of fees.

Any fees assessed by § 586.2 against Peruvian flag carriers operating pursuant to any Agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Peruvian-flag carriers without affecting the revenue shares or amount of revenue earned by non-Peruvian flag carriers operating pursuant to such Agreements.

§ 586.4 Effective Date.

Section 586.1 is effective on March 28, 1989. The date upon which §§ 586.2 and 586.3 shall become effective shall be determined by further order of the Commission amending this Part.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-6989 Filed 3-27-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) specified for pollock in the combined Central and Western Regulatory Areas of the Gulf of Alaska will be reached on March 23, 1989. The Secretary of Commerce (Secretary) is prohibiting further retention of pollock in these combined areas from 12:00 noon, Alaska Standard Time (AST), on March 23, 1989 through December 31, 1989.

DATES: This notice is effective from 12:00 noon on March 23, 1989, AST, until midnight, AST, December 31, 1989.

ADDRESS: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907-560-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Paragraph 672.20(a) of the regulations establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. TACs for each target groundfish species and species group are specified annually. For 1989, TACs were established for each of the target groundfish species and species groups and apportioned among the regulatory areas and districts.

An overall TAC for pollock equal to 60,000 mt has been specified for the Central and Western Regulatory Areas combined. For purposes of managing pollock, the Secretary adjusted the TAC under authority of § 672.22 of the regulations (see 54 FR 6524, February 13, 1989) such that no more than 6,250 mt of pollock could be harvested in an area called Shelikof Strait. This amount was reached on March 21, 1989, therefore, further retention of pollock was prohibited on that date in the Shelikof Strait area. The balance of the 60,000-mt TAC specified for the combined Central and Western Regulatory Areas is 53,750 mt. This amount will be achieved at 12:00 noon on March 23, 1989. Therefore, pursuant to § 672.20(c)(2), the Secretary is prohibiting further retention of pollock in the Central and Western Regulatory Areas effective 12:00 noon, AST, March 23, 1989. Any catches after that date must be treated as prohibited species and discarded at sea.

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

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: March 23, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-7346 Filed 3-23-89; 4:05 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 58
Tuesday, March 28, 1989

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89-021]

Importation of Porcine Semen From China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to add specific requirements for the importation of porcine semen from China to the regulations concerning importation of animal semen from countries where rinderpest or foot-and-mouth disease (FMD) exists. The requirements we propose to add concern the respective responsibilities of the official veterinary organization of the People's Republic of China and of the United States Department of Agriculture, isolation and handling procedures for donor boars, blood and semen testing requirements for donor boars, and other matters related to importation of porcine semen from China. These amendments are considered necessary to ensure that porcine semen imported from China does not transmit FMD or other diseases to the United States.

DATES: Consideration will be given only to comments postmarked or received on or before April 12, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89-021. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel S. Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, Veterinary Services, APHIS, USDA, Room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8144.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 set forth, among other things, the conditions under which animal semen from countries affected with rinderpest or foot-and-mouth disease (FMD) may be imported into the United States. These requirements are contained in § 92.4(d) (referred to below as the regulations). Generally, these requirements include importation under a United States Department of Agriculture (USDA) permit; inspection of the donor animals by a USDA veterinarian; determination by a USDA veterinarian that the donor animals have not been exposed to or vaccinated against rinderpest or FMD; isolation of the donor animals at a USDA-approved facility beginning prior to semen collection and continuing until blood tests have been completed with negative results, and supervision by a USDA veterinarian of semen collection, preparation for shipment, and shipment.

The Animal and Plant Health Inspection Service (APHIS) has recently received requests to import porcine semen from China. This is the first time importation of porcine semen from China has been requested since the regulations were established. In considering these requests, we have decided that certain requirements specifically designed for importation of porcine semen from China, in addition to the requirements currently contained in § 92.4(d), are necessary to ensure that such importations do not present a risk of introducing FMD or other exotic diseases of livestock into the United States.

The requirements we propose to add concern the isolation of the swine used as semen donors during disease testing and semen collection, the premises from which the swine are selected, the types of disease tests to be conducted on the swine, and certification by the People's Republic of China (PRC or China) concerning the status of that country in regard to certain diseases.

Certification by the PRC

We propose to require that the official veterinary organization (OVO) of the PRC certify that the PRC is free of three extremely dangerous swine diseases, African swine fever, rinderpest, and Teschen's disease. Because of the serious nature and rapid spread potential of these diseases, importation of swine semen from the PRC would not be allowed if any of these diseases occur in the PRC. These diseases are not known to occur in the PRC at this time, and this certification requirement would ensure that we are informed if this status changes.

Premises of Donor Boars

We propose to require that the premises from which the donor boars are selected meet certain standards designed to minimize the possibility that the swine were exposed to disease. The three most serious swine diseases that are considered to exist in China and that do not occur in the United States are FMD, swine vesicular disease (SVD), and hog cholera, and we therefore propose to require that these premises must be at the center of an area of 16 km radius that has been free of these diseases for three years prior to quarantine of the swine, and that no cases of these diseases occurred on these premises or adjacent premises for at least five years previous to collection of semen. We would also require that no animal may have been introduced into the herd of origin from farms affected with these diseases for three years previous to the collection of semen. To minimize the exposure of donor boars to other animals and other sources of disease, the donor boars would have to be selected from farms which are solely swine breeding operations.

Other swine diseases considered to exist in China include brucellosis, tuberculosis, and pseudorabies, and we propose to require that there must be no evidence of these diseases on these premises or adjacent premises for one year previous to the collection of semen.

Isolation and Semen Collection

We propose to require that donor boars be isolated in China for 60 days while semen collection and disease testing are under way, in a facility jointly approved by the OVO of the PRC and USDA. This isolation/collection

period would allow OVO and USDA personnel continual observation of the swine for signs of disease and would eliminate possible contact with other animals that may be capable of spreading disease. This period would also be used to conduct tests for diseases, discussed below. A 60 day period is sufficent time to conduct the tests and for clinical signs of illness to appear if any of the animals are infected prior to isolation. We propose to require the facility to be cleaned and disinfected with a 4 percent sodium carbonate solution used in accordance with applicable label instructions prior to the start of the isolation. During the isolation/collection period, personnel handling the animals would not be allowed contact with other domestic farm livestock (not including pets such as dogs and cats). Feed and bedding used during the isolation/collection period and during transport would have to come from epizootic disease-free areas and meet OVO veterinary hygienic requirements to ensure these materials are free of contamination that could transmit diseases. Because the feeding of garbage to swine is known to transmit a number of diseases, we propose that no garbage could be fed to swine in isolation during the isolation/collection period.

We also propose to require donor boars to be treated for leptospirosis during the isolation/collection period, prior to any semen collection. Donor boars would be given an intramuscular injection of dihydrostreptomycin at a rate of 25 mg/kg dosage twice at an interval of 14 days as a precautionary treatment for leptospirosis. This treatment is an internationally recognized standard procedure that is effective in preventing leptospirosis.

We believe these provisions are necessary to help ensure that the swine are not infected with diseases at the time semen is collected.

Testing for Disease

During their isolation in China the donor boars would be tested for seven diseases that are of concern under animal importation regulations and that are considered to exist in China. These diseases are foot-and-mouth disease (FMD), brucellosis, swine vesicular disease (SVD), hog cholera, Japanese encephalitis, pseudorabies, and tuberculosis. All the tests proposed for use are internationally recognized by the veterinary medical community as standard procedures.[1] They are also recognized by the American Association of Veterinary Laboratory Technicians (AAVLD), the principal organization in the United States to establish the validity of laboratory diagnostic procedures for animals.

Most of the tests are based on identification of antibodies in the animals' blood serum against the various diseases. Reaction of the serum with the test materials at various dilutions constitutes a positive reaction, with the dilution varying according to the disease. For example, reaction of a 1:4 serum dilution constitutes a positive reaction to the pseudorabies test, reaction of a 1:16 dilution constitutes a positive reaction to the hog cholera test, and reaction of a 1:40 dilution constitutes a positive reaction to the SVD test. These dilutions are recognized as standard by AAVLD for determining positive reactions to these tests.

In addition to requiring testing of the donor boars in China, we propose to require that a sample of each ejaculate of semen collected for export be submitted for testing to the USDA Foreign Animal Disease Diagnostic Laboratory. We believe that this testing program would reveal whether any of the donor boars are infected with any of the swine diseases considered to exist in China. If any donor boars or their semen are found to be infected with any of these seven diseases, no semen collected from the boars in that isolation group would be allowed to enter into the United States.

Comment Period

Dr. James Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on the proposal. We believe expedited action is appropriate because commercial interests are ready to begin semen collection activities in China, and delay could result in semen collection taking place during the summer, when there is a greater risk of infection of swine through insect vectors of diseases.

Executive Order 12291 and Regulatory Flexibility Act

We are proposing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

International trade in porcine semen is a very small business. During recent years, porcine semen imported into the United States has consisted of the ejaculates of no more than two dozen swine a year. Porcine semen imported from China in accordance with this rule would amount to a considerable percentage of the porcine semen imported in 1989, since the one company currently engaged in importations of this type plans to import ejaculates of approximately 16 Chinese boars. It is anticipated that very few additional Chinese porcine semen importation requests will occur in the near future. The ratio of Chinese swine semen imported to total swine semen imported will vary depending on the number and types of requests received for permits to import swine semen in future years.

The semen imported in accordance with this rule would be used in breeding research projects and will have no effects on the U.S. swine industry in the near future.

Importation of Chinese porcine semen may eventually improve United States breeds of swine, by increasing litter size and conferring other desirable attributes known to be present in Chinese swine breeds.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

[1] Technical information on laboratory methods and procedures for these tests may be obtained from the Administrator, APHIS, c/o Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 would be amended as follows:

1. The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.4, a new paragraph (d)(7) would be added to read as follows:

§ 92.4 [Amended]

* * * * *

(d) *Animal semen from countries where rinderpest or foot-and-mouth disease exists.* * * *

(7) *Porcine semen from the People's Republic of China.* In addition to the other requirements of this part, porcine semen may be imported into the United States from the People's Republic of China (PRC) only after the official veterinary organization (OVO) of the PRC has certified that the PRC is free of African swine fever, rinderpest, and Teschen's disease, and after the following conditions have been fulfilled:

(i) The donor boars must pass a 60-day isolation/collection period in a facility jointly approved by the OVO of the PRC and the USDA as adequate to prevent exposure of the donor boars to infectious diseases. Any other swine at the isolation facility, such as teaser animals, must also meet the requirements of this paragraph. No animals may be added to the group after the start of the 60-day isolation/collection period. The Department will permit collection of semen to be initiated at the beginning of the isolation/ collection period. The facility shall be cleaned and disinfected with a 4 percent sodium carbonate solution used in accordance with applicable label instructions in the presence of OVO quarantine personnel prior to the start of the isolation. During the isolation/collection period, personnel handling the animals shall not have contact with other domestic farm livestock (this term does not include pets such as dogs and cats). Raw animal food wastes (garbage) shall not be fed to the donor boars while in isolation. At the start of the isolation/collection period, and again after 14 days of isolation, all animals offered for collection of semen must be given an intramuscular injection of dihydrostreptomycin at a rate of 25 mg/kg dosage as a precautionary treatment for leptospirosis. Feed and bedding used during the isolation/collection period shall not originate from areas infected with epizootic diseases and must meet veterinary hygienic requirements established by the OVO of the PRC concerning freedom of the feed and bedding from contamination that could transmit diseases. During the isolation/collection period the swine at the collection center shall not have direct or indirect contact with, or exposure to, any other animals not included in the group at the isolation facility. Exposure consists of contact with yards, pens, or other facilities or vehicles that have been in contact with animals and have not been cleaned and disinfected.

(ii) Donor boars shall be selected from premises which are solely swine breeding operations. These premises must be located at the center of an area with a 16 km radius that was free of foot-and-mouth disease (FMD), swine vesicular disease (SVD), and hog cholera for three years prior to semen collection. Donor boars shall not have been vaccinated against these diseases. There shall have been no cases of these diseases on these premises for five years prior to the collection of semen. There shall have been no animal introduced into these premises from farms affected with these diseases for three years prior to the collection of semen. There shall have been no evidence of brucellosis, tuberculosis, or pseudorabies on these premises or on premises adjacent to these premises for one year prior to the collection of semen.

(iii) During the 60-day isolation/collection period, the boars offered for collection of semen shall be subjected to the following tests,[3] in lieu of the tests required by paragraphs (d)(1)(iv) and (d)(1)(vi) of this section. If test samples from any donor boars are lost, damaged, or destroyed prior to testing, or if test results are inconclusive, the donor boars involved shall be subjected to retesting:

(A) Foot-and-mouth disease: (1)Microtiter virus neutralization (VN) test for types A, 0, C, and Asia. (The PRC will test for types A and 0, and the United States will test for types C and Asia at the USDA Foreign Animal Disease Diagnostic Laboratory (FADDL)).

(2) Agar gel immunodiffusion (AGID) test using virus infection associated antigen (VIAA) in serum. (Animals having responses to the AGID test or reacting to the VN test at 1:10 dilution or greater shall be eliminated as semen donors, and all other swine in contact with them shall be retested within 30 days. If the whole group does not have the above responses and there is no clinical evidence of FMD, the group shall be eligible for collection of semen with respect to FMD. Otherwise, none of the group shall qualify as donors of semen for export.)

(B) Brucellosis: Standard tube test (STT) at less than 30 IU/ml, and card test (antigen and protocol to be supplied by USDA).

(C) Swine vesicular disease: Virus neutralization test at 1:40 dilution (serums to be tested at FADDL).

(D) Hog cholera: Fluorescent antibody neutralization (FAN) test at 1:16 dilution.

(E) Japanese B encephalitis: Hemagglutination inhibition (HI) test, negative according to PRC standards.

(F) Pseudorabies: Virus neutralization at 1:4 dilution.

(G) Tuberculosis: Intradermal test using bovine PPD tuberculin (Positive animals will be necropsied. If there are lesions of TB in the test positive pigs, the whole group will be ineligible as semen donors. If no lesions are found, the rest of the pigs will be eligible as semen donors with respect to tuberculosis.

All samples of the above tests, except as noted for FMD, SVD, and TB, will be submitted to laboratories designated by the OVO of the PRC. At least 21 days after the final collection of semen for exportation, the donor animals will be retested for the diseases listed above, with the exception of tuberculosis and Japanese encephalitis. In addition, aliquots of each ejaculate of semen collected shall be submitted to FADDL for pathogen isolation tests for FMD, brucellosis, swine vesicular disease, hog cholera, Japanese encephalitis, and pseudorabies.

(iv) The semen will not be eligible for release in the United States until all tests in paragraph (d)(7)(iii) of this section have been completed with negative results.

(v) Each semen straw or ampule for export must be identified with the name or identification number of the donor boar and with the date of collection. A USDA veterinarian shall certify that he or she has supervised the collection and

[3] Technical information on laboratory methods and procedures for these tests may be obtained from the Administrator, c/o Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010.

processing of the semen and its storage until the time it is shipped to the United States. Each shipment will be accompanied by a USDA veterinarian unless the semen is shipped directly to the port of New York with no stops en route. Shipment to the United States will be in accordance with the terms of a USDA import permit. Semen imported in accordance with this section shall be released by USDA to the importer only after all requirements of this section have been met.

* * * * *

Done in Washington, DC, this 23rd day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-7350 Filed 3-24-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-89-2]

Petition for Rulemaking; Summary and Dispositions

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 petitions or its final disposition.

DATE: Comments on petitions received must idenfity the petition docket number involved and must be received on or before May 29, 1989.

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

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

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

Issued in Washington, DC, on March 23, 1989.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 25787
Petitioner: Thomas J. Rush
Regulations Affected: 14 CFR 61.23
Description of Petition: The petitioner requests a change which would provide a longer window, either 60 or 90 days, for airmen who require Special Issue Medical Certificates, to schedule their medical examinations
Petitioner's Reason for the Rule: The petitioner believes that this change would afford affected airmen more flexibility. It would erase the need for those airmen to schedule examinations in the first week only of the renewal month. It would also alleviate the end of the month workload that the special issues section of the FAA medical certification office faces every month.

Docket No.: 24525
Petitioner: M. Edwards Gaydos
Regulations Affected: 14 CFR 25.832
Description of Petition: The petitioner proposes to confine the applicability of § 25.832 which sets ozone concentration limits to those airplanes for which the applicable operating rules prescribe maximum levels of cabin ozone concentrations or for which compliance is elected by the applicant
Petitioner's Reason for the Rule: The petitioner believes the amendment will: Correct an anomaly in Part 25; correct an inconsistency between the ozone requirements of Parts 25 and 121; and eliminate undue burdens imposed upon manufacturers and operators of airplanes for which ozone protection is not required for compliance with applicable operating rules.

Docket No.: 23498
Petitioner: Paul F. Kelley
Regulations Affected: 14 CFR 61 and § 121.721
Description of Petition/Disposition: The action would permit the issuance of a single, standardized identification card for United States citizens who are employed by air carriers or commercial operators as flight crewmembers on U.S.-registered aircraft engaged in international air commerce. *DENIED. December 19, 1988.*

[FR Doc. 89-7364 Filed 3-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-17-AD]

Airworthiness Directives; Learjet Model 24, 25, 28, 29, 35, 36, and 55 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Learjet series airplanes, which would require an inspection of the manufacture date stamp on the risers of all drag chutes, and replacement of certain unairworthy risers, if necessary. This action is prompted by reports of faulty thread stitching used in risers manufactured in May 1987 and later. Drag chute risers that are not properly stitched could cause the chute to break away prematurely if deployed during landing.

DATES: Comments must be received no later than April 26, 1989.

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. 89-NM-17-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Abbott, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications recieved 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. 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.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-17-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has received reports of two complete failures of the drag chute risers on Learjet series airplanes at 145 knots, and two partial failures of risers at 125 knots. Each of these incidents occurred during Learjet engineering test programs. The drag chute is designed for a maximum deployment speed of 150 knots. The manufacturer of the drag chute has determined, by laboratory testing, that the thread used in the drag chute risers manufactured in May 1987 or later, does not have the same strength as that manufactured prior to May 1987. The drag chute assembly is an optional installation on the affected airplanes; approximately 47 of the suspect drag chute risers may be installed in any of the 1,473 Learjet series airplanes currently in service.

Drug chute risers that are not properly stitched could cause the chute to break away prematurely if deployed during landing.

The FAA has reviewed and approved Learjet Service Bulletins 24/25-342A, 28/29-25-3A, 35/36-25-7A, and 55-25-4A, which describe procedures for a one-time inspection of the drag chute riser manufacture date stamp, and replacement of any riser having a date stamp of May 27, 1987 or later.

Since this situation is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would require a one-time inspection of the drag chute riser manufacture date stamp, and replacement, if necessary, in accordance with the service bulletins previously described.

It is estimated that 1,473 Learjet series 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 $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $58,920.

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 these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimnal cost of compliance per airplane ($40). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) 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. By adding the following new airworthiness directive:

Learjet (Formerly Gates Learjet): Applies to the following Learjet series airplanes and serial numbers, certificated in any category:

Model number/Series	Serial No.
24	24-100 through -357.
25	25-003 through -373.
28	28-001 through -005.
29	29-001 through -004.
35	35-001 through -646.
36	36-001 through -058.
55	55-001 through -134.

Compliance is required as indicated, unless previously accomplished.

To prevent failure of drag chute upon deployment, accomplish the following:

A. Within the next 10 hours time-in-service or 2 calendar weeks after the effective date of this AD, whichever occurs first, determine the manufacture date that is stamped on the drag chute riser, in accordance with the instructions provided in the following Learjet Service Bulletins:

Model/Series	Service bulletin
24 or 25	24/25-342A.
28 or 29	28/29-25-3A.
35 or 36	35/26-25-7A.
55	55-25-4A.

1. If the drag chute riser is dated prior to May 1987, reidentify the riser and reinstall the drag chute and canister, in accordance with the Accomplishment Instructions of the applicable service bulletin.

2. If the drag chute riser is dated May 1987 or later, accomplish either subparagraph a. or b., below:

a. Replace the suspect riser with a new riser, Learjet Part Number (P/N) 6600180-16, or a riser dated prior to May 1987, in accordance with the applicable service bulletin; or

b. Remove the riser and install a placard stating "DRAG CHUTE INOPERATIVE" on the drag chute deploy handle and drag chute mechanism, in accordance with the Accomplishment Instructions of the applicable Learjet service bulletin listed above. This placard may be removed once the drag chute riser is replaced, in accordance with paragraph A.2.a., above.

B. Prior to return to service after reidentification or replacement of the drag chute riser, as required by paragraph A. of this AD, perform a drag chute control system adjustment and drag chute functional test, in accordance with paragraph 2.C.(2)(f) of the Accomplishment Instructions of the applicable Learjet Service Bulletin specified in paragraph A. of this AD (reference Learjet Maintenance Manual, Chapter 25-62-00).

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may

be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

Issued in Seattle, Washington, on March 20, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-7243 Filed 3-27-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-16-AD]

Airworthiness Directives; McDonnell Douglas DC-9-80 (MD-80) Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposes rulemaking (NPRM).

SUMMARY: This notice proposed a new airworthiness directive (AD), applicable to McDonnel Douglas Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, which would require relocation of a number 2 engine pneumatic tube. This proposal is prompted by reports of chafing between the number 2 engine main fuel hose and a pneumatic tube, resulting in fuel and air leakage. This condition, if not corrected, could lead to a fire in the number 2 engine nacelle.

DATES: Comments must be received no later than May 19, 1989.

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. 89-NM-16-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5245.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in 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. 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.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-16-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been reports of fuel leakage from the number 2 engine main fuel supply hose on McDonnell Douglas DC-9-80 series airplanes. Investigation revealed that fuel and air leakage resulted from insufficient clearance and chafing between the fuel hose and the starter shutoff valve pneumatic tube. This condition, if not corrected, could result in fuel leaking from the hose, in the vicinity of hot air leaking from the pneumatic tube, creating a fire hazard.

Since the Model MD-88 has essentially the same configuration as the Model DC-9-80 series, it would be subject to the same unsafe condition.

The FAA has reviewed and approved McDonnell Douglas MD-80 Service Bulletin 80-8, dated November 3, 1988, which describes the procedure for relocating the starter shutoff valve pneumatic tube assembly from the forward side of the starter duct to the aft side of the duct on the inboard side of the number 2 engine.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would require relocation of the number 2 engine starter shutoff valve pneumatic tube, in accordance with the service bulletin previously described.

There are approximately 522 Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes in the worldwide fleet. It is estimated that 319 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $63,800.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national govenment 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 these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC-9-80 (MD-80) series airplanes or Model MD-88 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

proposes to amend section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) 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. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a fire hazard in the number 2 engine nacelle, accomplish the following:

A. Within 12 months after the effective date of this AD, relocate the number 2 engine starter shutoff valve pneumatic tube, in accordance with the accomplishment instructions in McDonnell Douglas MD–80 Service Bulletin 80–8 dated November 3, 1988.

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

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on March 20, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–7244 Filed 3–27–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–ASO–8]

Proposed Alteration of VOR Federal Airways; North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V–143 and V–454 located in the vicinity of Greensboro, NC. The realignment of these airways would enhance the traffic flow into the Charlotte, NC, terminal area. This action improves safety by providing a common transition area, and reduces controller workload.

DATES: Comments must be received on or before May 8, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 89–ASO–8, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASO–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airways V–143 and V–454 located in the vicinity of Greensboro, NC. The proposed airway alignment would enhance the flow of traffic into the Charlotte, NC, terminal area. This action would provide a common transition point for separating arrival traffic. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed 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, when promulgated, 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, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) 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. 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.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–143 [Amended]

By removing the words "From INT Charlotte, NC, 043° and Greensboro, NC, 223° radials;" and substituting the words "From INT Charlotte, NC, 034°T(039°M) and Greensboro, NC, 228°T(231°M) radials;"

V–454 [Amended]

By removing the words "From INT Charlotte 043° and Liberty, NC, 250° radials;" and substituting the words "From INT Charlotte 034°T(039°M) and Liberty, NC, 253°T(256°M) radials;"

Issued in Washington, DC., on March 16, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89–7245 Filed 3–27–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–9]

Proposed Alteration of VOR Federal Airway V–578; Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V–578, from Alma, GA, to Savannah, GA, by extending that airway from Alma via a south dogleg. A recent survey of the traffic in that area indicates a need for controlled airspace between Alma and Savannah. This action would aid flight planning and reduce controller workload.

DATES: Comments must be received on or before May 8, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 89–ASO–9, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASO–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–578 by extending that airway from Alma, GA, to Savannah, GA, via a south dogleg. A recent traffic survey indicated that an east/west airway is necessary due to the increased traffic in the Savannah area. The minimum en route altitude on this segment of V–578 would be 6,000 feet because of an underlying restricted area that has an altitude of up to and including 5,000 feet AGL. This action would improve flight planning and reduce controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed 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, when promulgated, 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, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) 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. 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.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–578 [Amended]

By removing the words "to Alma, GA." and by substituting the words "Alma, GA; INT Alma 072°T(072°M) and Savannah, GA, 210°T(211°M) radials; to Savannah."

Issued in Washington, DC, on March 16, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89–7246 Filed 3–27–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 88–AGL–22]

Proposed Alteration of Jet Routes; Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Jet Routes J–18, J–19, J–35, J–71, -J–73, J–87, J–96 and J–101 located in the state of Illinois. The proposed realignment of these jet routes is necessary to improve the flow of traffic in the metropolitan Chicago area. This action is one of a number of measures that would be implemented on an expedited basis to increase the efficiency of air traffic flow and reduce arrival/departure delays in the Chicago area. This action would enhance safety, improve traffic flow and reduce controller coordination.

DATES: Comments must be received on or before April 27, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 88–AGL–22, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–AGL–22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of ths NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of J–18, J–19, J–35, J–71, J–73, J–87, J–96 and J–101 located in the Pontiac, IL, area. These changes would substantially increase the efficiency of arrival and departure routes to and from O'Hare International Airport and other airports in the Chicago metropolitan area. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed 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, when promulgated, 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 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 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.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-18 [Amended]

By removing the words "Bradford;" and substituting the words "Moline, IL;"

J-19 [Amended]

By removing the words "to St. Louis, MO." and substituting the words "St. Louis, MO; Roberts, IL; to Northbrook, IL."

J-35 [Amended]

By removing the words "the INT of the Capital 036' and the Joliet, IL, 204' radials; Joliet," and substituting the words "Pontiac, IL; Joliet, IL;"

J-71 [Amended]

By removing the words "INT Centralia 019' and Northbrook, IL, 186' radials; to Northbrook." and substituting the words "Roberts, IL; to Northbrook, IL."

J-73 [Amended]

After the words "Terre Haute, IN;" insert "Danville, IL."

J-87 [Amended]

By removing the words "Bradford, IL;" and substituting the words "Moline, IL;"

J-96 [Amended]

By removing the words "Bradford, IL," and substituting the words "Peoria, IL."

J-101 [Amended]

By removing the words "INT of the Capital 036' and the Joliet, IL, 204' radials; Joliet;" and substituting the words "Pontiac, IL; Joliet, IL;"

Issued in Washington, DC, on March 16, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89-7247 Filed 3-27-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 882 3204]

Ujena, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Mountain View, CA. corporation from misrepresenting the terms and conditions of a money-back guarantee, from failing to provide a full refund of the amount stated in the money-back guarantee within the time specified in the offer, and from failing to transmit a credit statement to the consumer's credit card issuer within seven business days of accepting the return of merchandise.

DATE: Comments must be received on or before May 30, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janet Grady, San Francisco Regional Office, Federal Trade Commission, 901 Market St., San Francisco, CA. 94103. (415) 995-5220.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Mail order, Swimwear, Trade practices.

Ujena, Inc.; Agreement Containing Consent Order to Cease and Desist

[File No. 882 3204]

The Federal Trade Commission having initiated an investigation of certain acts and practices of Ujena, Inc., a corporation, and it now appearing that Ujena, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between Ujena, Inc., by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Ujena, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal business address located at 1400 Shoreline Boulevard, Mountain View, California 94043.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, Without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not

contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this Order the following definitions shall apply:

A. "Valid refund request" shall mean a refund request responsive to a money-back guarantee offer which meets all requirements disclosed clearly in the offer;

B. "Credit Statement" means any type of notice transmitted by the respondent or its agents to a credit card issuer that causes a consumer's account to be credited for the amount indicated on the notice;

C. "Credit Sale" shall be defined as provided by § 226.2(a)(16) of Regulation Z, 12 CFR 226.2(a)(16); and

D. "Card Issuer" shall be defined as provided by § 226.2(a)(7) of Regulation Z, l2 CFR 226.2(a)(7).

I.

It Is Ordered that respondent Ujena, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, and distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, any term or condition of a money-back guarantee offer;

B. Failing to provide, to any person who has made a valid refund request and who has paid by cash, check or money order, a full refund of whatever amount was stated in the guarantee offer within the time specified in that offer or, if no time was specified, within ten (l0) business days of receipt of the refund request; and

C. Failing to transmit, where there was a credit sale, a credit statement to the consumer's card issuer within seven (7) business days of accepting the return of property or forgiving the consumer's debt.

II.

It Is Further Ordered that respondent, shall:

A. Notify the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, reorganization, assignment, or sale resulting in the emergence of a successor corporation, or any other change in the corporation which may affect compliance obligations arising out of this Order; and

B. Within sixty (60) days after this Order becomes final, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Ujena, Inc. The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns representations and other actions by Ujena in connection with its sale of swimwear to consumers by mail. Ujena offered a money-back guarantee to consumers. The complaint alleges that by offering the money-back guarantee, Ujena represented to consumers that it would return their money in a timely manner. In fact, the complaint alleges, in many instances, Ujena did not honor its money-back guarantee within a reasonable period of time. In addition, the complaint alleges, that in many instances Ujena failed to transmit credit statements to card issuers within seven business days as required by Regulation Z, which implements the Truth in Lending Act.

The consent order contains provisions designed to remedy the violations charged by preventing Ujena from engaging in similar acts and practices in the future. Part I.A. of the consent order prohibits Ujena from misrepresenting the terms and conditions of a money-back guarantee. Part I.B. of the consent order prohibits Ujena from failing to provide a full refund of the amount stated in the money-back guarantee within the time specified in the offer or, if no time is stated, within ten business days of receipt of a refund request. Part I.C. of the consent order prohibits Ujena from failing to transmit a credit statement to the consumer's credit card issuer within seven business days of accepting the return of merchandise.

Part II of the consent order contains standard order provisions requiring Ujena to notify the Commission of any changes in its corporate structure and to report to the Commission its compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89-7273 Filed 3-27-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Payment of Benefits, Overpayments and Underpayments—Overpayment Defined

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would implement section 2612 of Pub. L. 98-369, the Deficit Reduction Act of 1984, which amended section 1631(b)(1) of the Social Security Act (the Act).

Section 2612 provides that for any month or months, the amount of an adjustment or recovery of a supplemental security income (SSI) and/or federally administered State supplementary overpayment that the Secretary may require, is limited to the lesser of: (1) The amount of the overpaid individual's benefit for that month; or (2) an amount equal to 10 percent of the overpaid individual's total income (countable income plus SSI and State supplementary payments) for that month. In addition, the individual is given the opportunity to negotiate a higher or lower rate of recovery or adjustment. This 10-percent limitation does not apply if fraud, willful misrepresentation, or concealment of material information has been

committed in connection with the overpayment. Section 2612 was effective October 1, 1984.

DATES: Your comments will be considered if we receive them no later than May 30, 1989.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1795.

SUPPLEMENTARY INFORMATION: Section 1631(b)(1) of the Act specifies that when more than the correct amount of SSI benefits has been paid with respect to any individual, proper adjustment or recovery shall be made by appropriate adjustments in future payments to such individual or by recovery from such individual or his or her eligible spouse (or by recovery from the estate of either). Operating policy in effect prior to August 1, 1984, required that the rate of adjustment proposed in the initial overpayment notice always be 100 percent of the benefit payable. That policy further provided that an SSI recipient could request a rate of adjustment of less than 100 percent if the overpayment could be recouped in 36 months or less and if the resulting amount withheld was not less than $10 per month. Special documentation was required to approve a withholding which was less than $10 per month or to approve a recoupment which would require more than 36 months to complete.

Section 2612 of Pub. L. 98–369, enacted July 18, 1984, and effective October 1, 1984, amends section 1631(b)(1) of the Act by limiting the rate at which an overpayment may be recovered from an individual still receiving benefits (SSI or federally administered supplementary payments or both) to the lesser of: 10 percent of the recipient's total income (countable income plus SSI and State supplementary payments); or, the recipient's payment for the month. The countable income that is used to figure the individual's total income will be the countable income used to compute the month's benefit amount under retrospective monthly accounting (i.e., generally 2 months prior to the payment month). The recipient is given the opportunity to request a higher or lower rate of adjustment or recovery. An evaluation of an individual's income and resources and other financial obligations will be undertaken when a request for a higher or lower rate of recovery or adjustment is received and when warranted the request will be granted. The 10-percent limitation is applied only to recipients in current payment status, but does not apply where it is determined that the overpayment occurred because of fraud, willful misrepresentation, or concealment of material information by the recipient.

A determination of concealment of material information will be made only when there has been an intentional, knowing, and purposeful delay or failure by the individual and/or his/her spouse to make a required report (see §§ 416.708 and 416.714). This is not merely an omission on the part of the recipient; it is an affirmative act to conceal.

Adjustment or recovery would be suspended if the recipient is residing in a medical facility in which Medicaid is paying a substantial portion of the recipient's cost of care. Because the Federal maximum monthly benefit rate for such recipient is only $30, we do not believe it would be cost effective to collect an overpayment at 10 percent of such a small amount (voluntary repayment by refund would still be available to individuals residing in such facilities).

Existing regulations at 20 CFR 416.543 provide that any underpayment adjustment due an individual will be used to reduce any overpayment determined to exist for a different period unless recovery of such overpayment has been waived. The legislative history of section 2612 suggests that Congress was focusing on protecting a sufficient monthly beneift to meet current needs when it limited the amount that could be recovered from current recipients. H.R. Rep. 98–664, 98th Cong. 2d Sess. 9–10 (1984). H.R. Conf. Rep. 98–861, 98th Cong., 2d Sess. 1389 (1984). Since underpayment adjustments are made to make up for payment of less than the correct amount for past periods and are not paid on the basis of current need at the time the recipient receives them, we propose to continue to apply 20 CFR 416.543.

The 10-percent limitation would not apply to repayment of benefits pursuant to agreements to dispose of resources (conditional disposition) in accordance with regulations at 20 CFR 416.1240. With conditional disposition of resources, an individual with nonliquid resources in excess of the basic resource limitations may still be eligible for SSI payments if the total resources do not exceed limits prescribed in the regulations and if the individual agrees in writing to dispose of the assets within certain timeframes and to repay any overpayment with the proceeds of the disposition. This form of repayment is quite different from the more typically encountered overpayment recovery Congress sought to limit by adding section 1631(b)(1)(B) to the Act. In the more typical situations, Congress was concerned with maintaining a sufficient flow of ongoing benefits to indigent persons while affording them a reasonable method of repaying their overpayment. In the case of a conditional disposition, the ongoing SSI payments to the individual are not disturbed and repayment of any overpayments is made from the proceeds of the sale of the assets. Without this provision, the individual would have been determined to be ineligible for SSI payments. Furthermore, the fact that the individual must, before becoming eligible, agree to repay the overpayment resulting during the conditional disposition time period with the proceeds of the sale of the assets makes this form of recovery analogous to the situation in which an individual voluntarily agrees to repay an overpayment in excess of the 10-percent limitation, a situation explicitly authorized by the statute. (See section 1631(b)(1)(B) and discussion of the legislative history at H.R. Conf. Rep. 98–861, 98th Cong., 2d. Sess. 1389 (1984).)

These proposed rules do not apply the 10-percent limitation to the reduction of any future SSI benefits as a consequence of the misuse of funds set aside in accordance with section 1613(d)(1) to meet burial expenses. Section 1613(d)(3) requires the reduction of any future SSI benefits in an amount equal to the amount of the excluded burial funds, interest, or appreciated value of those funds that are used for another purpose. Since section 1613(d)(3) contains this specific reduction provision, which is distinct from the normal rules of overpayment recovery or adjustment under section 1631(b)(1) of the Act, we believe Congress intended that unauthorized use of burial funds be treated in accordance with the burial fund rules and not under the overpayment rules. Moreover, neither the language of section 1613(d) nor its legislative history characterizes the consequences of an unauthorized use of burial funds as an "overpayment," nor does it characterize

the reduction of future SSI benefits mandated in section 1613(d) as a recovery or adjustment.

These proposed regulations add in Part 416, Subpart E, a new § 416.571 to incorporate the statutory requirements of section 2612 of Pub. L. 98–369. They also make minor changes to existing §§ 416.558, 416.560, and 416.570 to bring those sections into conformity with the requirements of section 2612.

Regulatory Procedures

Executive Order 12291

These proposed regulations do not meet the criteria for a major rule as described in Executive Order 12291 because they will not have an annual effect on the economy of $100 million and will not cause increases in costs or prices. These regulations reflect a legislative change enacted in 1984 that generated ongoing annual costs of $17.5 million. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

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

Paperwork Reduction Act

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

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: December 15, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: February 15, 1989.

Don M. Newman,

Acting Secretary of Health and Human Services.

Subpart E of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

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

Authority: Secs. 1102, 1601, 1602, 1611(c), 1631 (a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383 (a), (b), (d), and (g)

2. In § 416.558, paragraph (a) is revised to read as follows:

§ 416.558 Notice relating to overpayments and underpayments.

(a) *Notice of overpayment and underpayment determination.* Whenever a determination concerning the amounts paid and payable for any period is made and it is found that, with respect to any month in the period, more or less than the correct amount was paid, written notice of the correct and incorrect amounts for each such month in the period will be sent to the individual against whom adjustment or recovery of the overpayment as defined in § 416.537(a) may be effected or to whom the underpayment as defined in § 416.536 would be payable, notwithstanding the fact that part or all of the underpayment must be withheld in accordance with § 416.543. When notifying an individual of a determination of overpayment, the Social Security Administration will, in the notice, also advise the individual that adjustment or recovery is required, as set forth in § 416.571, except under certain specified conditions, and of his or her right to request waiver of adjustment or recovery of the overpayment under the provisions of § 416.550.

* * * * *

3. Section 416.560 is revised to read as follows:

§ 416.560 Recovery—refund.

An overpayment may be refunded by the overpaid recipient or by anyone on his or her behalf. Refund should be made in every case where the overpaid individual is not currently eligible for supplemental security income benefits. If the individual is currently eligible for supplemental security income benefits and has not refunded the overpayment, adjustment as set forth in § 416.570 will be proposed.

4. Section 416.570 is revised to read as follows:

§ 416.570 Adjustment—general rule.

Where a recipient has been overpaid, the overpayment has not been refunded, and waiver of adjustment or recovery is not applicable, any payment due the overpaid recipient or his or her eligible spouse (or recovery from the estate of either or both when either or both die before adjustment is completed) is adjusted for recovery of the overpayment. Adjustment will generally be accomplished by withholding each month the amount set forth in § 416.571 from the benefit payable to the individual except that, when the overpayment results from the disposition of resources as provided by §§ 416.1240(b) and 416.1244, the overpayment will be recovered by withholding any payments due the overpaid recipient or his or her eligible spouse before any further payment is made. Absent a specific request from the person from whom recovery is sought, no overpayment made under title II or XVIII of the Act shall be recovered by adjusting supplemental security income benefits, and absent a specific request, no overpayment of supplemental security income benefits shall be adjusted against benefits payable under title II of the Act. In no case shall an overpayment of supplemental security income benefits be adjusted against title XVIII benefits.

5. A new § 416.571 is added to read as follows:

§ 416.571 10-percent limitation of recoupment rate—overpayment.

Any adjustment or recovery of an overpayment for an individual in current payment status is limited in amount in any month to the lesser of (a) the amount of the individual's benefit payment for that month or (b) an amount equal to 10 percent of the individual's total income (countable income plus SSI and State supplementary payments) for that month. The countable income used is the countable income used in determining the SSI and State supplementary payments for that month under § 416.420. When the overpaid individual is notified of the proposed SSI and/or federally administered State supplementary overpayment adjustment or recovery, the individual will be given the opportunity to request that such adjustment or recovery be made at a higher or lower rate than that proposed. If a lower rate is requested, a rate of withholding that is appropriate to the financial condition of the overpaid individual will be set after an evaluation of all the pertinent facts. An appropriate rate is one that will not deprive the individual of income required for ordinary and necessary living expenses. This will include an evaluation of the individual's income, resources, and other financial obligations. The 10-percent limitation does not apply where it is determined that the overpayment occurred because of fraud, willful misrepresentation, or concealment of material information committed by the individual or his or her spouse. Concealment of material information

means an intentional, knowing, and purposeful delay in making or failure to make a report that will affect payment amount and/or eligibility. It does not include a mere omission on the part of the recipient; it is an affirmative act to conceal. The 10-percent limitation does not apply to the recovery of overpayments incurred under agreements to dispose of resources pursuant to § 416.1240. In addition, the 10-percent limitation does not apply to the reduction of any future SSI benefits as a consequence of the misuse of funds set aside in accordance with § 416.1231(b) to meet burial expenses. Adjustment or recovery will be suspended if the recipient is subject to a reduced benefit rate under § 416.414 because of residing in a medical facility in which Medicaid is paying a substantial portion of the recipient's cost of care.

[FR Doc. 89-7290 Filed 3-27-89; 8:45 am]
BILLING CODE 4190-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3544-2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking on a revision to the Illinois State Implementation Plan (SIP) for ozone. The revision pertains to an Alternative Control Strategy (ACS or bubble) submitted by the State for the Admiral Division of Magic Chef (Admiral). USEPA has determined that this SIP revision is not approvable as a bubble under the December 4, 1986, Emissions Trading Policy Statement (52 FR 43814). However, because this source is located in an attainment area that by Agency was not required to have any regulations controlling VOC emissions, USEPA is proposing to approve this revision as a source-specific SIP relaxation. Based on this proposal approval, USEPA is also proposing to remove the accommodative SIP for Knox County, the county where Admiral is located.USEPA's action is based upon a revision request which was submitted by the State under the Clean Air Act (Act).

DATE: Comments on this revision and on the proposed USEPA action must be received by April 27, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: On September 16, 1983, the Illinois Environmental Protection Agency (IEPA) submitted an Alternative Control Strategy (ACS or bubble) as a proposed SIP revision for Admiral. Admiral operates a large appliance manufacturing plant in Galesburg, Knox County, Illinois, an attainment area for ozone. Admiral had three paint lines in 1983. Under this proposed ACS, Admiral shut down Lines 1 and 3, built a new Line 4 and kept existing Line 2 as a backup. This bubble would allow Line 2 to operate with emissions in excess of the allowable under Illinois Pollution Control Board (IPCB) Rule 205(n)(1)(H).

On December 8, 1986, IEPA submitted a revised ACS for Admiral as a proposed revision to the Illinois SIP. This revised ACS replaced the SIP submittal sent to USEPA on September 16, 1983.

The revised ACS permit was granted by Illinois on June 23, 1986, and expires on October 31, 1990. Paint Shop No. 4 has been operating since December 1983, and Paint Shop Nos. 1 and 3 were shut down in 1984. This ACS permit is for the purpose of operating Paint Shop No. 2, which employs coatings which do not comply with Rule 205(n)(1)(H), in the event that Paint Shop No. 4 has a long-term disablement or shutdown or in the event that Paint Shop No. 2 is needed in conjunction with Paint Shop No. 4 for peak operations. The intent of this bubble is for emission reductions resulting from the shutdown of Paint Shop Nos. 1 and 3 to offset the emissions in excess of those allowable from Paint Shop No. 2. IEPA states that Paint Shop No. 2 has not operated since shop No. 4 began operating in December 1983.

IEPA states that it allowed Admiral to use the period 1974-1975 to determine the baseline because this period reflects their operations under normal economic conditions. IEPA determined the permit conditions as follows:

The actual quantity of paint coating used during 1974-1975 was adjusted to reflect the amount of emissions which would be allowed by Rule 205(n)(1)(H), the new VOM emission limit for large appliance coating operations. The emissions allowed by this rule are less than the actual emissions during 1974-1975. This adjusted allowable emission rate establishes the combined baseline for Paint Shops 1 and 3 at 303.2 tons per year (TPY) and the baseline for Paint Shop 2 at 295 TPY.

	Comparison of VOC emissions (tons/year)		
	Baseline emissions 1974-1975	ACS case 1: paint shop 4 at maximum operation shop 2 operating	ACS case 2: paint shop 4 not operating
Paint shop 1 and 3	303.2		
Paint shop 4		[1] 303.2	
Paint shop 2	295.0	295.0	598.2
Total	598.2	598.2	598.2

[1] Under the prevention of significant deterioration (PSD) rules, Paint Shop No. 4 may emit an additional 39.9 tons/year beyond 303.2 tons/year without being subject to the PSD requirements.

The above table compares the baseline emissions with the emissions authorized under the ACS. Admiral's preferred mode of operations (Case 1) is to use only Shop 4, because it was designed to coat the normal workload of the plant and is less expensive to operate. However, during peak operating conditions, Paint Shop No. 2 could be operated in combination with Paint Shop No. 4. If for some reason Paint Shop No. 4 needed to be shut down, then Paint Shop No. 2 would be operated alone with a limit of 598.2 TPY. In each case the 303 TPY emission reduction from the shut down of Shops 1 and 3 compensates for the excess emissions.

The emission limits contained in the ACS (which expires on 10-31-90) are included below:

a. Organic material emission from Paint Shop No. 4 shall not exceed 342.2 tons/year.

b. If Paint Shop No. 4 emits 303.2 tons/year or more of organic material, then

the emissions from Paint Shop No. 2 may not exceed 295.0 tons/year.

c. If Paint Shop No. 4 emits less than 303.2 tons/year of organic material, then the combined emissions from Paint Shop Nos. 4 and 2 shall not exceed 598.2 tons/year.

d. Organic material emissions shall not exceed 3.1 tons/day if Paint Shop No. 4 is operating or exceed 2.94 tons/day if Paint Shop No. 4 is not operating.

e. These emission limits, as applied to Paint Shop No. 2, are in lieu of the requirements of § 215.204(h) of 35 Illinois Administrative Code (35 IAC).[1]

USEPA Evaluation of Admiral Bubble

USEPA has evaluate the Admiral Bubble in relationship to its December 4, 1986, Emissions Trading Policy Statement (ETPS, 51 FR 43813).[2] This ACS is a "pending" bubble because it was submitted in its original form in 1983. Under the ETPS, credit can be taken for the 1984 shutdown of Lines 1 and 3. It should be noted, however, that IEPA's submission of this proposed revision to the Illinois SIP is deficient in two respects:

(1) IEPA has not adequately documented the Admiral production levels from 1974 through the present. This is needed both to document the baseline emission levels claimed by IEPA and also to support its position that 1974–1975 is the appropriate period in establishing a baseline.

(2) IEPA has not supported the period 1974–1975 as appropriate for use in determining the bubble baseline emissions. This period is almost 10 years prior to submittal of the original bubble and is prior to the time when Knox County was designated as an attainment area. It appears that this period was chosen because it represents a peak production period. The bubble policy does not authorize use of the peak production period as being representative for purposes of a bubble.

(3) Credit from these lines was already used in 1984 for a netting action involving the new paint shop #4. This violates emission trade policy which prohibits multiple use of emission reduction credits. Emissions must be surplus to qualify for credit. Any surplus emissions must be reductions not required by current regulations in the SIP, and not used by the source to meet any other regulatory requirement.

Because Admiral's production levels have not been adequately documented, 1974–1975 may not be the appropriate time period for establishing the baseline emission level. USEPA has determined, therefore, that the SIP revision is not approvable as a bubble. It is, however, approvable as a site-specific SIP relaxation, because USEPA does not require VOC regulations in this area.

Knox County is an ozone attainment area, and approval of this revision will not cause an increase in the historical VOC emission level from this source. Under USEPA's existing policy, however, no demonstration of attainment and maintenance was required in the SIP for ozone attainment areas.

It should be noted that the life of this ACS is limited to the life of the State operating permit under the decision reached in *Bethlehem Steel Corporation* v. *Gorsuch* 742 F.2d 1028 (7th Cir. 1984). Upon expiration of the operating permit, the federally enforceable emission limit for this source becomes the underlying SIP requirement.

This rulemaking relaxes a stationary source RACT emission limitation in an area that has been designated as attainment/unclassified for ozone. Originally, this RACT limitation was imposed by the State, not to satisfy an ozone nonattainment SIP planning requirement, but rather to allow the State to have an accommodative SIP. This action, when promulgated, will remove the accommodative SIP for Knox County for the duration of the variance, i.e., until October 31, 1990.[3] This means that all new major VOC sources and major modifications in this county must comply with all PSD monitoring requirements for the period of USEPA's approval. Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas—all sources wishing to locate in nonattainment area must continue to comply with the State's federally approved Part D new source review program.

If the State wishes to correct the inconsistencies cited above in order to retain the accommodative SIP for the area, it should also review the following guidance for other potential inconsistencies: (1) Appendix D of the proposed Post-1987 ozone policy titled "Discrepancies and Inconsistencies Found in Current SIP," (2) a May 25, 1988, clarification of Appendix D titled "Issues Relating to VOC Regulations Cutpoints, Deficiencies and Deviations," and (3) the "SIP Approvability Checklist-Enforceability," which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plan Revisions for Enforceability and Legal Sufficiency". These documents contain USEPA requirements (largely dealing with SIP approvability and enforceability) which must be met for a site-specific SIP revision to be approved in an attainment

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[1] It should be noted that the Rule 205(n)(1)(H) has been recodified as § 215.204(h) of Title 5 of the Illinois Administrative Code (35 IAC). 35 IAC has not, however, been incorporated into the Illinois SIP. For SIP purposes, therefore, this ACS is treated as though it were granted as a bubble from Rule 205(n)(1)(H) which is part of the SIP.

[2] On April 7, 1982 (47 FR 15076), the USEPA issued a proposed Emissions Trading Policy Statement (ETPS) which sets forth general principles for the creation, banking and use of emission reduction credits. This statement indicated that it is the policy of USEPA to encourage use of emissions trades to achieve more flexible, rapid and efficient attainment of the NAAQS[3]. It describes emissions trading, sets out general principles that USEPA will use to evaluate emissions trades under the Clean Air Act, and expands opportunities for states and industry to use these less costly control approaches. The April 7, 1982, notice noted that, until USEPA takes final action on its policy statement, state actions involving emission trades would be evaluated under the provisions set forth in the proposed statement. On December 4, 1986 (51 FR 43814), USEPA issued its final EPTS, which contains the criteria by which emission trades are now evaluated.

A source may secure emission reduction credits by meeting each of the applicable requirements of the final ETPS. To be approvable, the bubble must produce results which are equivalent to or better than the baseline emission levels in terms of ambient impact and enforceability. Only reductions which are surplus, enforceable, permanent, and quantifiable can qualify as an emission reduction credit. In attainment areas, a source must use the lower of actual or allowable values for each of the three baseline components, unless allowable values higher than corresponding actual values are clearly used or reflected in the demonstration of attainment or otherwise shown not to jeopardize ambient standards. These three baseline factors (which amount to the RACT allowable limit times actual production) are described here in the following paragraph. Actual values for production are normally determined, based upon the source's average historical values for the factors for the 2-year period preceding the source's application to trade emission reduction credits.

For bubbles, a source's "baseline" emissions are equal to the product of its: (1) *Emission rate* ("ER"), specified in terms of mass emissions per unit of production or throughput (e.g., pounds of volatile organic compound (VOC) per weight of solids applied); (2) *average hourly capacity utilization* ("CU") (e.g., millions of BTU per hour or weight of solids applied per hour); and (3) *number of hours of operation* ("H") during the relevant time period. In sum, baseline emissions = ER × CU × H. Net baseline emissions for a bubble are the sum of the baseline emission of all sources involved in the trade.

[3] An accommodative ozone SIP for areas classified as attainment/unclassifiable requires RACT-level controls on existing sources, in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required on new major sources in attainment/unclassifiable areas under USEPA's Prevention of Significant Deterioration (PSD) regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas.

area without eliminating the accommodative SIP for the area.

Proposed Rulemaking Action

USEPA proposes to approve the ACS for Admiral for the above cited reasons, but to remove the accommodative SIP for Knox County for the duration of the variance. Public comment is solicited on the proposed SIP revision and on USEPA's proposed approval of it. Comments received by the date indicated above will be considered in the development of USEPA's final rulemaking action.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental Protection, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: June 30, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial note: This document was received at the Office of the **Federal Register** on March 23, 1989.

[FR Doc. 89–7316 Filed 3–27–89; 8:45 am]

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40 CFR Part 52

[Region II Docket No. 94; FR–3543–9]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing that it is proposing to approve a request by New Jersey to revise its State Implementation Plan (SIP) for attainment of the ozone standard.This revision will reduce emissions of volatile organic compounds from gasoline by reducing the Reid Vapor Pressure (RVP) of gasoline. The intended effect of this action is to make reasonable further progress towards attainment of the ozone standard as expeditiously as practicable as required under the Clean Air Act.

DATE: Comments must be received by April 27, 1989.

ADDRESSES: All comments should be addressed to: Mr. William J. Muszynski, P.E., Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Program Branch, 26 Federal Plaza, Room 1005, New York, New York 10278

New Jersey Department of Environmental Protection Division of Environmental Quality Bureau of Air Pollution Control 401 East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: On February 3, 1989, EPA received a SIP revision from the Commissioner of the New Jersey Department of Environmental Protection (NJDEP) that would add a new Subchapter 25 to Chapter 27, Title 7 of the New Jersey Administrative Code. Subchapter 25, entitled "Control and Prohibition of Air Pollution by Vehicular Fuels," prohibits persons from selling or supplying gasoline from a bulk plant or terminal having a Reid Vapor Pressure (RVP) greater than 9.0 pounds per square inch (psi) from May 1 through September 15 beginning in 1989 and continuing each year thereafter.

Background

On November 12, 1987, the Commissioners of the Northeast States for Coordinated Air Use Management (NESCAUM) signed a Memorandum of Understanding expressing their intention to reduce the RVP of gasoline to 10.0 psi starting in the summer of 1988 and to 9.0 psi in the summer of 1989 and continuing every ozone season thereafter. Many states, including New Jersey, experienced delays in adopting necessary regulations and did not reduce RVP to 10.0 psi in the summer of 1988. New Jersey is, therefore, limiting RVP to 9.0 psi from May 1 to September 15 starting in 1989, and continuing each year thereafter. New Jersey adopted its RVP regulation on January 27, 1989 and submitted it to EPA as a SIP revision on the same date.

EPA published a notice of final rulemaking on March 22, 1989 (54 FR 11868) which also requires the control of RVP. The EPA rule calls for the control of the volatility of gasoline nationally. The rule requires that in the Northeast, the standard will be 10.5 psi beginning in 1989. The Federal standard will be enforced each year beginning June 1 (for retail users and other end users of gasoline) or May 1 (for all other points in the distribution system) except in 1989 when enforcement will begin 100 days and 70 days (respectively) after the publication date of the final rule. Enforcement ends at all points in the system on September 16 of each year. The EPA regulation would normally preempt the state provision under section 211(c)(4) of the Clean Air Act (the Act). However, section 211(c)(4)(C) of the Act provides for approval of state control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary national ambient air quality standard (NAAQS) for which the plan is in effect.

Criteria for Approval

Section 211(c)(4)(A) of the Act, in describing Federal preemption authority, states: "Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or (ii) if the Administrator has prescribed under paragraph (1) a control prohibition applicable to such fuel or fuel additive, unless [the] State prohibition or control is identical to the prohibition or control prescribed by the Administrator."

Thus in light of the new Federal volatility rule, the state control would normally be preempted.

However, even though preemption has occurred, EPA may still approve certain state provision for limits on RVP of fuel where a finding under section 211(c)(4) is made which would authorize EPA approval and, thus, eliminate the preemption problem. As set forth below, section 211(c)(4)(C) authorizes EPA to approve into the SIP a state-adopted fuel control measure that has otherwise been preempted by EPA action if EPA finds that the state control "is necessary to achieve" the standard that the SIP implements.

Section 211(c)(4)(C) of the Act, in setting forth the circumstances under which an exception to Federal preemption of state regulation may occur, states: "A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements."

In the **Federal Register** discussion of EPA's approval of a state oxygenated fuels program in the Maricopa County, Arizona SIP, EPA interpreted this language as requiring the Agency to find that a fuel control requirement was essential to achieve timely attainment of the primary standard for carbon monoxide. EPA said further that a fuel control measure may be "necessary" for timely attainment if no other measures that would bring about timely attainment exist, or if such other measures exist and are technically possible to implement, but are unreasonable or impracticable. Otherwise, no fuel control would ever be "necessary," since for any area there is at least one measure—namely, required shutdowns and prohibitions on driving—that would result in timely attainment of the NAAQS. It is doubtful that Congress would have intended to bar EPA from approving State fuel controls into a SIP based on the availability of such drastic alternatives.[1]

Evaluation of How the New Jersey Revision Satisfies the "Necessary" Criterion

In its 1982 SIP, New Jersey estimated that emissions of volatile organic compounds (VOCs) would need to be reduced by 59 percent from 1980 levels in order to attain the ozone standard in the New Jersey portion of the New Jersey/New York/Connecticut Air Quality Control Region (AQCR) by 1987. This percent reduction was estimated to be equivalent to 252,800 tons per year (tpy) of VOCs. EPA has reviewed the progress the State has made in achieving these emission reductions and determined that the State has only achieved a 39.8 percent reduction from 1980 levels; a reduction of 82,330 tpy identified in the SIP as necessary to attain the standard has yet to be achieved. The reasons for these shortfalls are varied and include increased RVP in gasoline, inability to implement certain measures, higher than anticipated growth in vehicle miles traveled, less than anticipated effectiveness of the inspection and maintenance program, and the finding that some of the measures the State committed to in 1982 are not reasonably available.

The New Jersey submittal concludes that by lowering RVP to 9.0 psi, VOC emission reductions of approximately 24,000 tpy would be obtained statewide, with 13,400 tpy of the reduction occurring in the New Jersey/New York/Connecticut AQCR. The quantity of this reduction was derived using the AP–42 emission factors for storage and transfer of gasoline and from the EPA MOBILE3 emission factor model for motor vehicle emissions. This estimate may understate the actual reductions resulting from RVP controls because it does not include the emissions reductions that would result from decreased running losses associated with lower volatility gasoline. Running losses are emissions from the gasoline tank and fuel system that occur while a car is being driven and which overload the evaporative control system or escape through the filler cap. This 24,000 tpy reduction represents nearly 8 percent of the State's total annual VOC inventory and 19 percent of the ozone season VOC inventory. On a worst case basis, considering hot weather (95 degrees Fahrenheit) and longer trip lengths, the reduction in VOC emissions provided by RVP control could be as high as 63 percent.

Using information available in the New Jersey SIP and Reasonable Further Progress Report for 1987, along with supplemental information submitted by the State, EPA determined that New Jersey has only achieved a 39.8 percent reduction from 1980 levels in the New Jersey/New York/Connecticut AQCR. This translates to at least a 31.9 percent reduction from the 1987 inventory. It is also important to recognize that the 59 percent emission reduction that guided New Jersey's selection of control measures has proven to be too low. EPA's experience with Regional Oxidant Model runs for the Northeast indicates that a VOC emission reduction on the order of at least 75 percent from 1980 levels is needed for attainment of the ozone standard. Under this scenario, the emission reductions needed for attainment of the ozone standard translate to at least a 58.8 percent reduction from the 1987 inventory, or 68,556 tpy in addition to the 252,800 tpy that has been identified in the SIP.

The VOC strategies identified by the State as having the greatest potential for significant future VOC reductions that have not been implemented are:

Measure	Reduction (tpy)	Percent of 1987 inventory
Reducing RVP from 11.5 to 9.0	13,400	5.2
Architectural Coating	9,650	[1] 3.7
Lower Exclusion Rates	20,100	7.8
Barge/Tanker Loading	3,900	[2] 1.5
Additional Consumer/Commercial Solvent Control	6,030	[1] 2.3
Automobile Refinishing	3,020	[1] 1.2
I/M Enhancements	10,600	4.1
Total	66,700	25.8

[1] Many solvents and coatings cannot be fully reformulated or replaced and, because they are area source emissions, cannot be effectively captured and controlled. Based upon New Jersey's experience, only 20 percent of these emissions reductions may be achievable in the foreseeable future. However, this table assumes 100 percent effectiveness based upon the State's estimate. There will be an additional 14,960 tpy VOC emissions reduction shortfall for these measures based upon a 20 percent effectiveness assumption.

[2] Due to delays caused by a safety study being conducted by the U.S. Coast Guard, it will be at least two years before any emission reductions can be obtained through this measure.

The potential combined reductions from other categories suggested by EPA for examination by other NESCAUM states, if found practicable, may provide an additional 0.6 percent emission reduction. This would yield a total reduction of 26.4 percent if all were 100 percent effective. There would still be at least a 5.5 percent VOC emission reduction shortfall.

By reducing RVP to 9.0 psi instead of 10.5 psi, New Jersey wuld be able to obtain additional reductions of approximately 5,896 tpy. Therefore, even with EPA's RVP regulation requiring control to 10.5 psi in 1989, the State regulation will still have a significant impact. It will provide, approximately, an additional 2.3 percent reduction per year beyond the EPA reduction.

Thus, New Jersey's RVP program appears to meet the appropriate test of being "necessary" to achieve attainment of the ozone standard. The fact that the State RVP regulation might not by itself fill the remaining shortfall and hence by itself achieve the standard does not mean the rule would not be "necessary" to achieve the standard within the meaning of section 211(c)(4)(C). EPA believes that if Congress had intended EPA to approve a state fuel-content rule only if it were necessary and sufficient to achieve the standard, then it would

[1] **Federal Register** August 1, 1988, 53 FR 30220, 30228.

have used that language in section 211(c)(4)(C). EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels (thus bringing the area closer to achieving the NAAQS) when no other reasonable measures are available to achieve this reduction. A contrary application of "necessary to achieve" in this situation would mean that measures which result in significantly improved air quality are nonetheless unacceptable (even though no other reasonable measures are available) merely because they are insufficient to themselves provide the reductions necessary to achieve attainment of the NAAQS.

Enforceability

In EPA's review for the enforceability of the New Jersey revision a problem with the test methods section was revealed. The State requires that testing shall be conducted in accordance with the American Society for Testing and Materials (ASTM) method D–323. While method D–323 may represent the current ASTM designation of the approved test method for determining fuel volatility and, as such, is the industry standard, EPA has adopted a final volatility rule which includes a test method based upon an ASTM proposed modification to method D–323 known as Annex 2. The State has committed to revise this section in order to resolve this issue. EPA is proposing to approve the State's RVP controls with the understanding that the State must revise the test methods section to include the EPA recognized methods.

EPA is confident that the State will pursue this course of action because the State has included method D–323 in its regulation already. Moreover, the State interprets this portion of the regulation to mean that additions to method D–323, such as Annex 2, will be incorporated into New Jersey's enforcement procedures upon finalization by ASTM.

Conclusion

EPA is proposing to approve this revision to the New Jersey Ozone State Implementation Plan to control gasoline volatility with the understanding that the State will revise the test method section of the regulation. EPA is also proposing to make a finding that this SIP revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to federal preemption. This finding is required since EPA has finalized national volatility standards.

EPA is soliciting public comments on its proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address noted at the beginning of today's notice.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act, and 40 CFR Part 51.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7642.

Date: March 24, 1989.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 89–7317 Filed 3–27–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[Region II Docket No. 93; FRL–3543–8]

Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing that it is proposing to approve a request by New York to revise its State Implementation Plan (SIP) for attainment of the ozone standard. This revision will reduce emissions of volatile organic compounds from gasoline by reducing the Reid Vapor Pressure (RVP) of gasoline. The intended effect of this action is to make reasonable further progress towards attainment of the ozone standard as expeditiously as practicable as required under the Clean Air Act.

DATE: Comments must be received by April 27, 1989.

ADDRESSES: All comments should be addressed to: Mr. William J. Muszynski, P.E., Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: On February 6, 1989, the Environmental Protection Agency (EPA) received a State Implementation Plan (SIP) revision from the Commissioner of the New York State Department of Environmental Conservation (NYSDEC) that would add a new regulation, Subpart 225–3, to Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York. This regulation, entitled "Fuel Composition and Use—Volatile Motor Fuels," prohibits any person from selling or supplying from a bulk plant or terminal, gasoline having a Reid Vapor Pressure (RVP) greater than 9.0 pounds per square inch (psi) from May 1 through September 15 beginning in 1989 and continuing each year thereafter.

Background

On November 12, 1987, the Commissioners of the Northeast States for Coordinated Air Use Management (NESCAUM) signed a Memorandum of Understanding expressing their intention to reduce the RVP of gasoline to 10.0 psi starting in the summer of 1988 and to 9.0 psi in the summer of 1989 and continuing every ozone season thereafter. Many states, including New York, experienced delays in adopting necessary regulations and did not reduce RVP to 10.0 psi in the summer of 1988. New York is, therefore, limiting RVP to 9.0 psi from May 1 to September 15 starting in 1989, and continuing each year thereafter. New York adopted its RVP regulation on December 5, 1988 and submitted it to EPA as a SIP revision on January 31, 1989.

EPA published a notice of final rulemaking on March 22, 1989 (54 FR 11868) which also requires the control of RVP. The EPA rule calls for the control of the volatility of gasoline nationally. The rule requires that in the Northeast, the standard will be 10.5 psi beginning in 1989. The Federal standard will be

enforced each year beginning June 1 (for retail users and other end users of gasoline) or May 1 (for all other points in the distribution system) except in 1989 when enforcement will begin 100 days and 70 days (respectively) after the publication date of the final rule. Enforcement ends at all points in the system on September 16 of each year. The EPA regulation would normally preempt the state provision under section 211(c)(4) of the Clean Air Act (the Act). However, section 211(c)(4)(C) of the Act provides for approval of state control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary national ambient air quality standard (NAAQS) for which the plan is in effect.

Criteria for Approval

Section 211(c)(4)(A) of the Act, in describing Federal preemption authority, states: "Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the **Federal Register**, or (ii) if the Administrator has prescribed under paragraph (1) a control prohibition applicable to such fuel or fuel additive, unless [the] State prohibition or control is identical to the prohibition or control prescribed by the Administrator."

Thus in light of the new Federal volatility rule, the state control would normally be preempted.

However, even where preemption has occurred, EPA may still approve certain state provisions for limits on RVP of fuel where a finding under section 211(c)(4)(C) is made which would authorize EPA approval and, thus, eliminate the preemption problem. As set forth below, section 211(c)(4)(C) authorizes EPA to approve into the SIP a state-adopted fuel control measure that has otherwise been preempted by EPA action if EPA finds that the state control "is necessary to achieve" the standard for which the SIP is in effect.

Section 211(c)(4)(C) of the Act, in setting forth the circumstances under which an exception to Federal preemption of state regulation may occur, states: "A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements."

In the **Federal Register** discussion of EPA's approval of a state oxygenated fuels program in the Maricopa County, Arizona SIP, EPA Interpreted this language as requiring the Agency to find that a fuel control requirement was essential to achieve timely attainment of the primary standard for carbon monoxide. EPA said further that a fuel control measure may be "necessary" for timely attainment if no other measures that would bring about timely attainment exist, or if such other measures exist and are technically possible to implement, but are unreasonable or impracticable. Otherwise, no fuel control would ever be "necessary," since for any area there is at least one measure—namely, required shutdowns and prohibitions on driving—that would result in timely attainment of the NAAQS. It is doubtful that Congress would have intended to bar EPA from approving State fuel controls into a SIP based on the availability of such drastic alternatives.[1]

Evaluation of How the New York Revision Satisfies the "Necessary" Criterion

New York City Metropolitan Area

In its 1984 New York City metropolitan area (NYCMA) SIP, the State estimated that it would need to reduce volatile organic compound (VOC) emissions by 59 percent over 1982 levels in order to meet the ozone standard by 1987. This translates to a 199,676 ton per year (tpy) reduction in VOC emissions. EPA has evaluated the State's progress in obtaining these reductions and determined that the State has only achieved a 38.1 percent reduction from 1982 levels; a reduction of 70,938 tpy identified in the SIP as necessary to attain the standard has yet to be achieved. The reasons for this shortfall are varied and include lack of (or inadequate) implementation of certain measures, less than anticipated effectiveness of certain measures, growth in vehicle miles traveled and the unanticipated growth in emissions due to increases in gasoline RVP in recent years.

As an example of the effect of one of these reasons for the shortfall, in its 1984 SIP for the NYCMA, the State committed to study the feasibility of reducing VOC emissions from architectural coatings, consumer/commercial solvent use and automobile refinishing. These three control measures were identified as extraordinary control measures that were beyond reasonably available control technology (RACT) and, as such, were not reasonably available. In addition to the State's commitment to study these three source categories, the State originally estimated that these controls would reduce VOC emissions by 29,800 tpy. The results of the State's current study suggest that the extraordinary controls would not be 100 percent effective because these are area sources, and therefore would not yield the reductions originally anticipated. The State estimates that the reductions attributable to the three extraordinary measures would be as low as 4,300 tpy.

To make up for the emission reduction shortfall, the State developed and adopted a regulation that would reduce the volatility of gasoline sold in the State during the ozone season. The New York submittal and related documents contain the State's analysis of the emission reductions that the extraordinary measures would achieve and the remaining shortfall. That analysis concludes that the New York RVP regulation would reduce VOC emissions by an estimated 9,000 tpy in the NYCMA. This estimate may understate the actual reductions because it does not include the emissions reductions that would result from decreased running losses associated with lower volatility gasoline. Running losses are emissions from the gasoline tank and fuel system that occur while a car is being driven and which overload the evaporative control system or escape through the filler cap. New York has estimated that the RVP regulation would reduce emissions by 19,000 tpy if running losses are taken into account.

Using information available in the New York SIP and Reasonable Further Progress Report for 1986, along with supplemental information submitted by the State, EPA determined that New York has only achieved a 38.1 percent reduction from 1982 levels in the NYCMA. This translates to at least a 33.8 percent reduction from the 1987 inventory. It is also important to recognize that the 59 percent emission reduction that guided New York's

[1] **Federal Register**, August 10, 1988, 53 FR 30220, 30228.

selection of control measures has proven to be too low. EPA's experience with Regional Oxidant Model runs for the Northeast indicated that a VOC emission reduction on the order of at least 75 percent from 1982 levels is needed for attainment of the ozone standard. Under this scenario, the emission reductions needed for attainment of the zone standard translate to at least a 59.7 percent reduction from the 1987 inventory, or 54,149 tpy in addition to the 199,676 tpy that has been identified in the SIP.

The VOC strategies that are not yet implemented which have the greatest potential for significant future VOC reductions are:

Measure	Reductions (tpy)	Percent of 1987 inventory
Reduce RVP from 11.5 to 9.0	9,004	4.3
Architectural Coating Consumer/ Commercial Auto Refinishing (combined)	4,300	2.1
RACT for Small Sources	3,978	1.9
Perc Dry Cleaners	3,947	1.9
Total	21,229	10.2

The potential combined reductions from other categories suggested by EPA for examination by other NESCAUM states, if found practicable, may provide an additional 1.5 percent emission reduction. This would yield a total reduction of 11.7 percent if all were 100 percent effective. There would still be at least a 22.1 percent VOC emission reduction shortfall. In order to make up for this remaining shortfall, the State is considering additional changes to its motor vehicle inspection and maintenance program along with other measures as part of the Post-1987 Ozone SIP planning process. A reasonable level of I/M program changes would result in less than a 5,000 tpy reduction in emissions. Thus, even in such reasonable I/M enhancements are implemented, a shortfall will still exist necessitating the implementation of other measures to achieve attainment.

By reducing RVP to 9.0 psi instead of 10.5 psi, New York would be able to obtain additional reductions of approximately 3,800 tpy. Therefore, even with EPA's RVP regulation reguiring control to 10.5 psi in 1989, the State regulation will still have a significant impact. It will provide, approximately, an additional 1.8 percent reduction per year beyond the EPA reduction.

Thus, New York's RVP program appears to meet the appropriate test of being "necessary" to achieve attainment of the ozone standard. The fact that the State RVP regulation might not by itself fill the remaining shortfall and hence by itself achieve the standard does not mean the rule would not be "necessary" to achieve the standard within the meaning of section 211(c)(4)(C). EPA believes that if Congress had intended EPA to approve a state fuel-content rule only if it were necessary and sufficient to achieve the standard, then it would have used that language in section 211(c)(4)(C). EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels (thus bringing the area closer to achieving the NAAQS) when no other reasonable measures are available to achieve this reduction. A contrary application of "necessary to achieve" in this situation would mean that measures which result in significantly improved air quality are nonetheless unacceptable (even though no other reasonable measures are available) merely because they are insufficient in themselves to provide the reductions necessary to achieve attainment of the NAAQS.

It must be noted that the State's submittal indicated that the regulation was intended "as a replacement volatile organic compound control measure for a portion of three existing SIP commitment to control VOC through measures that have been categorized as extraordinary, and as a package that improves the ground level ozone situation on its own merits." EPA is not at this time determining that this measure replaces the three extraordinary measures which are part of the 1984 SIP for the NYCMA. EPA will evaluate the State's submittal of regulations implementing these measures which was received on December 5, 1988 and take action in a separate **Federal Register** notice. EPA is proposing action today with the knowledge that New York's overwhelming intention in seeking EPA approval of this SIP revision, is to continue to make progress toward attaining the ambient air quality standard for ozone through the implementation of RVP controls.

Finally, EPA notes that its 211 (c)(4)(C) covers not only the designated NYCMA nonattainment area, but also Orange and Putnam Counties. In its June 6, 1988 proposal concerning nonattainment designations pursuant to the Mitchell-Conte Amendment (53 FR 20722), EPA proposed to include Orange and Putnam Counties within the NYCMA nonattainment area because of their contribution to ozone formation in that area. For the same reason, EPA also indicated in letters dated May 26, 1988 to New York State that both counties must be included in Post-1987 SIP planning for the NYCMA. See also, 52 FR 45044 (November 24, 1987). Therefore, EPA today concludes that implementation of the RVP rule in Orange and Putnam Counties is necessary to achieve the ozone standard in the NYCMA.

Upstate Nonattainment Areas

During the summers of 1987 and 1988, air monitoring data revealed numerous exceedances of the ozone NAAQS indicating actual nonattainment of the standard in Jefferson, Erie, Niagara, Dutchess, Essex, Albany, Schenectedy, Rensselaer, Saratoga, and Washington Counties. New York has submitted information indicating that the RVP program is necessary to achieve attainment as expeditiously as practicable in these upstate areas. This information reveals that no other measures could be implemented rapidly enough to provide any significant emission reductions by the summer of 1989, and available measures which would produce emission reductions of similar magnitude to the RVP program could not be in place for several years. The upstate areas already have in place reasonably available control technology (RACT) for stationary sources consistent with EPA's Group I and Group II Control Technique Guidelines (CTGs) as a result of previous nonattainment designations. New York could impose RACT on Group III CTG sources, institute a vehicle inspection and maintenance program, require Stage II vapor controls, and other extraodinary controls such as regulating consumer solvents. However, New York has indicated that none of these measures could be in place before 1992 and most would take significantly longer to produce emission reductions similar to that of the RVP program.

The State has estimated that reductions in upstate areas from the RVP program are expected to be in the range of 26,500 tpy. Although New York is not yet in a position to make a demonstration of attainment for these areas, pending the development of inventories and the use of computer modeling, New York currently believes that the RVP program alone may be sufficient to provide for attainment of the ozone NAAQS in the upstate nonattainment areas. New York therefore concludes that implementation of the RVP program now is necessary to achieve the standard as expeditiously as practicable in these areas.

In light of the State's submitted analysis and the fact that New York does not currently have a nonattainment demonstration for the upstate nonattainment counties listed above, EPA cannot now conclude that the RVP program is not necessary to achieve the standard as expeditiously as practicable in those areas.[2] Until EPA is in a position to conclude that the program is definitely not necessary, the Agency believes it is appropriate to make a finding under section 211(c)(4)(C) with respect to the RVP program in the upstate nonattainment areas. EPA therefore proposes today to make such a finding. Further, it appears that since the upstate nonattainment areas are located geographically all over the State, New York logistically had to make the RVP rule apply on a statewide basis in order to ensure compliance in the nonattainment areas without producing supply and distribution problems. Given New York's need to apply the RVP program statewide, EPA finds that application of the program throughout the State is necessary to achieve the ozone standard as expeditiously as practicable in all of the upstate and downstate nonattainment areas.

EPA acknowledges that the technical data to support its 211(c)(4)(C) finding for the upstate areas are not extensive given the late date at which the upstate nonattainment problem became apparent. EPA therefore specifically requests comment on the propriety of its 211(c)(4)(C) finding for the upstate nonattainment areas.

Enforceability

In EPA's review of the enforceability of the New York revision, a problem with the test methods section was revealed. The State requires that fuel sampling and testing shall be "by methods acceptable to the Commissioner." EPA has adopted a final volatility rule which contains the American Society for Testing and Materials (ASTM) method D–4057 for bottle sampling, the method contained in the California Administrative Code Title 13, R.2261 for nozzle sampling and ASTM "dry" method D–4814, Annex 2 (formerly known as P–176) or the Herzog "dry" method as a test method. The State has committed to revise this section in order to resolve this issue. EPA is proposing to approve the State's RVP controls with the understanding that the State must revise the test methods section to include the EPA recognized methods.

Conclusion

EPA is proposing to approve this revision to the New York State Implementation Plan for ozone to control gasoline volatility with the understanding that the State will revise the test method section of the regulation. EPA is also proposing to make a finding that this SIP revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to Federal preemption.

EPA is soliciting public comments on its proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address noted at the beginning of today's notice.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act, and 40 CFR Part 51.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7642.

Date: February 24, 1989.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 89–7318 Filed 3–27–89; 8:45 am]

BILLING CODE 6560–50–M

[2] Although EPA indicated in its national RVP rulemaking that control to 9.0 psi would not be practicable for implementation before 1992 nationwide March 22, 1989 (54 FR 11868), EPA must conclude, based upon the record underlying New York's actual adoption of a 9.0 psi RVP program in 1989, that such a program is currently practicable in New York.

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40 CFR Part 52

[FRL–3544–5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The USEPA is today withdrawing its November 23, 1988, proposed rulemaking notice (53 FR 47549) which proposed to approve a revision to the ozone portion of the Ohio State Implementation Plan (SIP) for Mansfield Products Company in Mansfield, Ohio.

On February 23, 1989, the Ohio Environmental Protection Agency requested that USEPA withdraw the pending SIP revision for a large appliance coating line (K005) at the Mansfield Products Company plant in Mansfield, Ohio. The noncomplying coating line at the Mansfield Plant has since been shutdown.

DATE: Withdrawal of this rulemaking is effective as of March 28, 1989.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6041.

Authority: 42 U.S.C. 7401–7642.

Dated: March 20, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89–7319 Filed 3–27–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3544–1]

40 CFR Part 300

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Cecil Lindsey site from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Cecil Lindsey site from the National Priorities List (NPL) and requests public comment on this action. This site is located northeast of Newport, in Jacksonville County, Arkansas. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986. EPA and the Arkansas Department of Pollution Control and Ecology (ADPC&E) have determined that all appropriate CERCLA response actions have been implemented and that no additional cleanup activities are appropriate. In addition, EPA and the State have determined that the remedial activities conducted at the site to date

have been protective of human health, welfare, and the environment. This deletion does not preclude future actions under Superfund.

DATES: All comments relating to this site may be submitted on or before May 3, 1989.

ADDRESSES: Comments should be addressed to: Carl E. Edlund, Chief, Superfund Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Comprehensive information on this site is available through the EPA Region 6 public docket, which is located at the Region 6 offices. Requests for copies of the background information from the regional public docket should be directed to: Martin Swanson, Site Project Manager (6H–SA), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–6720.

Detailed information concerning this site is also available for viewing at the local repositories located at the following addresses:

Jackson County Library, 213 Walnut Street, Newport, Arkansas
Jackson County Courthouse, Third and Main Street, Newport, Arkansas.

FOR FURTHER INFORMATION CONTACT: Martin Swanson, Site Project Manager (6H–SA), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–6720.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Environmental Protection Agency (EPA) Region 6, announces its intent to delete the Cecil Lindsey site. Newport, Arkansas, from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this deletion. The NPL is a list of hazardous waste sites which EPA has identified as presenting a known or potential threat to human health and the environment. Sites on the NPL are eligible for remedial actions financed by the Hazardous Substance Supefund Response Trust Fund (Fund). Pursuant to § 300.66(c)(8) of the NCP, any site deleted from the NPL is eligible for further Fund-financed remedial actions, should future conditions warrant such action.

Comments relating to the deletion of this site from the NPL will be accepted by the EPA for thirty days after publication of this notice in the Federal Register.

II. NPL Deletion Criteria

The NCP establishes the criteria which are used to determine whether a site is eligible for deletion from the NPL. In accordance with 40 CFR 300.66(c)(7) of the NCP, sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment, and therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

EPA Region 6, will accept and respond to all public comments prior to the deletion of this site from the NPL. Comments from the local community will be taken into account by EPA in its deletion decision. The following procedures have been implemented for the intended deletion of this site:

1. EPA Region 6 has recommended the deletion and has prepared a site Closeout Report.

2. The State of Arkansas has reviewed the site Closout report and concurred with the proposed deletion.

3. Concurrent with this National Notice of Intent to Delete, a local Notice of Intent to Delete was published in a local newspaper and was distributed to the appropriate Federal, State, and local officials, and other interested parties. The local notice announces a thirty day comment period on the deletion package, which begins on April 3, 1989 and ends on May 3, 1989.

4. All relevant documents have been made available to the public at the Region 6 office and at the local repositories.

Any comments received during the comment period will be evaluated prior to the decision to delete the site. A Responsiveness Summary addressing these comments will be prepared by the Region and will be made available to the public. Deletion will then occur after the EPA Regional Administrator places a notice in the Federal Register. The site deletion will be reflected in the next final update to the NPL. Copies of the Notice of Deletion will also be made available to the public by Region 6.

IV. Basis for Intended Site Deletion

The Cecil Lindsey site occupies 5.2 acres in a rural region of northeastern Arkansas. It is located approximately 3.5 miles north of Newport, in Jackson County, Arkansas. Wastes for salvage and/or disposal were accepted at the site from the early 1970's to about 1980. The property was first used for a salvage operation, where machinery, automobiles, culvert pipe, and other scrap metal were collected. Later, the northern part of the site was used as a municipal dump by the community of Diaz, located approximately 2 miles west of the site. Industrial waste was also reportedly disposed at the site, although the type and extent of this waste is not well documented.

The Arkansas Department of Pollution Control and Ecology (ADPC&E) first inspected the site in 1980 and informed the owner that his operation was not in compliance with the State Solid Waste Disposal Code and Act 237. In March of 1980, the owner was requested to close the site to prevent further dumping.

ADPC&E inspected the site again in December 1980, and found evidence of recent dumping. On July 13, 1982, an EPA Region 6 Field Investigation Team conducted an inspection of the site and prepared a site inspection report. The report recommended that a second inspection and additional sampling be conducted at the site. In August 1982, EPA evaluated the site and it was subsequently placed on the NPL.

The Cecil Lindsey Remedial Investigation/Feasibility Study (RI/FS) was completed in December 1985. The results of the RI indicated that there were approximately 100 drums onsite, either partially buried or on the surface; all in various states of degradation. The RI also indicated the presence of very limited onsite soil and ground water contamination and off-site surface water and sediment contamination. Although the RI indicated the presence of contamination in the ground water, levels of compounds detected did not exceed any primary drinking water standards. An Exposure Assessment conducted as part of the Feasibility Study and a Health Assessment conducted by the Centers for Disease Control concluded that no significant health threat existed at the site.

The selection of the appropriate remedial action for the Cecil Lindsey site was dependent on several key

findings of the Remedial Investigation and Exposure Assessment. The results of the Exposure Assessment indicated that the low levels of contamination at the Cecil Lindsey site did not create a significant danger to present public health or the environment. The site was overgrown and fairly inaccessible. The area was unlikely to ever be developed due to its location in the Village Creek floodplain. With regard to the ground water in the area of the site, the flow direction is toward Village Creek. The limited contamination detected in the ground water was not seen as a potential problem, since it was expected to dissipate quickly. Based on these considerations and the fact that hazardous materials were identified in several site related drums, the remedial action selected for the Cecil Lindsey site was a modified limited action remedy. The remedial action consisted of the following activities: implementation of site access restrictions; installation of two additional monitoring wells; ground water monitoring for a period of one year; and removal/disposal of all drums containing hazardous materials in an EPA approved facility. The Cecil Lindsey Record of Decision (ROD) was signed by EPA on April 23, 1986.

Throughout the Superfund process, an extensive community relations program was used to keep the residents located near the site and those in the city of Newport informed. Notification of the activities taking place at the site was accomplished through a series of news releases, updates, and fact sheets. The public was given an opportunity to comment on the results of the Remedial Investigation/Feasibility Study at a meeting held by EPA on April 3, 1986, at the White River Vocational Institute. Additional comments were received druing the public comment period and were addressed in the Responsiveness Summary.

The remedial action was initated in February 1987, and was completed in March 1989. Two additional monitoring wells were installed at the site on November 10 through November 15, 1987. The site monitoring wells were sampled from November 17 through November 24, 1987. All drums containing hazardous materials were removed from the site in February 1988. These drums were disposed of at an EPA approved Hazardous Waste Management Facility. A second round of ground water sampling was conducted in September 1988. The site wells are scheduled to be removed in April or May 1989. These well closure activities do not significantly effect the degree of protection of human health, welfare, and the environment which is provided by the remedial action implemented. The second round of ground water sampling concluded the one year of ground water monitoring specified in the Record of Decision Document. A final site inspection was held on March 6, 1989. During this inspection, representatives from EPA and ADPC&E verified that all of the activities specified in the ROD had been completed.

EPA, with concurrence from the State of Arkansas, has determined that all appropriate Fund-financed responses under CERCLA have been completed at the Cecil Lindsey site. Furthermore, EPA has determined that no additional response actions are appropriate.

Date: March 16, 1989.

Robert E. Layton Jr.,

Regional Administrator, Region 6.

[FR Doc. 89-7320 Filed 3-27-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 588

[Docket No. 89-08]

Inquiry Concerning the Definitions of United States and Foreign Carriers in the Foreign Shipping Practices Act of 1988

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Maritime Commission solicits public comment on the definition of United States carrier and foreign carrier for the purposes of the Foreign Shipping Practices Act of 1988 and the Commission's implementing regulations at 46 CFR Part 588, and on the interpretation of the statutory provision identifying foreign carriers who may be subject to sanctions under the Act on the basis of their nationality. The comments received will assist the Commission in proposing any appropriate rule to amend its implementing regulations.

DATES: Comments (original and fifteen copies) on or before May 12, 1989.

ADDRESS: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Foreign Shipping Practices Act of 1988 ("1988 Act") is contained within the Omnibus Trade and Competitiveness Act of 1988 at Title X, Subtitle A, and became effective August 23, 1988. The 1988 Act directs the Federal Maritime Commission ("Commission") to address adverse foreign conditions affecting United States carriers in U.S.-foreign oceanborne trades, which conditions do not exist for carriers of those countries in the United States, either under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S. On November 1, 1988, the Commission initiated a proceeding, Docket No. 88-24, proposing a rule to implement the 1988 Act. Comments from interested parties were received, and a Final Rule was adopted and published in the **Federal Register** on March 21, 1989 (55 FR 11529), to be effective 30 days hereafter.

The Final Rule differs from that proposed in one major respect—the definitions of U.S. and foreign carriers. In proposing a rule, the Commission noted that the 1988 Act's definitions of those terms are such that the two overlap to some degree. We explained.

> A foreign carrier [under the statute] is one "a majority of whose vessels are documented under the laws of a country other than the United States." 46 U.S.C. app. 10002(a)(2). A United States carrier "operates vessels documented under the laws of the United States." 46 U.S.C. app. 10002(a)(5). Thus, an ocean common carrier which operates some U.S.-flag vessels but an even greater number of foreign-flag vessels could be argued to fit both definitions.

Although the Commission generally proposed definitions for its rules which were identical to the statute's definitions, the Commission's definitions of U.S. and foreign carriers differed from the statutory language in order to remove this ambiguity. Noting that the statute's definition of "foreign carrier" is more specific than that of "U.S. carrier," language was added to the definition of the latter in the proposed rule clarifying that a carrier which meets both definitions shall be considered a foeign carrier for the purpose of the Commission's administration of the statute. Thus, the rule defined "U.S. carrier" to mean "an ocean common carrier which operates vessels documented under the laws of the United States *and which does not also meet the definition of 'foreign carrier' above* * * *." Italicized language representing addition to statutory version.)

Only four of the ten comments on the proposed rule addressed the definitions, but these four, representing U.S. carrier interests, were critical of the definition of "U.S. carrier." They were generally

concerned that they could be deemed, for 1988 Act purposes, a foreign carrier under the rule, rather than a U.S. carrier. Several indicated that U.S. carriers frequently support their U.S.-flag operations with foreign-flag vessels, such as small feeder vessels, when U.S.-flag vessels cannot be employed competitively. One commenter noted that one of its subsidiary liner operations employs vessels a majority of which are U.S.-flag, but that of those used in foreign commerce, most are foreign-flag.

These commenters argued that under the definitions proposed, a U.S. carrier which increases the number of foreign-flag vessels it owns or charters could jeopardize its standing as a carrier entitled to protections under the 1988 Act. This, they contended, is antithetical to Congress' intentions in enacting the statute. Congress, they claimed, defined foreign carriers as those operating a majority of foreign vessels rather than exclusively foreign vessels, in order to prevent them from evading sanctions by reflagging a few vessels under U.S. law. The "majority" language was not, according to the commenters, meant to apply to bona fide U.S. carriers who add foreign vessels to their fleets, or to serve as a "vessel-count" test for established U.S. operations. The proposed definitions, it was argues, would thus serve to disqualify the very companies the statute intended to protect.

Various alternative definitions were suggested in the comments. One party recommended basing the definition of "U.S. carrier" on all companies affiliated with that carrier, thereby solving its own problem of foreign-flag dominated subsidiaries. Others suggested that a more "flexible" rule for defining "U.S. carrier" could be substituted, based on factors such as U.S.-flag capacity and corporate citizenship. Another proposal focused on the definition of "foreign carrier," urging that it be amplified to disregard reflagged vessels and to exclude carriers qualifying as U.S. citizens under section 2(a) of the Shipping Act, 1916, 46 U.S.C. app. 802(a). All the commenters addressing this issue also stated that preserving the statute's definitions would be preferable to adopting those proposed, and that to the extent uncertainties or ambiguities remain, they could be resolved on a "flexible," case-by-case basis.

The Commission determined, in issuing its Final Rule, to revert to the statutory definition of "U.S. carrier" on a temporary basis and to allow the Final Rule to become effective, in asmuch as no other aspect of the regulation proposed presented any cause for reconsideration or delay. The Final Rule made clear, however, that its reversion to the statute's ambiguous language was but a temporary measure, and was not deemed a satisfactory resolution of this issue for two major reasons.

One reason is that the 1988 Act imposes a 120-day time limit on investigatory proceedings. Inclusion of an additional "sub-proceeding" to resolve a particular carrier's status as U.S. or foreign within the uncertain meaning of the statute and the Commission's regulations could render impossible a timely resolution of the major proceeding. The completion of even a simple 1988 Act proceeding in the allotted time will be challenge.

Secondly, the definitions of U.S. and foreign carriers are fundamental to the scope, efficacy and very nature of 1988 Act proceedings. An *ad hoc*, piecemeal resolution of these critical definitions issues could adversely affect the Commission's administration of the statute. If the 1988 Act is to be effective, potential petitioners and other interested parties should not be forced to guess as to such basic issues as who might qualify for protection or be subject to sanctions under the Act.

The Commission indicated in the Final Rule that clearer definitions of the terms "United States carrier" and "foreign carrier," or at least the criteria to be applied in making those designations, were desirable. The Commission therefore decided that a separate proceeding affording an opportunity for more ideas and comment would benefit the participants and the Commission in adopting the appropriate regulatory language.

To that end, this Notice of Inquiry solicits comments from interested parties on whether and how the definitions of U.S. and foreign carriers contained in the Commission's regulations implementing the 1988 Act should be amended to clarify any ambiguity and to enhance the efficacy of the Act. The Commission has initiated a Notice of Inquiry rather than a proposed rule at this time because more information and discussion are desirable to ensure an adequate basis for a proposed rule, and the responses to the instant Notice will, it is hoped, provide that basis. A full round of comment prior to the actual proposal of a rule should also prove beneficial inasmuch as the nature of the Docket No. 88–24 rulemaking itself was such that none of the commenting parties had the opportunity to reply to any of the other submissions.

With respect to the definition of "United States carrier," the suggestions which arose from the Proposed rule in Docket No. 88–24, alluded to above, offer a useful starting point for discussion, but are not viewed by the Commission as providing the universe of possible approaches. The Commission is amenable to suggested language defining the terms in issue, or standards or criteria to be used to make those determinations. A wide range of comment, including both opinions of previous proposals and new suggestions, will ensure that the Commission reaches an informed and appropriate decision on this issue.

The Commission also takes this opportunity to solicit comment on the interpretation to be given the statutory provision at section 10002(e)(1) of the 1988 Act relating to "foreign carrier," which states, *inter alia:*

> * * * the Commission shall take such action as it considers necessary and apporpriate against any *foreign carrier* that is a contributing cause to, or *whose government* is a contributing cause to, such [adverse] conditions * * *.

(Emphasis added.) While the *"Definitions"* sections of the 1988 Act and the Commission's implementing regulations define "foreign carrier" in general terms, this provision provides that sanctions may be imposed only on particular foreign carriers, as determined by their relationship to the adverse conditions or to the foreign government causing those conditions. The phrase "foreign carrier * * * whose government" is not otherwise defined or explained. The phrase could refer to the national flag a carrier flies, to the country in which the carrier was incorporated, to the citizenship of a majority of its owners, or to other criteria of ownership. Comment on how to determine a carrier's eligibility for sanctions based on *its* "government" is therefore also requested. Again the Commission will consider either a precise definition or a set of criteria to make the appropriate determination, in any subsequently proposed rule.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–7324 Filed 3–27–89; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Threatened Status for Lesquerella congesta (Dudley Bluffs bladderpod) and Physaria obcordata (Dudley Bluffs twinpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing, and reopening of comment period.

SUMMARY: The Service gives notice that a public hearing will be held in Meeker, Colorado, on the proposed determination of threatened status for *Lesquerella congesta* (Dudley Bluffs bladderpod) and *Physaria obcordata* (Dudley Bluffs twinpod) and that the comment period on the proposal will be reopened.

DATES: The public hearing will be held on April 13, 1989, at 7:00 p.m. Comments on the proposal must now be received by April 26, 1989.

ADDRESS: The public hearing will be held at the Fairfield Center, 2d and Main Street, Meeker, Colorado. Written comments and materials should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 730 Simms Street, Suite 290, Golden, Colorado 80401. Comments and materials received will be available for public inspection during normal business hours by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: John L. Anderson, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 529 25½ Road, Suite B–113, Grand Junction, Colorado 81505 (303–243–2778 or FTS 322–0348).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella congesta and *Physaria obcordata* are known from five populations each, two of which occur together, in the Piceance Basin in Rio Blanco County, Colorado. both species occur in a multimineral oil shale zone, an area containing rich deposits of oil shale in the mahogany zone and sodium minerals in the saline zone. If project designs for development of these deposits do not include planning for the conservation of these two rare mustards, both species could be significantly impacted. A proposal of threatened status for *Lesquerella congesta* and *Physaria obcordata* was published in the January 24, 1989, **Federal Register** (54 FR 3497).

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On March 9, 1989, the Service received notifications from Peggy J. Rector, Chairman of the Rio Blanco County Board of Commissioners, Meeker, Colorado, and Chairman of the Board of Directors of the Associated Governments of Northwest Colorado, Rifle, Colorado, requesting a public hearing on the proposal to determine threatened status for *Lesquerella congesta* and *Physaria obcordata*. The Service has scheduled this hearing for April 13, 1989, at 7:00 p.m. at the Fairfield Center, 2nd and Main Street, Meeker, Colorado. Those parties wishing to make statements for the record should have a copy of their statements available to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

In order to accommodate the hearing, the Service also reopens the public comment period on the proposal. Written comments may now be submitted until April 26, 1989, to the Service's office in the **"ADDRESS"** section.

Author: The primary author of this notice is John L. Anderson, botanist (see **"FOR FURTHER INFORMATION CONTACT"** section above).

Authority

The authority for this action is the Endangered Species Act:

Authority: (16 U.S.C. 1531 et seq.; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 99–625, 100 Stat. 3500; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: March 22, 1989.

John L. Spinks, Jr.,

Deputy Regional Director, U.S. FWS, Denver, Colo.

[FR Doc. 89–7340 Filed 3–27–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 58
Tuesday, March 28, 1989

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.

ACTION

Neighborhood-Based Illicit Drug Use Prevention Projects, National Demonstration Grant; Availability of Funds Notice

ACTION, the Federal Domestic Volunteer Agency, announces the availability of funds for a national demonstration program that consists of illicit drug use prevention projects conducted in a select number of neighborhoods in up to nine jurisdictions throughout the country, whose principal aim will be to mobilize neighborhood awareness activities designed to prevent and reduce the incidence of use and trafficking in illicit substances. This demonstration program will operate under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title 1, Part C; 42 U.S.C. 4992).

ACTION, historically a principal source of volunteer leadership in America, has been mandated by the President and Congress to respond to the crisis of illegal drug use by fostering innovative prevention programs that capitalize on volunteer resources on the local level. Volunteers of all ages and from every segment of the community can make vital contributions to drug prevention and awareness programs, and ACTION intends to support programs which encourage and sustain the spirit of voluntarism as a weapon in America's fight against drugs.

As documented by the White House Conference for a Drug-Free America, the best strategy to combat illegal drug use is to prevent it from starting. In high-risk neighborhoods where drug trafficking is rampant, prevention efforts must be combined with effective intervention strategies and require the involvement of every segment of the community, particularly law enforcement, drug abuse treatment professionals, parents, youth and the schools. Recognizing that no single approach will work in every locale, comprehensive approaches assure that clear, consistent "no use" messages are delivered and reinforced by a variety of community resources. This announcement solicits innovative proposals in response to that need.

A. Eligible Strategy

National nonprofit organizations are encouraged to submit proposals either to establish or expand neighborhood-based illicit drug use prevention projects in up to 9 jurisdictions, preferably one in each ACTION Region.

In each of these 9 jurisdictions, there should be established more than one special high-risk, geographically limited zones or neighborhoods that exhibit particularly high levels of drug trafficking and use and are at risk of (or already display) economic and social deterioration exacerbated by the illegal drug trade. Within such neighborhoods, extra community-wide resources and effort will be targeted, and neighborhood residents will be mobilized and involved in volunteer efforts to make these neighborhoods drug free. The concept of establishing drug free neighborhoods or zones is that specific defined areas, with special attention and citizen participation, can be largely rid of illegal drugs, thereby offering greater safety to the general public and the residents of the area, as well as offering optimism to residents of other parts of the community that progress against drugs can be made. This requires the active participation and cooperation of a number of local public agencies (including police, prosecutors, courts, social welfare, health and education), as well as neighborhood-based groups, businesses, rental housing owners/associations, youth-serving organizations and individual citizens.

The grant recipient will develop an overall plan which includes detailed site-specific plans for these local projects. This plan would also include any proposed sub-grants to a local organization in each of the 9 proposed jurisdictions. Prior to implementation or execution, the overall plan and all proposed individual sub-grants must be approved by ACTION. In addition, the grant recipient will provide national leadership, policy guidance, training and technical assistance for the local projects.

The following are illicit drug use prevention strategies successfully implemented by neighborhood-based or community organizations which should be primary among the planned activities of the drug free neighborhood projects:

1. *Public Awareness*—A strong public awareness component should be implemented which identifies, quantifies and publicizes the economic and human costs associated with drug trafficking and use within the community in general, and within the targeted neighborhood in particular. Such information should include, but not be limited to, the dangers of illegal drugs to users and their families; the statistical relationship between illegal drugs and serious crime in that local community; the impact on victims of crime; the economic impact on the community; the impact drug trafficking has on the security, freedom of movement and other civil liberties of community residents; the role of individual responsibility in preventing and stopping illegal drug use; and specific neighborhood opportunities for citizen participation. Among the activities that may contribute to an effective public awareness effort may be the local media thoroughly reporting on the impact of the drug problem, as well as providing appropriate public service programming; city officials, civic leaders, and religious leaders speaking out against the use of illegal drugs; and law enforcement and school officials taking every opportunity to inform and reinforce anti-drug sentiment within the community.

Residents of the targeted areas should be mobilized to share information and to help involve their neighbors. Further, every organized group in the community can play a part by informing and educating its membership.

Effective public awareness efforts must be based on accurate assessments of the costs of illegal drug use and trafficking in the community. In addition, public awareness materials and programs must be developed and disseminated, which include all facets of the comprehensive strategy contained in this Announcement.

2. *Zero Tolerance*—Every segment of the community can establish the standard of "zero tolerance" of illegal drugs to support the prevention initiative within the specially defined

areas. This standard is invoked and reinforced by such activities as housing officials evicting drug trafficking/using tenants, neighborhood watch groups and citizens informing on drug use/sales locations; employers taking appropriate action against drug-using employees, which may include sanctions and/or the provision of intervention or treatment services; employees, police and prosecutors invoking the full weight of the law against drug violators; school officials providing security against drug activity on school property; and intervention and treatment programs providing opportunities for drug-using residents to obtain rehabilitation and treatment assistance. Public awareness efforts are important to assuring that a community-wide "zero tolerance" standard has a chance to succeed, but without the substantive (and continually reinforced) response by individual citizens, neighborhood/community organizations and public agencies, such a policy will have no impact.

3. *Neighborhood Watch*—According to numerous studies at national and local levels, Neighborhood Watch/Block Watch programs have had a salutary effect on preventing a wide range of personal and property crimes in localities throughout the country. These strategies can play an equally effective part in preventing and reducing the use and trafficking of illegal drugs. Neighbors watching out for one another has proven to be an extraordinarily powerful tool that should be part of any neighborhood-based effort to stop the use and trafficking of illegal drugs. In neighborhoods with active Watch programs, efforts can be made to inform participants about illegal drugs and their relation to crime, economic development, and general neighborhood quality of life. Such information can include facts about illegal drugs, advice on identifying drug use and sales, and on appropriate means to inform authorities. In neighborhoods without active Watch, a commitment to "zero tolerance" of illegal drugs may provide an outstanding opportunity for volunteers and local law enforcement to organize Watch programs—particularly in heavily drug-infested neighborhoods. Watch programs can be established in public housing projects and apartment buildings as well. It should be remembered that, even if a Watch program is started primarily to combat illegal drugs, its impact will be much greater in terms of restoring safety and security to the neighborhood.

4. *Victim Emphasis*—A major impact of the illegal drug problem is the personal victimization which accompanies illegal drugs. National statistics show that a significant percentage of violent and property crime is directly related to illegal drug use. For example, the U.S. Department of Justice has found that in 12 major American cities, between 50 percent and 80 percent of arrestees were on drugs at the time of their arrest. Other studies have shown that more than 90 percent of arrestees for certain crimes were using illegal drugs. Each of these crimes has one or more victims whose pain and loss should not be ignored, and whose voices can be powerful communicators of the personal cost of drug trafficking and use beyond the user and the seller. A community-wide project to prevent the use of illegal drugs should involve victims of crimes committed by drug-using offenders or drug traffickers to help the public understand the terrible impact of victimization and to become more aware of the price society pays for its tolerance of illegal drugs. Victims can speak out within the community, can advocate for changes in policy and law, and can help other victims of crime cope with their trauma. They constitute an underutilized source of dedicated volunteer manpower. In addition, public awareness efforts should assure that the perspectives of crime victims are incorporated.

5. *Community Coalition Building*—A community-wide drug prevention project requires involvement of a variety of individuals and entities from throughout the community, if it is to be comprehensive and effective. Among the groups that must participate in developing and conducting strategies are school, law enforcement and city officials, clergy, business community, medical community, drug abuse treatment and intervention professionals, media, members of tenant organizations and neighborhood associations, and, very importantly, parents and youth. Only such all-inclusive participation will ensure that all potential resources for the initiative will be mobilized, and that the concerns of prevention, enforcement, intervention and treatment are properly considered and integrated. The parameters of involvement, commitment to this initiative, and responsibility of each significant entity should be detailed and included in the community plan. An important emphasis of this coalition-building process must be the development of appropriate alternative activities and other drug prevention efforts focusing on youth at particularly high risk of becoming involved in the use of illegal drugs.

Every group or individual participating in an effective coalition will be able to contribute particular elements of the targeted area's anti-drug effort, but must also play a role of educating and informing the community about the drug problem. For example, physicans have a critical role to play in the community's response to illegal drugs by the provision of medical services, but they can and should speak out forcefully within the community in support of needed changes.

B. Eligible Applicants

Only applications from national private non-profit organizations with experience in mobilizing local initiatives will be considered. The successful applicant will display significant experience in the development and management of community or neighborhood-based volunteer initiatives. Organizations must evidence the capacity, knowledge, and experience to:

1. Provide leadership for the selection, development, and implementation of up to 9 local neighborhood-based community-wide drug prevention projects, including the distribution and oversight of any sub-grant funds.

2. Provide appropriate training for local projects' staffs and volunteers, and technical assistance and other management support to the local projects to maximize their successful implementation.

3. Identify and mobilize existing networks or relationships to develop and support leaders of drug-free neighborhood initiatives.

4. Cooperate and coordinate efforts at national levels with other existing prevention programs—whether privately or federally sponsored.

5. Encourage and provide means for cooperation and coalition-building at the project level among all segments of the community.

C. Available Funds

The announcement will result in the award of a single grant not to exceed $1 million for a period of up to 24 months. ACTION, based on prior experience with national multi-jurisdictional grants, expects applicants to develop budget plans allocating approximately 65% of these funds for sub-grants to local projects, approximately 15% for provision of technical assistance and training to the local projects, and approximately 20% for overall grant management and administrative support costs.

Applicants should be aware that renewal funding for this project is not

likely. The proposal should, therefore, include specific plans for ensuring continuity and self-sufficiency of local projects receiving sub-grants at the end of the two-year period.

D. General Criteria for Grant Review

Grant applications will be reviewed and evaluated based on the criteria outlined below, as well as on conformance to instructions contained in the application kit. Applications incorporating significant use of volunteers will receive priority.

1. Plans for developing and implementing more than one neighborhood-based drug prevention project within nine geographically-diverse jurisdictions. It will be especially important to assure that unique local needs, characteristics, and resources are appropriately considered and that the local projects are implemented in cooperation with existing prevention activities.

This will require a commitment to participate and cooperate as evidenced by letters of support from a number of local public agencies (including police, prosecutors, courts, social welfare, health and education), as well as neighborhood-based groups, youth-serving organizations, businesses and rental housing associations.

2. Ability, capacity, and willingness of identified local sponsoring organizations, as evidenced by background descriptions and letters of support/commitment included in the overall plan, to design and implement neighborhood-based drug prevention projects in their respective jurisdictions.

3. Plans for the joint development with each proposed local sponsoring organization of a detailed workplan and budget for ACTION approval. Each workplan should (1) incorporate, at a minimum, the strategies cited in Section A, with particular emphasis on the involvement of neighborhood organizations and residents, particularly youth; and (2) contain letters of commitment to participate from any local organizations not included in the initial application.

4. Capacity and specific plans to provide national leadership, training, technical assistance, and support for local project sites.

5. Evidence, including letters of support, of commitment and intent to participate in projects from appropriate national and local organizations, entities, and of existing or to-be-formed partnerships whose participation will provide in-kind support for the project. This should also include letters from potential members of the program's advisory board or local sponsoring organizations' board of directors.

6. Plans for involving non-stipended volunteers in all aspects of project activity, with quantifiable, measurable and time-phased goals.

7. Likelihood of continuing or expanding national program and local level projects following completion of grant period.

8. Evidence of public and private sector financial and in-kind support at both national and local levels. While a specific level of match is not required, non-federal contributions to this initiative are highly encouraged and are considered as important indicators of a public/private partnership and likelihood of future project self-sufficiency.

9. Detailed schedule for accomplishing objectives, including implementation of local sites and participation of volunteers.

10. Plans for assessing the overall effectiveness of the national demonstration program as well as the specific accomplishments and impact of the local projects in achieving drug-free neighborhoods.

E. The Associate Director of Domestic and Anti-Poverty Operations may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;

2. Applicants accessibility to alternate resources, both technical and financial;

3. Allocation of Program Demonstration/Drug Alliance resources in relation to other ACTION funds;

F. Application Review Process

Applications submitted under this announcement will be reviewed and evaluated by ACTION's Program Demonstration and Development Division. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

G. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to ACTION's Program Demonstration and Development Division no later than 5:00 p.m. Eastern Standard Time on Monday, May 29, 1989. Only those applications that are received at ACTION Headquarters by 5:00 p.m. Eastern Standard Time on this date will be eligible.

All grant applications must consist of:

a. Application for Federal Assistance (ACTION Form A–1036) with narrative budget justification and a narrative of project goals and objectives, and assurances.

b. CPA certification of accounting capability.

c. Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

Items b, c and d above are not required for public agencies of state and local government.

e. Current resume of the candidate for the position of project director, if available, or the current resume of the director of the applicant agency or project.

f. Organization chart of the applicant organization showing how the project is related to the organization and how proposed local sponsoring organizations will relate to the project.

g. List of the current board of directors showing their names, addresses and organizational and community affiliations.

h. A signed copy (with an original signature) of the "Certification Regarding Drug-Free Workplace Requirements," ACTION Form A–1452 (2/89).

To receive an application kit, please contact ACTION's Program Demonstration and Development Division. The application kit can be obtained by writing to: ACTION, Program Demonstration and Development, Room M–513, 806 Connecticut Ave. NW., Washington, DC 20525, or by telephoning (202) 634–9757.

Signed at Washington, DC, this 23rd day of March 1989.

Donna M. Alvarado,

Director.

[FR Doc. 89–7299 Filed 3–27–89; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF COMMERCE

Export Administration

[Docket No. 8108–01]

Actions Affecting Export Privileges; Stefan Ulvander

Summary

Pursuant to the February 16, 1989, Recommended Decision and Order on Remand of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, the June 1, 1988, Charging Letter against Respondent Stefan Ulvander, is hereby dismissed.

Order

On February 16, 1989, the ALJ entered his Recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Date: March 20, 1989.

Paul Freedenberg,

Under Secretary for Export Administration.

Preliminary Statement

Decision—and Order

In the Matter of: Stefan Ulvander, Respondent.

Appearance for Respondent: Edward E. Dyson, Esq., John W. Polk, Esq., Baker & McKenzie, 815 Connecticut Avenue NW., Washington, DC 20006.

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Avenue NW., Washington, DC 20230.

This proceeding against Respondent Stefan Ulvander began with the issuance May 2, 1988, of a charging letter by the Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce. The charging letter was reissued June 1, 1988, with a new address for Respondent. Both charging letters were issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended, ("the Act"), and the Export Administration Regulations ("the Regulations").[1]

The June 1, 1988, charging letter alleged that Respondent conspired and acted with others, including a person denied U.S. export privileges, to acquire a U.S.-origin computer in Sweden and to reexport it to the Soviet Union without the required U.S. authorization. The charging letter claimed that Respondent thus violated §§ 387.3, 387.4, 387.6, and 387.12 of the Regulations.

Respondent filed a July 13, 1988, answer to the June 1, 1988, charging letter that denied its allegations. Both parties waived a hearing, and accordingly this case is decided on the record under § 388.14 of the Regulations. The parties engaged in extensive discovery and made various filings, with the Agency's making the last filing on February 9, 1989.

Discussion

As contended by the Agency, Respondent and several others conspired to order a U.S.-origin computer from a Swedish distributorship, representing Respondent to be the end user. One or another of the conspirators other than Respondent, according to the Agency, arranged payment for the computer, picked it up from the distributorship, and shipped it to the Soviet Union without the U.S. authorization that was required. These events were said to have occurred in November and December of 1985. One of the alleged conspirators, Goran Josberg, was denied U.S. export privileges during this time.

Respondent's role in this conspiratorial operation, in the Agency's view, was to serve as the stated end user of the computer, for which he was allegedly paid 5,000 Swedish kroner. The Agency charged him with violating four sections of the Regulations: § 387.3 for his role in the conspiracy, § 387.4 for participating in an export that he knew or had reason to know was unauthorized, § 387.6 for participating in an unauthorized export, and § 387.12 for participating without authorization in the export transaction with a person denied U.S. export privileges.

Respondent's answer was to deny all the charges. His defense did not challenge the Agency's allegation that several persons conspired to export a U.S.-origin computer from Sweden to the Soviet Union without the required U.S. authorization. Rather, his defense focused on the Agency's claim that he was connected with the transaction.

Agency's Argument

Although the Agency cited several documents to connect Respondent with the transaction, the heart of its argument was a February 1986 written statement by a part owner of the distributorship from which the computer was purchased (Agency Dec. 22, 1988, Submission, Exhibit (hereinafter "Exh.") 2).[2]

According to this statement, in November 1985 the part owner was telephoned and then visited by a man who the Agency described as "a known associate of Josberg's" (Agency Dec. 22, 1988, Submission 4). This man said, per this written statement, that he had a customer for a particular U.S.-origin computer, and he gave the name of Respondent's firm and Respondent as the purchaser and end user, and said that the firm should be sent an invoice for the equipment. Both Respondent and the Agency agreed that Respondent is a lawyer, and that the firm's name and address were that of his firm.

The part owner of the distributorship, according to his written statement, next contacted Respondent, who at first disclaimed knowledge of the order but then, after further explanation from the part owner, said that he was not ready for delivery, and that for specifics the part owner should contact the man who placed the order. When contacted, that man again told the part owner, per the written statement, to send the invoicing and order confirmation to Respondent, to be signed by him.

The part owner then, as set forth in his written statement, checked with his usual leasing company regarding Respondent's credit history, and was told that Respondent "was a very bad credit risk and that the leasing company would not back the lease for him" (Agency Exh. 2, at 1). Further per this written statement, the part owner next contacted Respondent again, who referred him for financing to a leasing company bearing the last name of, and represented by, a man alleged by the Agency to have been one of the co-conspirators (June 1, 1988, charging letter 1).

This alleged co-conspirator, according to the written statement, appeared at the distributorship, made a ten percent downpayment, signed the order information showing Respondent as the end user, and confirmed that Respondent was the end user. This alleged co-conspirator, together with the man who first placed the order, was, per the written statement, pressing for delivery as soon as possible, so the invoices were rewritten to show the alleged co-conspirator as the buyer, and delivery was made to him at the distributorship on December 27, 1985.

The part owner of the distributorship stated, in his written statement, that when payment for the computer was not forthcoming within the prescribed period, he contacted Respondent in late January 1986 to repossess the equipment. Respondent replied, according to the statement, "that he

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368–399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

[2] The primacy of this Exhibit 2 in the Agency's effort to connect Respondent with the transaction is shown by the Agency's citing only this Exhibit to make this point in the text of its December 22, 1988, Submission (at 4–5); other evidence is cited in a footnote (5 n.5). Similarly, in its February 9, 1989, Reply, in making this point the Agency again cited specifically only this Exhibit in the text (at 3); other documents are referred to only generally in the text (at 2) or specifically in a footnote (3 n.2).

never intended to take the equipment, but that he was offered 5,000 SEK to be a 'front' as an end-user for * * * [the man who placed the order and the alleged co-conspirator] in the purchase of the * * * equipment" (Agency Exh. 2, at 2).

Respondent's Defense

Respondent's defense was to tell a very different story of the events surrounding this computer transaction and to attack this written statement given by the distributorship's part owner. What happened during late 1985, as recounted by Respondent (Respondent Jan. 18, 1989, Submission, Exh. 1), is that he was then considering the purchase of a computer. He received an unscheduled visit, he stated, from a computer salesman. Respondent's best recollection, he claimed, is that this salesman was from the same company as the company of the man who placed the order in Respondent's name with the distributorship, but Respondent does not remember whether the salesman actually was that man. Respondent asserted that he neither ordered a computer from the salesman nor instructed the salesman to place an order in his name.

Respondent recalled, he said, receiving an "invoice reminder" from the distributorship (*id.* 3); and he telephoned the distributorship to find out what it was all about since, he said, he had ordered nothing from the distributorship. Respondent stated that he spoke with somebody at the distributorship, whose name he does not remember, that they discussed the invoice reminder, and that he "thought the whole thing was a mistake, and * * * did not keep the invoice reminder" (*id.* 4).

As to the different account in the written statement of the part owner of the distributorship, Respondent denied that it was the distributorship that called him, denied that he ultimately acknowledged recognition of the order but said that he was not yet ready for delivery, and denied that he referred the caller to the computer salesman for specifics. Respondent further denied the assertion in this written statement that the distributorship subsequently called him to say that he had a poor credit rating, and that in reply he referred the distributorship to another leasing company for financing the computer transaction.

As to the alleged co-conspirator to whom the written statement claimed that Respondent had referred the distributorship for payment arrangements through this leasing company, Respondent denied knowing or having contact with him, other than a single telephone call. That call, according to Respondent, occurred in late 1985 or early 1986, and Respondent asked the alleged co-conspirator the meaning of the invoice reminder, and said he had not ordered a computer and did not know why the invoice reminder had come. The alleged co-conspirator's reply, again according to Respondent, was that he, the alleged co-conspirator, "would take care of the matter," leading Respondent again to conclude, as he said, "that the whole thing was a mistake" (*id.* 6).

Finally, the written statement by the distributorship's part owner described his call to Respondent in late January 1986 to repossess the computer, and Respondent, per the statement, replied that he had never intended to take the computer, and that he had been offered 5,000 SEK to appear as the end user. Respondent denied that such a telephone call had ever taken place, and denied that he had ever made such statements to the part owner of the distributorship or to anyone else. Incidentally, Respondent noted that in November 1985 the dollar value of 5,000 Swedish kroner was about $626.

Respondent, in addition to setting forth his own version of events, attacked the credibility of the Agency's key document in terms of both its form and its content. As to form, Respondent argued that the written statement by the part owner of the distributorship was neither under oath nor was it an unsworn declaration under penalty of perjury. The statement was written in English by an Agency official, and at the end, above the signature of the part owner of the distributorship, it was stated that he had been given the opportunity to read and correct the statement, and had initialed any corrections. On this point Respondent argued that no evidence was presented of this signatory's ability in English, or of the Agency official's ability in Swedish. Respondent contrasted this written statement with his own written version of events, also in English, which was made under penalty of perjury and which set forth his capacity in English.

As to the content of the written statement by the distributorship's part owner, Respondent challenged first its assertion that the part owner had told him that he, Respondent, was a poor credit risk. On the contrary, claimed Respondent, he was not a poor credit risk in late 1985, or at the present time. To support that claim, Respondent submitted a credit report on himself dated October 12, 1988 (Respondent Exh. 1, Attachment 1); he said that he had no credit report for late 1985, because he was unaware then that he would need one, but that his "financial status at that time was not significantly different than it is today" (Respondent Exh. 1, at 5). Respondent noted also that the Agency supplied no evidence to support the assertion that he was a poor credit risk.

Respondent then focused on the statement by the distributorship's part owner that he had been referred by Respondent to another leasing company for financing. Respondent submitted evidence suggesting that this company was a questionable credit risk at that time (Respondent Exh. 1, Attachment 2); and yet, Respondent pointed out, the distributorship's part owner said nothing about trying to check this company's creditworthiness.

Respondent challenged also the logic and believability of the assertion in the written statement of the distributorship's part owner that the distributorship gave the computer to the alleged co-conspirator, rather than to Respondent. According to the Agency's own evidence, the invoice provided for delivery to be made to Respondent's firm (Agency Exh. 15). Moreover, Respondent noted, that party to whom delivery was made, the alleged co-conspirator, was associated with a leasing company that had a questionable creditworthiness, a factor that the distributorship's part owner had represented to be important when he was dealing with Respondent.

Finally, Respondent suggested a motivation for the distributorship's part owner to have been inaccurate in his written statement regarding this transaction. As argued by Respondent, at the time this statement was given in February 1986, the distributorship was aware that a computer that it had sold had been diverted to the Soviet Union (Agency Exh. 11). Its owners knew, contended Respondent, that they had delivered this computer to somebody other than the end user, without authorization from the end user, and accordingly might have feared that their distributorship might be denied U.S. export privileges.

Consequently, claimed Respondent, the owners had an incentive to shift the culpability for any mishandling of the export to other parties, such as Respondent. Respondent cited also evidence indicating that the distributorship might have received this computer as an approved consignee on a distribution license held by the U.S. manufacturer, in which event the distributorship's obligation to dispose of the computer properly would have been higher.

Other Arguments

As to Respondent's challenges to the written statement of the distributorship's part owner, the Agency's reply essentially limited itself to dismissing the attacks on the statement's form as unimportant (Agency Feb. 9, 1989 Reply). The Agency did also cite two other documents as connecting Respondent with the computer transaction (Agency Dec. 22, 1988 Submission 5 n.5; Agency Feb. 9, 1989 Reply 3 n.2).

The first document is a September 1986 written statement (Agency Exh. 3) by somebody described by the Agency as a "Josberg cohort" (Agency Dec. 22, 1988 Submission 5 n.5; Agency Feb. 9, 1989 Reply 3 n.2). The person making this statement said that in January 1986 he had been told by the alleged co-conspirator in this case that in December the latter had bought for Josberg the type of computer involved in this case. Moreover, according to this written statement, the alleged co-conspirator had said that the computer had been purchased from a dealer of the U.S. manufacturer, and that a lawyer had been given 5,000 SEK to appear in the transaction as the buyer, although the real buyer was Josberg.

Respondent challenged this statement as coming from somebody who, as reflected in the statement, had engaged in repeated business transactions with Josberg, and therefore was himself, in Respondent's words, "an unreliable person" (Respondent Jan. 5, 1989 Submission 5). Respondent noted further that the person making the statement had no firsthand knowledge of this computer transaction, and could have been reporting "simply a collection of gossip" (*id.*). Finally, Respondent observed that nothing in the statement identified him as the lawyer who supposedly had been given the 5,000 SEK.

The second additional document cited by the Agency to connect Respondent to the computer transaction (Agency Dec. 22, 1988 Submission 5 n.5; Agency Feb. 9, 1989 Reply 3 n.2) was a February 1986 written statement by the managing director and chairman of the board of the distributorship (Agency Exh. 8). In this statement, this distributorship official said that, in approximately early February 1986, he had been told by a Swedish police inspector that the computer delivered to the alleged co-conspirator had been diverted to the Soviet Union by one of Josberg's companies. According to this statement, this Swedish police inspector said also that the Swedish police had interrogated Respondent, and that Respondent had confessed.

As to this document, Respondent denied that he had ever been interrogated by the Swedish police, much less confessed. Further, he argued that, were such a confession to have been made, the Agency would surely have submitted either a copy of it or some affidavit from the Swedish police regarding it.

Conclusion

The pivotal issue is whether Respondent had any connection with what was apparently an illegal conspiracy to obtain a U.S.-origin computer from a Swedish distributorship and export it to the Soviet Union without the required U.S. authorization. The Agency introduced evidence suggesting the conspiracy, the export, and Respondent's role in both. As mentioned at the outset of the Discussion, Respondent challenged neither the allegation of the conspiracy nor of the export, but only the charge that he was connected with either.

Both the Agency and Respondent proffered versions of the relevant events that are plausible in view of the record. The Agency portrayed Respondent as knowingly allowing his name to be misrepresented as the end user in the computer purchase in return for 5,000 Swedish kroner. Respondent described a situation in which his name was used without his permission or knowledge.

The major piece of evidence advanced by the Agency to support its version is the written statement of the part owner of the distributorship. Nothing in the record bears the signature of Respondent, and this written statement is the only testimony given by somebody who claimed to have had any direct contact with Respondent. How persuasive, then, is this written statement?

Respondent challenged three points contained in this statement: that his credit rating was bad in 1985, that the distributorship after rejecting his creditworthiness would have then unquestioningly accepted the leasing company to which it turned, and that the distributorship could properly have given the computer to somebody other than the stated end user. To support each of these challenges, Respondent supplied evidence.

Each of Respondent's challenges does in fact lessen the believability of the Agency's written statement, especially because the Agency was unable to reply to Respondent's evidence with any evidence or explanation of its own. For example, Respondent introduced evidence indicating that his credit rating was satisfactory, whereas the Agency supplied nothing to support the contrary assertion in the written statement by the distributorship's part owner. A similar situation obtains with respect to the leasing company to which the distributorship turned for financing. Respondent provided evidence suggesting a weak creditworthiness for this company, and the Agency supplied nothing to explain why the distributorship would nonetheless have accepted this company after rejecting Respondent. Likewise the Agency's case lacked explanation as to why the distributorship would have given the computer to other than the stated end user.

The Agency did introduce two additional documents to bolster its version of events. But the written statement of the distributorship official citing as its source of information a confession that Respondent allegedly gave Swedish police carries little credibility in light of the absence in the record of any other evidence of that confession. The written statement of the Josberg associate has limited persuasiveness in view of its reliance totally on what somebody else had said.

In sum, the Agency's key piece of evidence—the written statement of the distributorship's part owner—has a distinctly lessened believability in light of Respondent's challenges to it. The two further documents cited by the Agency fail to add enough to the Agency's case to overcome the lessened believability of its major document. Finally, it is the Agency that has the burden of proof in this case. Thus the conclusion follows that the evidence of record is insufficient to sustain the Agency's charges against Respondent.

Order

The June 1, 1988 charging letter issued against Respondent is dismissed. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: February 16, 1989.

Thomas W. Hoya,

Administrative Law Judge.

To be considered in the 30-day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave. NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made

within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89-7264 Filed 3-27-89; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Telecinco, Inc., From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of dismissal.

On January 4, 1988, Telecinco, Inc. (Appellant) filed with the Department of Commerce (Department) a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations, 15 CFR Part 930, Subpart H. The appeal arose from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's certification that its proposal to fill wetlands to develop seven residential lots in Cabo Rojo, Puerto Rico would be consistent with Puerto Rico's coastal management program.

On January 18, 1989, the Appellant informed the Department that the Corps of Engineers (Corps) had denied the Appellant's request for a permit to discharge fill in the wetlands. The Corps' denial of the permit application, which was the basis of the PRPB's consistency objection and the Appellant's appeal, rendered moot the consistency appeal. Accordingly, the Department dismissed the appeal on February 24, 1989 for good cause pursuant to 15 CFR 930.128(c). That dismissal bars the Appellant from filing another appeal from the PRPB's objection to the aforementioned activities.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Dated: March 21, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

[FR Doc. 89-7262 Filed 3-27-89; 8:45 am]

BILLING CODE 3510-08-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council, the Council's Scientific and Statistical Committee (SSC), its Advisory Panel (AP), and its Data Gathering Committee will meet on April 10–14, 1989, at the Sheraton Hotel in Anchorage, AK. Except as noted below, the meetings are open to the public.

The North Pacific Council will meet on April 11 at 1 p.m., and continue the meeting through April 14. The Council will decide which of the proposed amendments to the Groundfish of the Gulf of Alaska and the Groundfish of the Bering Sea and Aleutian Islands Fishery Management Plans (FMPs) will be distributed for public review. It will hear reports on the progress of its Fisheries Planning Committee in developing controlled-access alternatives for sablefish, halibut, other groundfish and crab. The Council also will revisit and may confirm the proposed January 16, 1989, cut-off date for participation in the groundfish fisheries off Alaska, and discuss criteria for determining vessels already in the process of entering the fishery. The Council also will review a draft amendment for a comprehensive data gathering program before sending it out for public review. A draft of the revised Salmon FMP will be reviewed, and a proposed regulatory amendment to redefine directed fishing will also be reviewed before sending it to the Secretary of Commerce. NOAA Fisheries will provide a status report on bycatch planning for 1989 an 1990.

The Council will hold a scoping meeting on the afternoon of April 13 to take testimony on issues and concerns for future management of the groundfish, halibut, and crab fisheries. At least once during the week of April 10 the Council will discuss litigation on a closed session.

The Council's SSC and AP are scheduled to meet on April 10 at the Sheraton Hotel, as is the Council's Data Gathering Committee, which also is scheduled to meet on April 10 at 7 p.m., at the Hotel.

For further information contact Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: March 21, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-7325 Filed 3-27-89; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON AGRICULTURAL WORKERS

Meeting Cancellation

This notice announces the cancellation of the first formal meeting of the Commission on Agricultural Workers originally scheduled for April 4, 1989. The meeting will be rescheduled at a later date.

Dennis G. Condie,

Acting Administrative Officer, Commission on Agricultural Workers.

Date: March 24, 1989.

[FR Doc. 89-7435 Filed 3-27-89; 8:45 am]

BILLING CODE 6820-62-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Partially Closed Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Government Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: April 6, 1989.

Time: 10:00 a.m.–10:45 a.m. (Closed); 10:45 a.m.–Close of business (Open).

Location: U.S. Department of Education, Office of Educational Research and Improvement, Room 600B, 555 New Jersey Avenue, NW., Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Eunice E. Henderson, Designated Federal Official, Office of Assistant Secretary for Educational Research and Improvement, U.S. Department of

Education, 555 New Jersey Avenue, NW., Room 602C, Washington, DC 20208, Telephone: (202) 357–6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297); 20 USC 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet via teleconference on Thursday April 6, 1989 from 10:00 a.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Board's deliberations during the open session. The proposed agenda includes discussion of plans for a meeting of the full Board in May, qualifications of candidates for key position on the Board's staff, activities and accomplishments of the various Board committees, nominations process for Board members, NAGB's budget, office space for the Board's staff, and the agenda for the May meeting of the Board.

A portion of the meeting will be closed to the public. From 10:00 a.m. until approximately 10:45 a.m., the meeting will be closed and the Executive Committee will discuss qualifications of specific individuals for key positions on the Board's staff. Discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. This portion of the meeting of the Executive Committee will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemption (6) of Section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 522b(c) (6).

From approximately 10:45 a.m. to the conclusion of the remainder of the agenda, the meeting will be open to the public. The public is being given less than fifteen days notice of this closed session because information needed by the Committee for its deliberations will not be available until the first week in April and difficulties were encountered in attempts to arrange the meeting so as to ensure participation of Executive Committee members and avoid scheduling conflicts.

A summary of the activities at the closed session and related matters which are informative to the public consistent with Title 5 U.S.C. 552b will be available to the public within fourteen days of this meeting.

Records are kept of all Board proceedings, and until a permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Room 600, Washington, DC from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Dated: March 24, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–7408 Filed 3–27–89; 8:45 am]

BILLING CODE 4000–01–M

Student Financial Assistance Advisory Committee; Meetings

AGENCY: Advisory Committee on Student Financial Assistance.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the opportunity to attend.

DATES: April 13, 1989 beginning at 9:00 a.m. and ending at 5:30 p.m.; and April 14, 1989 beginning at 8:00 a.m. and ending at 1:30 p.m.

ADDRESS: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Room 4600, ROB–3, 7th & D Streets SW., Washington, DC 20202–7582 (202) 732–3439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Pub. L. 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms and making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students. The Congress also mandated that the Advisory Committee conduct a study of institutional lending in the Stafford Student Loan Program.

The Advisory Committee will meet in Washington, DC from 9:00 a.m. to 5:30 p.m. on April 13 and from 8:00 a.m. to 1:30 p.m. on April 14.

The proposed agenda of the meeting includes: (a) Institutional Lender Study Recommendations; (b) Discussion of Subcommittee on Needs Analysis Simplification and Delivery System activities; (c) Committee Activities Related to Reauthorization; and (d) a Report on Committee Organization and Administration.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Room 4600, 7th and D Streets SW., Washington, DC from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: March 21, 1989.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 89–7256 Filed 3–27–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Intent to Negotiate a Grant with New Mexico Research and Development Institute

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to negotiate a grant with the state of New Mexico, New Mexico Research and Development Institute.

SUMMARY: "Fluid Diversion and Sweep Improvement with Chemical Gels in Oil Recovery Process." The U.S. Department of Energy (DOE), Idaho Operations

Office, through the DOE Bartlesville Porject Office, intends to negotiate on a noncompetitive basis a cost-share grant with the New Mexico Research and Development Institute (NMRDI). This action is prompted by the consummation of Joint Powers Agreement #2 (JPA #2) of the Memorandum of Understanding between DOE and the state of New Mexico, which defines the research proposal and the participants, and specifies cost-sharing. The grant will be to determine the mechanisms by which gel treatments divert fluids in reservoirs and will establish where and how gel treatments are best applied. The participant shall (1) develop systematic methods for effective use of chemical gels for improving sweep efficiency in oil recovery processes in the state of New Mexico, (2) characterize polymeric gels and other types of chemical gels, (3) determine the proper placement of gels, the types of gels required for the various oil recovery processes and for different scales of reservoir heterogeneity, and (4) transfer the learned technologies to the oil operators through publications and workshops. The NMRDI will make available to this research project the state well records, geological data archives, well samples, petrographic equipment, and computer resources. The authority and justification for Determination of Noncompetitive Financial Assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR Part 600.7(b)(2)(i)(B). The activities proposed in JPA #2 to the agreement between the U.S. Department of Energy and the state of New Mexico are in support of a public purpose and are as directed by the agreement. This activity would be conducted by the NMRDI using their own resources; however, DOE support of the activity would enhance the public benefits to be derived by allowing more thorough coverage of the state's reservoirs. DOE knows of no other entity which is conducting or planning to conduct such an activity.

The term of the grant is for a three-year period at an estimated value of $880,000. This funding level will be shared by DOE, NMRDI, Petroleum Recovery Research Center and private industry. DOE funding will be approximately $420,000 (48%). Public response may be addressed to the contract specialist stated below.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402, Trudy A. Thorne, Contract Specialist, (208) 526-9519.

Date: March 17, 1989.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 89-7347 Filed 3-27-89; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGEY

Office of Fossil Energy

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council.

Date and Time: Tuesday, April 18, 1989, 9:00 a.m.

Place: The Madison Hotel, Dolley Madison Ballroom, 15th & M Streets NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585. Telephone 202/586-4695.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenga

—Call to order by Edwin L. Cox, Chairman, National Petroleum Council.

—Remarks by the Honorable James D. Watkins, Secretary of Energy.

—Report of the NPC Committee on Petroleum Storage and Transportation.

—Consideration of administrative matters.

—Discussion of any other business properly brought before the National Petroleum Council.

—Public comment (10-minute rule).

—Adjournment.

—Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-7348 Filed 3-27-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF86-683-002, et al.]

Mobile Joliet Refining Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Mobile Joliet Refining

[Docket No. QF86-683-002]

March 21, 1989.

On March 14, 1989, Mobile Joilet Refining Corporation (Applicant) of Rt. 55 and Arsenal Road, P.O. Box 874, Joliet, Illinois 60434 submitted for filing an application for recertification of a facility as a dually qualifying cogeneration facility and small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility was previously certified as a qualifying small power production facility on January 13, 1987 (38 FERC ¶62,015) and as a qualifying cogeneration facility on September 16, 1987 (44 FERC ¶61,341). The facility will consist of a combustion turbine generator, a heat recovery steam generator, and a condensing steam turbine generator. The heat recovered from the facility will be used in the refinery. The maximum net electric power production of the facility will be 27.6 MW. The primary energy source will be waste in the form of refinery off gas produced by refinery hydrocarbon cracking process. The installation of the facility was completed in November 1987.

Comment date: April 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. MSU System Services, Inc.

[Docket No. ER89-34-001]

March 22, 1988.

Take notice that on MSU System Services, Inc. (SSI), as agent for Arkansas Power & Light Company (AP&L), Louisiana Power & Light Company (LP&L), Mississippi Power &

Light Company (MP&L) and New Orleans Public Service Inc. (NOPSI), on February 22, 1989 tendered for filing an amendment to the emergency service schedule between AP&L, LP&L, MP&L, NOPSI and SSI (collectively the Middle South System Companies) and Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T) (Amendment) to comply with the Commission's Regulations.

SSI requests an effective date for the Amendment of the later of January 1, 1989, or upon agreement between SRG&T and Gulf States Utilities Company on necessary arrangements for transmission services.

Comment date: March 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. South Carolina Electric & Gas

[Docket No. ER89-273-000]

March 23, 1989.

Take notice that South Carolina Electric & Gas Company (SCE&G) tendered for filing on March 10, 1989, Sixteenth Revised Sheet No. 5 and Sixteenth Revised Sheet No. 6 to its FERC Electric tariff, Original Volume No. 1. These sheets contain proposed changed to SCE&G's rates and charges to its municipal, rural electric cooperative and public power body sales-for-resale customers.

SCE&G proposes to place the revised tariff sheets into effect to coincide with the effective date of its retail large general service rate in South Carolina Public Service Commission Docket No. 88-691-E. Such date is not anticipated before May 10, 1989 but cannot be later than July 3, 1989.

SCE&G states that the proposed rates would increase revenues by approximately 3%, for the 12 month period ending June 30, 1989.

SCE&G states that the proposed increased rates are necessitated by the fact that it is realizing an unreasonably low rate of return on sales to its jurisdictional customers.

Copies of the filing have been served upon SCE&G's jurisdictional customers and the South Carolina Public Service Commission.

Comment date: April 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Co.

[Docket No. ER89-275-000]

March 23, 1989.

Take notice that on March 13, 1989, Northeast Utilities Service Company (NUSCO) as agent for the Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "Nu Companies") tendered for filing a proposed rate schedule with respect to Transmission Service Agreements (Agreements), between the NU Companies and Boston Edison Company (BE), dated October 28, 1988, and the UNITIL Power Corporation (UNITIL), New England Power Company (NEP), United Illuminating Company (UI), dated November 1, 1988.

NUSCO states that these Agreements provide service to BE< UNITIL, NEP, and UI for the non-firm transmission of their purchases of electric system capacity and associated energy from sources outside of New England.

NUSCO requests that the Commission waive its standard notice and filing requirements to the extent necessary to permit the rate schedule to become effective as of October 28, 1988 and November 1, 1988, respectively, as applicable and terminate as of April 30, 1989 in the case of the Agreements with UNITIL, NEP and UT.

NUSCO states that copies of the appropriate rate schedules have been mailed to BE, NUSCO, NEP, and UI.

Comment date: April 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Co.

[Docket No. ER89-276-000]

March 23, 1989.

Take notice that on March 13, 1989, Northeast Utilities Service Company (NUSCO) as agent for the Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "NU Companies") tendered for filing a proposed rate schedule with respect to Transmission Service Agreements (Agreements), between the NU Companies and Newport Electric Corporation (Newport), dated May 1, 1988.

NUSCO states that the Agreement provides service to Newport for the non-firm transmission of its purchase of electric system capacity and associated energy from Niagara Mohawk Power Corporation.

NUSCO requests that the Commission waive its standard notice and filing requirements to the extent necessary to permit the rate schedule to become effective as of May 1, 1988 and terminate as of October 31, 1988.

NUSCO states that copies of the appropriate rate schedules have been mailed to Newport.

Comment date: April 7, 1989, in accordance with Standard Paragarph E at the end of this notice.

6. Connecticut Light and Power Co.

[Docket No. ER89-277-000]

March 23, 1989.

Take notice that on March 14, 1989, the Connecticut Light and Power Company (CL&P) tendered for filing proposed Sales Agreements with Respect to Slice-of-System Units, for ten-month, one-month, three-month, one month sales of entitlements in a group of units representative of CL&P's generating system, between (i) CL&P and (ii) Boston Edison Company, dated January 1, and February 1, 1989, and (iii) Canal Electric Company and (iv) Montaup Electric Company, dated as of January 1, 1989, respectively, (collectively, Buyers).

CL&P states that the Sales Agreements provide for a sale to Buyers of capacity and energy from CL&P's Slice of System Units (the Units) during the periods January 1, 1989 to October 31, 1989, February 1 to February 28, 1989, January 1, 1989 to March 31, 1989, respectively, together with related transmission service. CL&P states that the capacity, energy transmission and station service charge rate for the proposed service are based on the cost-of-service formulas.

CL&P requests that the Commission permit the rate schedules to become effective on January 1, 1989 or February 1, 1989, as appropriate.

CL&P states that a copy of the rate schedules have been mailed or delivered to Buyers.

Comment date: April 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. The Cleveland Electric Illiminating Co. et al.

[Docket No. ER89-272-000]

March 23, 1989.

Take notice that on March 10, 1989, the above listed members of the CAPCO Group filed Appendix 8 as a supplement to Schedule E of the CAPCO Basic Operating Agreement, as amended September 1, 1980, which is on file with the Commission and identified by the Rate Schedule numbers shown for each below listed company:

Company	FERC rate schedule number
The Cleveland Electric Illiminating Company	15
Duquesne Light Company	15
Ohio Edison Company	144
Pennsylvania Power Company	35
The Toledo Edison Company	27

Appendix 8 to Schedule E of the CAPCO Basic Operating Agreement provides that the basis for the determination of charges applicable to Unit Capacity and Energy transactions by the CAPCO member companies from Beaver Valley Unit No. 2. The services and compensation for Unit Capacity and Energy transactions from base load charges from particular CAPCO Units being set forth in Appendices to Schedule E. It is requested that Appendix 8 become effective as of November 1, 1988.

Comment date: April 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Co.

[Docket No. ER89-274-000]

March 23, 1989.

Take notice that Arizona Public Service Company (APS) on March 10, 1989, tendered for filing proposed changes to the following FERC Rate Schedules:

FERC rate No.	Customers
78	Los Angeles Department of Water and Power.[1]
92	Tucson Electric Power.[1]
93	San Diego Gas & Electric.[1]
97	Arizona Electric Power Cooperative.[1]
102	Public Service Company of New Mexico.[1]
110	El Paso Electric Company.[1]
115	City of Farmington.[1]
166	Department of the Navy.[2]

[1] Interruptible Transmission Service.
[2] Fir Transmission Service.

APS requests that the above customer agreements be amended to discontinue recovery of the Yuma County Transportation Excise Tax effective March 1, 1989.

These proposed changes are intended to reflect the discontinuation of the Yuma County Transportation Excise tax, February 28, 1989 pursuant to A.R.S. section 42-1306, section 4.B.

Copies of this filing have been served upon the customers affected by the filing and applicable State regulatory agencies.

Comment date: April 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7357 Filed 3-27-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

[Docket Nos. TM89-9-20-000, TM89-8-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 22, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on March 16, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 as set forth in the revised tariff sheet:

Proposed to be effective March 1, 1989

Substitute Thirty-second Revised Sheet No. 203

Twenty-fifth Revised Sheet No. 204

Proposed to be effective April 1, 1989

Twenty-sixth Revised Sheet No. 204

Algonquin states that in a filing dated March 1, 1989 in Docket No. TF89-1-22-000, Algonquin's pipeline supplier, CNG Transmission Corporation ("CNGT") filed an Interim PGA to revise CNGT's rates filed for on January 27, 1989 in Docket No. TQ89-3-22-000. The changes made by CNGT represent decreases of 49.5 cents per MMBtu in the Demand Charge and 6.0 cents per MMBtu in the Commodity Charge.

Algonquin states that in a filing dated February 27, 1989 in Docket No. TF89-3-16-000, Algonquin's pipeline supplier, National Fuel Gas Supply Corporation ("National") made an Interim Purchased Gas Adjustment which decreased its commodity rate by 32.28 cents per MMBtu from the rate filed in its Interim PGA dated January 30, 1988 in Docket No. TF89-2-16-000. Additionally, on March 1, 1989 in Docket No. TQ89-2-16-000 National made a quarterly PGA filing to update its estimated cost of purchased gas. National's Quarterly PGA increases the Demand Charge by 23.0 cents per MMBtu and the Commodity Charge by 34.8 cents per MMBtu above those rates contained in National's February 27, 1989 Interim PGA.

Pursuant to section 7 of Rate Schedules F-2 and F-3, Algonquin is filing Substitute Thirty-second Revised Sheet 203, Twenty-fifth Revised Sheet No. 204 and Twenty-sixth Revised Sheet No. 204 to concurrently track the rate changes filed for by CNGT and National in the services underlying Algonquin's Rate Schedules F-2 and F-3.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7300 Filed 3-27-89; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulation Commission

[Project Nos. 2322-006, 2325-003, 2552-003 and 2574-007]

Central Maine Power Co. and Merimil Ltd. Partnership; Extending Deadlines

March 22, 1989.

By orders issued January 25, 1989,[1] the Director, Division of Project Compliance and Administration (Director), amended the licenses for Project Nos. 2322, 2325, 2552 and 2574. On February 24, 1989, American Rivers, Inc., Natural Resources Council of Maine, and the Atlantic Salmon Federation jointly filed motions to intervene in the above-captioned proceedings under Rule 214 of

[1] Orders Amending Licenses in the above-captioned proceedings, 46 FERC ¶¶ 62,078 and 62,076 (1989). Similar orders at 45 FERC ¶¶ 62,082 and 62,077 (1989) were issued in Project No. 2611-009, Scott Paper Company and UAH-Hydro Kennebec Limited Partnership, and Project No. 5073, Benton Falls Associates, respectively

the Commission's Rules of Practice and Procedure [2] and appeals of the Director's orders under Rule 1902.[3] Under Rules 214(c) and 1902(b), replies to the motions and appeals must be filed by March 13 and 6, 1989, respectively.

By letter filed March 6, 1989, pursuant to Rule 2008,[4] Central Maine Power Company and Merimil Limited Partnership, the licensees for the considered projects, each request 25- and 30-day extensions of time (to April 7, 1989) to file replies to the motions to intervene and the appeals, respectively. Licensees contend that they did not receive copies of the motions and appeals, which involve several issues, until March 1, 1989. The licensees have shown good cause for granting the requested extensions of time, and notice is hereby given that licensees must file any replies to the motions to intervene and appeals by April 7, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7302 Filed 3-27-89; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. EL89-23-000]

The Villages of Edgerton and Montpelier, OH v. Ohio Power Co.; Filing

March 22, 1989.

Take notice that on February 28, 1989, the Villages of Edgerton and Montpelier, Ohio (Villages) filed a complaint, application for an order pursuant to section 202(b) of the Federal Power Act, and request for expedited resolution. In their filing the Villages state that they are applying to the Commission for an order requiring Ohio Power Company to interconnect with and sell power and energy to the Villages.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Villages state that a copy of the complaint has been served upon the respondent. Answers shall be due on or before April 21, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7303 Filed 3-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA87-37-000]

Kansas City Power & Light Co.; Consent to Shortened Procedures

Issued March 21, 1989.

On January 25, 1989, the Office of the Chief Accountant issued a report on the examination of the books and records of Kansas City Power & Light Company (Kansas City) for the years 1983-1986. As noted in that report, Kansas City disagrees with Tariff Exception No. 1 on Schedule No. 2, concerning the proper accounting for certain final reclamation and mine closing costs. By letter filed February 23, 1989, Kansas City Power & Light Company consented to disposition of this matter under the shortened procedures set forth in 18 CFR Part 41.

Therefore, initial memoranda of facts and arguments shall be due on or before April 20, 1989. Replies shall be due on or before May 10, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7312 Filed 3-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-93-000]

Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff

March 22, 1989.

Take notice that Sabine Pipe Line Company (Sabine) on March 15, 1989, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, to be effective April 1, 1989.

Sabine states that the proposed tariff sheet, Original Sheet No. 205E incorporates a new tariff provision which sets forth the method by which Sabine will reallocate its OCS firm transportation capacity in the event that two or more shippers seek to obtain the firm capacity that one or more shippers offer to relinquish. Sabine states that it intends to utilize its current rates after April 1, 1989, for certificated transportation provided pursuant to its General Rate Schedule T-3, for the remaining terms of two affected outstanding contracts. Sabine's T-3 rates are equal to the Part 284 interruptible rates that Sabine has on file with the Commission. Sabine further states that the proposed tariff sheet and statements supporting its continued use of current rates for certificated transportation provided pursuant to its General Rate Schedule T-3, fulfill the compliance requirements of the Commission's regulations as set forth in Order Nos. 509 and 509-A, issued December 9, 1988, and February 21, 1989, respectively.

Copies of this filing were served upon Sabine's customers, the Louisiana Department of Natural Resources and the Railroad Commission of Texas. 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 §§ 315.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before 3/29/89. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7301 Filed 3-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1047-000]

CNG Transmission Corp.; Request Under Blanket Authorization

March 22, 1989.

Take notice that on March 20, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302, filed in Docket No. CP89-1047-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for various shippers under the certificate issued in Docket No. CP86-311-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for various shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and interstate pipelines. CNG lists for each shipper the receipt

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[2] 18 CFR 385.214 (1988).

[3] 18 CFR 385.1902 (1988).

[4] 18 CFR 385.2008 (1988).

and delivery points, the maximum daily, average daily, and annual volumes, as well as the docket number related to the 120-day transportation service initiated by CNG pursuant to § 284.223(a)(1) of the Regulations (see attached appendix). CNG alleges that only existing facilities are necessary to perform the proposed transportation service.

Any person or the Commission's staff may, within 45 days after 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 therefor, 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

Appendix

Docket number	Shipper or customer	Commence date	Max. daily; avg. daily; est. annual	Receipt point	Delivery point
ST89-2679	North Atlantic Utilities	1/22/89	20,000 282 102,930	A	Texas Eastern.
ST89-2678	Gulf Ohio Corp.	1/25/89	5,300 168 61,230	B	Texas Eastern.
ST89-2676	CNG Trading Co.	1/27/89	200,000 516 188,340	B	Transco.
ST89-2674	System Supply for end users	1/13/89	30,000 787 287,255	A	Transco.
ST89-2673	Natural Gas Clearinghouse, Inc.	1/10/89	75,000 20,968 7,653,320	A	Transco.
ST89-2672	CNG Trading Co.	2/07/89	300,000 519 189,435	B	Texas Eastern.

Legend of Delivery Points
Transco—Transcontinental Gas Pipeline Corporation.
Texas Eastern—Texas Eastern Transmission Corporation.
Legend of Receipt Points
A—Various interconnects between Tennessee Gas Pipeline Company and CNG.
B—Various receipt points in West Virginia, Pennsylvania, and New York.

[FR Doc. 89-7297 Filed 3-27-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP88-207-008 and RP87-55-011]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 22, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on March 17, 1989, tendered for filing for the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

Third Substitute Original Sheet No. 16B3
Third Substitute Original Sheet No. 16B4
Third Substitute Original Sheet No. 16B5

Columbia states that the foregoing tariff sheets relate to Columbia's July 1, 1988, August 12, 1988 and September 1, 1988 filings in Docket Nos. RP88-207, *et al.* and Order No. 500 to recover from its customers a portion of the contract reformation costs paid by Columbia to reform certain of its gas purchase contracts with Southwest producers. Specifically, these tariff sheets reflect corrections in certain deficiency period volumes reflected for Columbia's customers in the prior filings. The tariff sheets submitted with the instant filing reflect the revised allocation factors and Fixed Monthly Demand Surcharges resulting from the adjustments to the deficiency period volumes. Also included in this filing are new title pages for Columbia's Volume No. 1 and Volume No. 2 Tariffs reflecting an organizational change which substitutes Stephen M. Warnick in place of Glen L. Kettering as the contact for future communications relating to these tariffs.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-207, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7294 Filed 3-27-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-110-000]

K N ENERGY, INC.; Proposed Changes in FERC Gas Tariff

March 22, 1989.

Take notice that K N Energy, Inc. ("K N") on March 20, 1989 tendered for filing revised tariff sheets reflecting changes in its General Terms and Conditions to accommodate and conform with K N's initial transportation rate schedules in Original Volume 1-A of K N's FERC Gas Tariff filed concurrently herewith. The revised General Terms and Conditions are set forth in a new Volume I-B of K N's FERC Gas Tariff. The proposed effective

date for these tariff sheets is April 1, 1989.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before March 30, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 204276, a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7295 Filed 3-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-111-000]

K N Energy, Inc.; Initial Rate Schedules

March 22, 1989.

Take notice that K N Energy, Inc. ("K N") on March 20, 1989 tendered for filing Original Volume 1-A consisting of initial transportation Rate Schedules FT and IT and the service agreement and transportation request forms applicable thereto. The proposed effective date for these tariff sheets is April 1, 1989. K N will conduct an open season for NGPA section 311 transportation requests from March 20 through March 31, 1989.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before March 30, 1989, 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7296 Filed 3-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-61-001]

Kentucky West Virginia Gas Co. Compliance Filing

March 22, 1989.

Take notice that on March 17, 1989, Kentucky West Virginia Gas Company (Kentucky West) filed certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. Kentucky West states that these tariff sheets are filed in compliance with the Commission's order of March 2, 1989 in this docket. Kentucky West states that it is submitting the tariff sheets solely to comply with the Commission's March 2, 1989 order, and without prejudice to the position set forth in its request for rehearing of the March 2 order, or the rights and entitlements it may have pursuant to other proceedings or decisions.

Kentucky West states that this filing is being served upon all parties to this proceeding and upon each of its customers and the Public Service Commissions of Kentucky, Pennsylvania and West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before March 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7292 Filed 3-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ89-2-38-000 and TQ89-2-38-001]

Ringwood Gathering Co.; Compliance Filing

March 22, 1989.

Take notice that on March 20, 1989, Ringwood Gathering Company (Ringwood) filed Substitute Forty-Eighth Revised Sheet Quarterly PGA-1 in compliance with the Commission's Letter Order of March 8, 1989.

Ringwood states that this tariff sheet reflects the removal of its surcharge adjustment as well as the corrected current adjustment amount. Ringwood states that the correction was due to an incorrect projection methodology used by Ringwood in its filing of January 30, 1989 to be effective March 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before March 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7293 Filed 3-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1051-000]

United Gas Pipe Line Co. Request Under Blanket Authorization

(March 22, 1989).

Take notice that on March 20, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1051-000, a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for Louisiana State Gas Corporation (LSGC), an intrastate pipeline company, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request

which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 309,000 MMBtu of natural gas equivalent per day pursuant to a transportation agreement dated October 1, 1988, as amended on December 22, 1988, between United and LSGC. United would receive natural gas at various receipt points in Texas, Louisiana and Mississippi and redeliver equivalent volumes of gas, less fuel and company used gas, at various delivery points in Louisiana, Mississippi, Alabama and Florida.

United further states that the estimated average daily and annual quantities would be 309,000 MMBtu and 112,785,000 MMBtu, respectively. Service under § 4.223(a) commenced December 29, 1988, as reported in Docket No. ST89-2520-000, it is stated.

Any person or the Commission's staff may, within 45 days after 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 therefor, 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. 89-7298 Filed 3-27-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of December 9 through December 16, 1988

During the Week of December 9 through December 16, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 22, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 9 through December 16, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 9, 1988	Government Accountability Project Washington, DC.	KFA-0243	Appeal of an Information Request Denial. If Granted: The Government Accountability Project would receive access to information concerning the Knolls Atomic Power Laboratory.
Dec. 9, 1988	Government Accountability Project Washington, DC.	KFA-0244	Appeal of an Information Request Denial. If Granted: The Government Accountability Project would receive access to information concerning the Knolls Atomic Power Laboratory.
Dec. 9, 1988	Government Accountability Project Washington, DC.	KFA-0245	Appeal of an Information Request Denial. If Granted: The Government Accountability Project would receive access to information concerning the Knolls Atomic Power Laboratory.
Dec. 9, 1988	Government Accountability Project Washington, DC.	KFA-0246	Appeal of an Information Request Denial. If Granted: The Government Accountability Project would receive access to information concerning the Knolls Atomic Power Laboratory.
Dec. 9, 1988	Government Accountability Project Washington, DC.	KFA-0247	Appeal of an Information Request Denial. If Granted: The Government Accountability Project would receive access to information concerning the Knolls Atomic Power Laboratory.
Dec. 12, 1988	Southwestern States Marketing Corp. Abilene, TX	KRX-0060	Supplemental Order. If Granted: The Office of Hearings and Appeals would strike portions of the March 3, 1988, Decision and Order issued to Kenneth Walker and the Economic Regulatory Administration, 17 DOE ¶ 83,006 (1988).
Dec. 12, 1988	Southwestern States Marketing Corp. Abilene, TX	KRX-0061	Supplemental Order. If Granted: The Office of Hearings and Appeals would amend the Proposed Remedial Order issued jointly to Southwestern States Marketing Corporation and Kenneth Walker (Case No. HRO-0258) to delete all references to criminal matters involving the parties that appear in the charging document.
Dec. 13, 1988	Terry J. Fox, San Francisco, CA	KFA-0248	Appeal of an Information Request Denial. If Granted: The November 18, 1988 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded and Terry J. Fox would receive access to long distance call(s) information of Bonneville Power Administration personnel.
Dec. 14, 1988	Amoco/South Dakota Pierre, SD	RM21-139, RM251-140	Request for Modification/Rescission. If Granted: The October 28, 1988 Decision and Order issued to South Dakota (Case Nos. RM21-130 & RM251-134) would be modified, regarding the state's plan submitted in the Amoco second stage refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of Refund Proceeding/Name of Refund Application	Case No.
10/26/87	City of Holyoke Gas & Elect.	RF272-1
11/16/88	Anthony Farms, Inc.	RF272-75160
12/08/88	Belridge Farms	RF272-75147
12/08/88	Rakie's Oil Company	RF310-327
12/9/88 thru 12/16/88	Exxon Refund Applications Received	RF307-7041 thru RF307-7194
12/9/88 thru 12/16/88	Atlantic Richfield Co. Applications Received	RF304-7446 thru RF304-7547
12/9/88 thru 12/16/88	Murphy Oil Refunds Applications Received	RF309-625 thru RF309-678
12/9/88 thru 12/16/88	Gulf Oil Refunds Applications Received	RF300-10625 thru RF300-10642
12/09/88	Wozniak's Sunoco	RF272-75148
12/09/88	Total Transportation, Inc.	RF272-75149
12/09/88	Ligon Specialized Hauler, Inc.	RF272-75150
12/09/88	Wiliam Matthew	RF272-75151
12/09/88	Marylyn Lonneman	RC272-13
12/12/88	Schaner Oil Company	RF272-75153
12/12/88	Oceana County Road Comm.	RF272-75154
12/12/88	Oceana Petroleum, Inc.	RF272-75155
12/12/88	Artesian Apco Service	RF310-328
12/12/88	Warin Oil Company	RF310-329
12/12/88	Glenn's Apco	RF330
12/12/88	Elite Ltd.	RF310-331
12/12/88	Hoegh Oil & Tire Company	RF310-332
12/12/88	King Gas Company	RF139-204
12/12/88	Thomas W. Starkey Farms	RF272-85152
12/12/88	Amco/New Mexico	RQ21-487
12/12/88	Perry Gas/New Mexico	RQ183-488
12/8/88	National Helium/Arizona	RRQ3-486
12/12/88	Joura Oil Company	RF310-333
12/12/88	Breda Oil Company	RF310-334
12/12/88	Doyle C. Borts	RF310-335
12/12/88	Fernguist Arco	RF304-7464
12/12/88	Jones Oil, Inc.	RF313-1
12/13/88	Gary Maus	RC272-14
12/13/88	O & J Service, Inc.	RF316-3
12/13/88	Hillcrest Service Station	RF316-2
12/13/88	Cataldo Automotive, Inc.	RF316-1
12/15/88	Sherman Phillips Trucking	RF272-75156
12/16/88	Robert Farley	RF272-75157
12/16/88	Gene Layfield	RF272-75158
12/16/88	Holger E. Johnson	RF272-75159
12/16/88	Home Oil Co. of Jacksonville	RF313-2

[FR Doc. 89-7349 Filed 3-27-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3544-3]

Science Advisory Board; Environmental Engineering Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that the Science Advisory Board's Environmental Engineering Committee (EEC) will meet April 11-12, 1989 in the Waterside Mall, EPA Headquarters in the Administrator's Conference Room 1101, West Tower, 401 M Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. on Tuesday and Wednesday, and adjourn no later than 5:00 p.m.

The purpose of the meeting is to discuss work plans and examine topics of interest to the Environmental Engineering Committee that are being reviewed in Fiscal Year 1989. These topics include, but are not limited to the following subjects: ash stabilization criteria, asbestos engineering research, cleanup models for soils, municipal waste combustion ash, pollution prevention research plan report to Congress, saturated zone model for surface impoundments, POTW sludge incineration and toxics treatability for wastewater.

Other topics will be discussed as time permits, such as Toxicity Characteristic Leaching Procedure (TCLP), risk reduction strategies and municipal solid waste problems.

The meeting is open to the public. Any member of the public wishing further information on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian.

Executive Secretary, Science Advisory Board, (A101-F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552 by April 5, 1989. Seating at the meeting will be on a first come basis.

Dated: March 20, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-7322 Filed 3-27-89; 8:45 am]
BILLING CODE 6560-50-M

[FRL 3544-4]

Draft Evaluation of the Potential Carcinogenicity of Lead and Lead Compounds: In Support of Reportable Quantity Adjustments Pursuant to CERCLA Section 102

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of external review draft and request for public comments.

SUMMARY: This notice announces the availability of the external review draft of the Evaluation of the Potential Carcinogenicity of Lead and Lead Compounds: In Support of Reportable Quantity Adjustments Pursuant to CERCLA section 102, EPA/600/8–89/045A.

This document will be the subject of a Science Advisory Board meeting to be held on March 30, 1989. Notice of the time and place of the Science Advisory Board meeting was published in the **Federal Register** on March 17, 1989 (54 FR 11275).

DATES: The Agency will make the draft document available for public review and comment on or about Monday, March 27, 1989. Comments must be postmarked by Friday, May 26, 1989.

ADDRESSES: To obtain a single copy of the draft document, interested parties should contact the ORD Publications Office, CERI–FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, (513) 569–7562 or FTS/684–7562. Please provide your name and mailing address and request the external review draft by title and EPA number.

The draft document also will be available for public inspection and copying in the Public Information Reference Unit of the EPA Library, U.S. Environmental Protection Agency Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Commenters are requested to submit their comments in writing to: Project Officer for Lead Evaluation, Technical Information Staff, Office of Health and Environmental Assessment (RD–689), U.S. Environmental Protection Agency, 401 M Street, SW (Waterside Mall-Room 3703), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: James Cogliano, (202) 382–5898 or FTS/382–5898.

SUPPLEMENTARY INFORMATION: This report summarizes and evaluates information on the potential carcinogenicity of a hazardous substance defined under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). EPA's Office of Emergency and Remedial Response considers this report along with other information when adjusting reportable quantities under CERCLA section 102.

EPA's Air Quality Criteria for Lead, especially Volume III, has been used extensively as a reference in the preparation of this carcinogenicity assessment. The Air Quality Criteria for Lead has had considerable peer review, including review by the Clean Air Scientific Advisory Committee of the Science Advisory Board in public sessions. The four-volume set is available from the National Technical Information Service (NTIS), 5285 Port Roybal Road, Springfield, Virginia 22161 (Telephone 703/487–4650). The NTS publication numbers and approximate costs are:

Volume I PB87–142386 $24.95
Volume II PB87–142394 $30.95
Volume III PB87–142402 $30.95
Volume IV PB87–142410 $36.95
SET PB87–142378 $105.50

The lead evaluation reflects two factors that the Agency considers important in characterizing potential carcinogens: weight of evidence and potency. Information in the report has been organized as described in EPA's Guidelines for Carcinogen Risk Assessment. Section 1 develops the weight of evidence (the strength of the evidence that a substance cause cancer) according to the Guidelines. It has subsections dealing with human studies, long-term animal studies, short-term tests, toxicologic effects other than carcinogenicity that are relevant to the evaluation of carcinogenicity, and pharmacokinetic properties. Section 2 discusses potency (the strength of a substance to cause cancer), and section 3 combines the weight of evidence and the potency into an overall hazard ranking for potential carcinogenicity as required for the reportable quantities program.

Date: March 21, 1989.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89–7323 Filed 3–27–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 89–335]

Advisory Committee on Advanced Television Service

March 22, 1989.

A meeting of the Advisory Committee on Advanced Television Service will be held on: April 17, 1989, 2:00 p.m., Commission Meeting Room (Room 856), 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Reports of Subcommittees
4. Draft of Second Interim Report
5. Report on Testing Laboratories
6. Future Work Plans
7. Other Business
8. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Advisory Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429–7010 or Alex D. Felker at (202) 632–6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–7271 Filed 3–27–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection.

Title: Emergency Education Network (EENET) Videoconference Evaluation Form.

Abstract: The Emergency Education Network (EENET) Videoconference Evaluation Form will be used to obtain information to evaluate the materials and presentations of FEMA sponsored video broadcasts. At the end of each broadcast, a FEMA contractor will conduct a random telephone survey of no more than 15 viewers from the EENET mailing list to obtain figures on audience size and comments that may impact on future video broadcast planning. FEMA expects to broadcast about 15 videoconferences per year.

Type of Respondents: Individuals and households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 40.

Number of Respondents: 225.

Estimated Average Burden Hours Per Response: .17.

Frequency of Response: Once per videoconference broadcast.

Copies of the above information collection request and supporting documentation can be obtained by

calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: March 20, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89–7275 Filed 3–27–89; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–010099–006
Title: International Council of Containership Operators ("ICCO")
Parties: Lykes Bros. Steamship Co., Inc.
Ben Line Containers Ltd.
Koninklijke Nedlloyd Groep N.V.
Atlantic Container Line Services, Ltd.
A.P. Moller (Maersk Line)
Sea-Land Service, Inc.
The Australian National Line
P&O Containers Ltd.
Hapag-Lloyd AG
Finmare Group
United Arab Shipping Co. (S.A.G.)
Transatlantic Shipping Co., Ltd.
Columbus Line
Orient Overseas Container Line, Ltd.
Compagnie Generale Maritime
Transportation Maritima Mexicana
American President Lines, Ltd.
Mitsui OSK Lines, Ltd.
South African Marine Corp., Ltd.
Wilh. Wilhelmsen
Compagnie Maritime Belge S.A.
Neptune Orient Lines Ltd.
Evergreen International Corp.
Nippon Yusen Kaisha
Blue Star Line Ltd.
Crowley Maritime Corporation
Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed modification would increase a new member's initial contribution towards ICCO expenses from $1,000 to $5,000.

Agreement No.: 203–011172–004
Title: United States Atlantic and Gulf Venezuela, Freight Conference Discussion Agreement
Parties: United States Atlantic and Gulf Venezuela, Freight Conference, Maragua Line, Venezuelan Container Liner, Seaboard Marine, Ltd. King Ocean

Synopsis: The proposed modification would change the name of the United States Atlantic and Gulf Venezuela Freight Conference to United States Atlantic/Venezuela Freight Association. It would also add United States Gulf/Venezuela Freight Association as a conference party, and delete King Ocean, Maragua Line, Venezuelan Container Line, and Seaboard Marine, Ltd., as independent parties to the Agreement.

Agreement No.: 206–011235
Title: Far East Policing Agreement
Parties: Asia North America Eastbound Rate Agreement ("ANERA")
Japan-Atlantic and Gulf Freight Conference ("JAGFC")
Trans Pacific Freight Conference of Japan ("TPFCJ")
Transportation Westbound Rate Agreement ("TWRA")

Synopsis: The proposed Agreement would authorize the parties to coordinate or jointly contract for self-policing services, and to discuss and agree upon matters relating to self-policing in the trade between ports and points in the Far East and ports and points in the U.S. covered by the basic agreements of any of the conference parties.

By Order of the Federal Maritime Commission.

Date: March 23, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–7251 Filed 3–27–89; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/Address	Date Reissued
2481R....	Akhtar L. Din dba Indus Shipping Co., 114 Liberty St., Rm. 806, New York, NY 10006.	Feb. 28, 1989
1291R....	Robert J. Semany & Co., dba Altransco, 10501 Allen Rd., Suite 206, Allen Park, MI 48101.	Mar. 6, 1989
3126R....	Transcontinental Cargo, Inc. dba Freight, Forwarding Service, 7369 NW. 54th Street, Miami, FL 33166.	Mar. 13, 1989

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89–7342 Filed 3–27–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp.; 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 availale 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.

Comment regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 1989.

A. Federal Reserve Bank of New York

William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manahattan Corporation*, New York, New York; to acquire Mortgage Servicing Portfolio of Bankers Trust Company, New York, New York, and thereby engage in servicing mortgages for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 22, 1989.

Jennifer J. Johnson,

Asociate Secretary of the Board.

[FR Doc. 89-7358 Filed 3-27-89; 8:45 am]

BILLING CODE 6210-01-M

Citicorp, et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 11, 1989.

A. Federal Reserve Bank of New York

(William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage *de novo* through its subsidiary, Citicorp Information Resources, Inc., in data processing activities pursuant to § 225.25(b)(7); and management consulting to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. Comments on this application must be received by April 19, 1989.

B. Federal Reserve Bank of Atlanta

(Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Barnett Banks, Inc.*, Jacksonville, Florida; to engage *de novo* through its subsidiary, Barnett Merchant Services, Inc., Jacksonville, Florida, in providing debt collection srevices to customers of BMSI, through a proposed new subsidiary which will be a wholly-owned subsidiary of BMSI. Specifically, BMSI proposes to establish a wholly-owned subsidiary to: (1) Conduct collection activities on checks accepted or received by its customers that do not meet contractual standards for a guarantee; (2) offer collection services on checks for organizations that do not participate in the guarantee program; (3) conduct collection activities on charge-backs on bankcard accounts; and (4) conduct collection activities on charged-off balances on bank accounts and any other accounts pursuant to § 225.25(b)(23) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago

(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *How-Win Development Co.*, Cresco, Iowa; to engage *de novo* in making, acquiring, and servicing loans or other extensions of credit for the Applicant's banking and nonbanking subsidiaries as well as for unaffiliated lending institutions pursuant to §§ 225.25(b)(1)(i), (iii), (iv) and (v) of the Board's Regulation Y.

D. Federal Reserve Bank of Kansas City

(Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Missouri Bancshares, Inc.*, Kansas City, Missouri; to engage *de novo* in making, acquiring, and servicing loans and other extensions of credit pursuant to section 225.25(b)(1) of the Board's Regulation Y.

E. Federal Reserve Bank of Dallas

(W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *The Plains Corporation*, Lubbock, Texas; to engage *de novo* through its subsidiary, Plains Financial Corporation, Lubbock, Texas, in originating loans for itself or for others of the type made by a mortgage company pursuant to section 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in West Texas. Comments on this application must be received by April 19, 1989.

Board of Governors of the Federal Reserve System, March 22, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-7359 Filed 3-27-89; 8:45 am]

BILLING CODE 6210-01-M

Lexington Bancshares, 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 April 29, 1989.

A. Federal Reserve Bank of Cleveland

(John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Lexington Bancshares, Inc.*, Lexington, Kentucky; to acquire 100 percent of the voting shares of Cardinal Bancshares, Inc., Lexington, Kentucky, and thereby indirectly acquire Cardinal Bancshares Subsidiary, Inc., Lexington, Kentucky; Harco Bancshares, Inc., Harlan, Kentucky; Cole Holding Company, Harlan, Kentucky; Guaranty Deposit Bank, Cumberland, Kentucky; Harlan National Bank, Harlan, Kentucky; and Union Bank & Trust Company, Irvine, Kentucky.

B. Federal Reserve Bank of Kansas City

(Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Widmer Bancshares, Inc.*, Salisbury, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants and Farmers Bank, Salisbury, Missouri.

C. Federal Reserve Bank of Dallas

(W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First State Bankshares, Inc.*, Spearman, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Spearman, Texas.

2. *Red River Financial Corporation*, Detroit, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank, Detroit, Texas.

D. Federal Reserve Bank of San Francisco

(Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Allied Bancorp*, Mission Viejo, California; to become a bank holding company by acquiring up to 50 percent of the voting shares of Mission Valley Bank, N.A., San Clemente, California.

Board of Governors of the Federal Reserve System, March 22, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-7360 Filed 3-27-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 1989.

A. Federal Reserve Bank of Chicago

(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mary C. McCrane*, Independence, Iowa; to acquire an additional 6.96 percent of the voting shares of Independence Bancshares, Inc., Independence, Iowa, for a cumulative total of 31.16 percent of the voting shares and thereby indirectly acquire Security State Bank, Independence, Iowa.

B. Federal Reserve Bank of San Francisco

(Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *John E. Anderson*, Los Angeles, California; to acquire 100 percent of the voting shares of 1st Business Corporation, Los Angeles, California, and thereby indirectly acquire 1st Business Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, March 22, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-7361 Filed 3-27-89; 8:45 am]

BILLING CODED 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Custom Feed Services Corp.; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Custom Feed Services Corp. The NADA provides for the use of a hygromycin B Type A medicated article for making Type C medicated feed for chickens and swine. The firm requested the withdrawal of approval. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to remove those portions of the regulations reflecting the approval.

EFFECTIVE DATE: April 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Custom Feed Services Corp., 2100 North 13th St., Norfolk, NE 68701, is the sponsor of NADA 129-158, which was originally approved June 8, 1982 (47 FR 24694). The NADA provides for the use of a Type A medicated article containing 0.6 gram of hygromycin B per pound for making Type C medicated feed to be used as anthelmintics for chickens and swine in accordance with 21 CFR 558.274(c)(1).

In a letter dated September 30, 1988, the sponsor requested the withdrawal of approval of the NADA because it is no longer interested in marketing the Type A product.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 129-158 and all supplements thereto is hereby withdrawn, effective April 7, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the firm's drug labeler code No. "017473," from 21 CFR 558.274(a)(4) and from the table in 21 CFR 558.274(c)(1).

Dated: March 22, 1989.

Gerald G. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-7265 Filed 3-27-89; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an extension of an information collection approval for Standard Setting Requirements for Medical and Non-Medical Facilities Where SSI Recipients Reside.

ADDRESSES: Copies of the information collection may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and questions regarding the requested extension should be sent directly to Shannah Koss-McCallum OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Extension Document

Title: Standard Setting Requirements for Medical and Non-Medical Facilities Where SSI Recipients Reside.
OMB No.: 0980–0154.
Description: State authorities must set standards, license facilities, enforce and maintain standards for certain medical and non-medical facilities where SSI recipients reside. Copies of standards and other relevant data must be made available to interested individuals and an annual certification must be sent to the Secretary.
Annual Number of Respondents: 52
Annual Frequency: 2
Average Burden Hours Per Response: 4
Total Burden Hours: 416

Dated: March 21, 1989.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 89–7291 Filed 3–27–89; 8:45 am]

BILLING CODE 4130–01–M

National Institutes of Health

National Cancer Institute; Meeting

Notice is hereby given of the meeting of the Acrylonitrile Study Advisory Panel, National Cancer Institute, June 8, 1989, Conference Room H, Executive Plaza North, 6130 Executive Blvd., Rockville, Maryland 20892. The meeting will be open from 10 a.m. to adjournment for discussion and review of the study progress. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Acrylonitrile Study Advisory Panel, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will provide substantive program information, upon request.

Betty J. Beveridge,

Committee Management Officer, NIH.

Dated: March 22, 1989.

[FR Doc. 89–7253 Filed 3–27–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases, National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on May 2, 1989, from 8:00 a.m. to approximately 5 p.m. at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: March 21, 1989.

Betty Beveridge,

NIH Committee Management Officer.

[FR Doc. 89–7254 Filed 3–27–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–930–09–4212–13; MTM 73152]

Conveyance and Order Providing for Opening of Public Land in McCone, Prairie, and Custer Counties, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. No minerals were transferred in the exchange. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

EFFECTIVE DATE: May 17, 1989

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2941.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to Section 206 of FLPMA, the following described surface estate was transferred to Glacier Park Company:

Principal Meridian, Montana

T. 15 N., R. 41 E.,
Sec. 20, SW¼.
T. 20 N., R. 44 E.,
Sec. 14, all;
Sec. 22, S½NW¼, E½SE¼.
T. 20 N., R. 45 E.,
Sec. 4, lot 1;
Sec. 8, S½;
Sec. 18, lots 1–4, inclusive, E½, E½W½.
T. 21 N., R. 45 E.,
Sec. 30, lots 3, 4, E½SW¼, SE¼;
Sec. 32, NW¼NW¼.
T. 36 N., R. 54 E.,
Sec. 31, NE¼SE¼.
T. 14 N., R. 58 E.,
Sec. 22, SW¼NE¼, NW¼.
T. 14 N., R. 59 E.,
Sec. 20, NW¼NW¼.
T. 20 N., R. 60 E.,
Sec. 10, lot 4.
Aggregating 2,650.35 acres.

2. In exchange for the above selected land, the United States acquired the following described surface estate from the Glacier Park Company:

Principal Meridian, Montana

T. 20 N., R. 44 E.,
Sec. 3, SE¼;
Sec. 11, all;
Sec. 19, That part of lots 1, 2, 3, 4 and E½NW¼ lying Westerly of Highway No. 24.
T. 13 N., R. 47 E.,
Sec. 13, all.
T. 12 N., R. 50 E.,

Sec. 27, lots 5, 6, and 7;
Sec. 33, lots 5, 6, and 7.
T. 9 N., R. 51 E.,
Sec. 27, all.
Aggregating 2,349.71 acres.

3. The values of the Federal public land and the private land were appraised at $97,000 each.

Opening Date

4. At 9 a.m. on May 17, 1989, the lands described in paragraph 2 above that were conveyed to the United States of America will be opened to the operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications under the public land laws received at or prior to 9 a.m. on May 17, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

March 17, 1989.

[FR Doc. 89-7257 Filed 3-27-89; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Paperwork Reduction Project (1010-0034), Washington, DC 20503, telephone 202-395-7340, with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Notice of Processing of Geological and Geophysical Information, 30 CFR 251.11 and 251.12

OMB Approval Number: 1010-0034

Abstract: Respondents conducting exploration for oil or gas provide the Minerals Management Service with geological and geophysical data, processed and analyzed information, and interpretations which are used to properly evaluate Federal Outer Continental Shelf (OCS) resources and environmental conditions as required by the OCS Lands Act.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Federal OCS permittees

Estimated Completion Time: 3.1 hours

Annual Responses: 640

Annual Burden Hours: 2,000

Bureau Clearance Officer: Dorothy Christopher (703) 435-6213

Dated: December 29, 1988.

Wm. D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 89-7258 Filed 3-27-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 18, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by April 12, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

De Kalb County

Fort Payne Boom Town Historic District, Roughly Gault St. from 4th St. NE. to 6th St. NE., Fort Payne, 89000308.

Fort Payne Main Street Historic District, Roughly Gault Ave. from 2nd St. NE. to 2nd St. NW., Fort Payne, 89000307.

Lee County

Yarbrough, Franklin, Jr., Store, Co. Hwy. 68, Beaulah vicinity, 89000309.

Macon County

Creekwood, Society Hill Rd., 0.4 mi. N of Co. Hwy. 10, Creekstand vicinity, 89000310.

Marshall County

Henry, Albert G., Jr., House, 308 Blount Ave., Guntersville, 89000291.

Pickens County

Hill, Hugh Wilson, House, 201 Phoenix, Carrollton, 89000292.

ARIZONA

Navajo County

Winslow Residential Historic District, Kinsley Ave. from Oak to Aspinwall, Winslow, 89000296.

GEORGIA

Ben Hill County

South Main—South Lee Streets Historic District, Roughly bounded by Magnolia St., S. Main St., Roanoke Dr., and S. Lee St., Fitzgerald, 89000294.

INDIANA

La Porte County

MUSKEGON Shipwreck Site, Address Restricted, Michigan City vicinity, 89000290.

KENTUCKY

Daviess County

Federal Building and US Post Office—Ownesboro (Owensboro MRA), 5th and Frederica, Owensboro, 89000295.

MISSOURI

St. Louis County

Coral Court Motel, 7755 Watson Rd., Marlborough, 89000311.

NEW JERSEY

Somerset County

Reynolds—Scherman House, 71 Hardscrabble Rd., Bernardsville, 89000298.

NEW YORK

Dutchess County

Beekman Meeting House and Friends' Cemetery (Dutchess County Quaker Meeting Houses TR), Emans Rd., LeGrangville, 89000303.

Clinton Corners Friends Church (Dutchess County Quaker Meeting Houses TR), Salt Point Tnpk./Main St., Clinton Corners, 89000305.

Creek Meeting House and Friends' Cemetery (Dutchess County Quaker Meeting Houses TR), Salt Point Tnpk./Main St., Clinton Corners, 89000299.

Crum Elbow Meeting House and Cemetery (Dutchess County Quaker Meeting Houses TR), Quaker Ln., East Park vicinity, 89000302.

Nine Partners Meeting House and Cemetery (Dutchess County Quaker Meeting Houses TR), NY 343, Millbrook vicinity, 89000300.

Oswego Meeting House and Friends' Cemetery (Dutchess County Quaker Meeting Houses TR), Oswego Rd. at jct. with Smith Rd., Moore's Mill vicinity, 89000301.

Poughkeepsie Meeting House (Montgomery Street) (Dutchess County Quaker Meeting Houses TR), 112 Montgomery St., Poughkeepsie, 89000304.

Poughkeepsie Meeting House (Hooker Avenue) (Dutchess County Quaker Meeting Houses TR), 249 Hooker Ave., Poughkeepsie, 89000306.

TENNESSEE

Davidson County

Weakley—Truett—Clark House, 415 Rosebank Ave., Nashville, 89000297.

VIRGINIA

Powhatan County

French's Tavern, 6100 Old Buckingham Rd., Ballsville vicinity, 89000293.

[FR Doc. 89-7283 Filed 3-27-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Ex Parte No. 290 (Sub No. 5) (89-2)

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a modified version of the second quarter 1989 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads (AAR). AAR's proposal has been modified to include a productivity adjustment. The second quarter 1989 RCAF (Unadjusted) is 1.052 and the second quarter 1989 RCAF (Adjusted) is 1.048. Maximum second quarter RCAF rate levels may not exceed 100.2 percent of maximum first quarter 1989 RCAF rate levels.

EFFECTIVE DATE: April 1, 1989.

FOR FURTHER INFORMATION CONTACT:

William T. Bono, (202) 275-7354.

or

Robert C. Hasek, (202) 275-0938.

[TDD for hearing impaired, (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357 or 4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., Room 2229 at Commission Headquarters.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Dated: March 21, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley dissented. He would have restated the current RCAF level to reflect past productivity gains.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7227 Filed 3-27-89; 8:45 am]

BILLING CODE 7035-01-M

Exemption; Aberdeen Carolina and Western Railway Co.—Lease Exemption—Southern Railway Company's Line Between Charlotte and Gulf, North Carolina

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the Aberdeen Carolina and Western Railway Company (AC&W) and Southern Railway Company (Southern) from the prior approval requirements of 49 U.S.C. 11343-11345 to allow AC&W's lease and operation of 104 miles of rail and rail-related property, now owned and operated by Southern, between Charlotte, NC and Gulf, NC.

DATES: The exemption will be effective on April 12, 1989. Petitions for stay must be filed by April 4, 1989 and petitions for reconsideration must be filed by April 17, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31404 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives:

For Aberdeen Carolina & Western Railway Company: William L. Slover, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

For Southern Railway Company: F. Blair Wimbush, Assistant General Solicitor, Law Department, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

[TDD for hearing impaired, (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: March 20, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7226 Filed 3-27-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 278X)]

CSX Transportation, Inc.—Abandonment Exemption—In Glades and Hendry Counties, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of 24.4 miles of rail line in Glades and Hendry Counties, FL, subject to standard labor protective conditions and a public use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 27, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 7, 1989, petitions to stay must be filed by April 12, 1989, and petitions for reconsideration must be filed by May 8, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 278X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

[1] *See Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

(2) Petitioner's representative: Patricia Vail, 500 Water Street–J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired, (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, or call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721].

Decided: March 20, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–7225 Filed 3–27–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–21,615]

Drag Specialties, Minnetonka, Minnesota; Negative Determination Regarding Application for Reconsideration

By an application dated February 10, 1989, counsel for the United Auto Workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on January 12, 1989 and will be published soon in the **Federal Register.**

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Counsel for the union claims that a significant amount of workers were involved in the assembly of motorcycle parts and their subsequent packaging and shipment.

The Department's denial was based on the fact that the workers did not produce an article within the meaning of section 222(3) of the Trade Act.

Investigation findings show Drag Specialties was the distribution arm and parent company of D.S. Manufacturing which produced aftermarket automotive accessories. Other findings show that in the early 1980's a substantial amount of assembly work was performed at Minnetonka. However, during the period applicable to the petition, only incidental assembly work involving repair and repackaging of defective parts occurred at the subject facility and these workers were not separately identifiable by function.

The petition postmarked November 1, 1988 states that worker separations began in 1984. Section 223(b)(1) of the Act does not permit the certification of workers laid off prior to one year of the date of the petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this March 17, 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services. UIS.

[FR Doc. 89–7304 Filed 3–27–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21, 179 and TA–W–21, 179A]

Exploration Employment Service, Inc. Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistant on November 29, 1988 applicable to all workers of Exploration Employment Service, Inc., Livingston, Texas.

Based on new information from the company, additional workers were separated from Exploration Employment Service, Inc., in Bay City, Michigan. The notice, therefore, is amended by including the Bay City, Michigan location.

The amended notice applicable to TA–W–21, 179 is hereby issued as follows:

All workers of Exploration Employment Service, Inc., Livingston, Texas and Bay City, Michigan who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this March 16, 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services.

[FR Doc. 89–7305 Filed 3–27–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,128, et. al]

Parker Drilling Co., et. al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Parker Drilling Company Headquartered in Tulsa, Oklahoma: TA–W–21,128A

Operating at Various Locations in Oklahoma and Operating at Various Locations in the Following States:

TA–W–21,128B Texas
TA–W–21,128C Alaska
TA–W–21,128D Wyoming

and

TA–W–21,128E OIME d/b/a/ PARTECH Odessa, Texas

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 22, 1988 applicable to all workers of Parker Drilling Company, Tulsa, Oklahoma and operating at other various locations in Oklahoma, Texas, Alaska, and Wyoming.

Based on new information from the company, the certification is amended to include workers of OIME, Odessa, Texas now doing business as Partech, Odessa, Texas. OIME was owned by Parker Drilling Company during the period applicable to the petition. OIME's name was changed to Parker Technology, Inc. (Partech) in 1988 but it is still owned by Parker Drilling.

The amended notice applicable to TA–W–21,128 is hereby issued as follows:

All workers of Parker Drilling Company, headquartered in Tulsa, Oklahoma and operating in various locations in the states listed below who became totally or partially separated from employment on or after October 1, 1985 and before August 31, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.Q02

TA–W–21,128A Oklahoma
TA–W–21,128B Texas
TA–W–21,128C Alaska
TA–W–21,128D Wyoming

and

All workers of OIME, Odessa, Texas now doing business as Partech, Odessa, Texas who became totally or partially separated from employment on or after October 1, 1985 and before August 31, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this March 17, 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services.

[FR Doc. 89-7306 Filed 3-27-89; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act (JTPA); Migrant and Seasonal Farmworker (MSFW) Programs for Program Year (PY) 1989; Methodology for Setting Grantee Performance Standards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice, opportunity for comments.

SUMMARY: For Program Year 1989 (July 1, 1989–June 30, 1990), the Department of Labor will retain the basic methodology currently used to set performance standards for Job Training Partnership Act Migrant and Seasonal Farmworker (MSFW) program grantees. This methodology was previously adopted and implemented during Program Year 1987 (July 1, 1987–June 30, 1988) and continues in use for the current Program Year 1988 (July 1, 1988–June 30, 1989). This notice describes certain limited changes in these model-based procedures anticipated for PY 1989. MSFW grantees and other interested parties may offer comments for review and consideration by the Department. Any changes based on comments received in response to this notice and accepted by the Department will be communicated to MSFW grantees through issuance of subsequent program instructions.

DATE: *Effective Date:* July 1, 1989.

Comments: Interested persons are invited to submit comments. Comments must be received by the Department of Labor no later than April 11, 1989.

ADDRESS: Comments should be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Clayton Johnson, Room N5637.

FOR FURTHER INFORMATION CONTACT: Clayton Johnson, Telephone: 202–535–0685 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 402 of the Job Training Partnership Act (JTPA) authorizes federally-funded employment and training programs to meet the needs of migrant and seasonal farmworkers and their dependents. These programs and services are provided through grants made to public agencies and nonprofit organizations determined by the Secretary of Labor (Secretary) to possess a demonstrated capability to effectively administer these activities within the given states. JTPA section 106 requires the Secretary to formulate performance standards applicable to grantees designated to operate these section 402 programs. (See also 20 CFR 633.321). JTPA section 402(c)(4) further specifies that

> Recipients of funds under this section shall establish performance goals, which shall, to the extent required by the Secretary, comply with performance standards established by the Secretary pursuant to section 106.

Department of Labor (DOL or Department) regulations at 20 CFR 633.204(a)(5) identify performance standards as one of fourteen responsibility tests that MSFW grantees are required to meet in being considered for final selection. By focusing on participant outcomes of the MSFW programs, performance standards complement the other program assessment criteria relating to various compliance aspects.

Required Performance Measures

The Department has established and utilized two required performance standards for JTPA Section 402 grantees as follows:

- Entered Employment Rate (EER)—the percentage of total terminees placed in unsubsidized employment.
- Cost per Entered Employment (CEE)—total expenditures (excluding costs of administration and costs of "Services Only") divided by the total number of terminees who entered employment.

In calculating these standards, participants in "Services Only" and youths who obtain an employability enhancement outcome are excluded from total terminations.

The Entered Employment Rate (EER) measure reflects the employment orientation of all JTPA programs. The Cost per Entered Employment (CEE) measure holds grantees accountable for using their training funds in a cost effective manner.

Background

Performance standards for MSFW programs were first introduced on a trail basis in the last year of the Comprehensive Employment and Training Act (CETA) (Fiscal Year [FY] 1983, October 1, 1982–September 30, 1983). These standards continued to be used on a developmental basis in these MSFW programs through the subsequent periods under the Job Training Partnership Act (JTPA) until the end of PY 1986 (July 1, 1986–June 30, 1987).

Program Year 1987 (July 1, 1987–June 30, 1988) was the first year the standards became officially effective for assessing performance of JTPA section 402 grantees designated to operate Migrant and Seasonal Farmworker (MSFW) programs.

Prior to PY 1987, minimum standards for MSFW grantees were set through the use of two previous approaches. From FY 83 through PY 85, a "clustering" approach was used in which a grantee's standards were set according to given categories of program size and primary clientele served (i.e. migrants or seasonals). Because of problems with the clustering approach, an interim procedure was adopted for PY 1986 by which performance standards were set at 100% of each grantee's actual performance reported for PY 1984 with a 15% end of year variance allowed for both measures (i.e., EER and CEE). Under both of these previous approaches, standards were set primarily on the basis of taking grantee performance levels in a prior year and applying those levels as the minimum standard for the upcoming program period. Thus, grantees who had performed at high levels in the previous year were held to high standards even though their conditions may have changed in the subsequent period. Conversely, those grantees performing at lower levels in previous years had much easier standards with little incentive to improve from one year to the next.

Rationale for Basic Modeling Approach

From the inception of performance standards, the Department has explored ways to establish a uniform and objective method for setting individual grantee's standards that accounts for client characteristics and local conditions in each grantee's service area. The statistical technique for accomplishing this is known as multiple regression analysis. This technique is used to develop and update performance standards for the mainline JTPA Title IIA programs operated by the States and local service delivery areas. This same approach is also used to set standards for other JTPA employment and training programs such as the disclocated worker programs (Title III) and the nationally administered programs (Title IV) operated by Job Corps centers and by Native American grantees.

Basic Modeling Approach

Over a period of several years (PY 1984–85–86) this type of approach was under development for MSFW programs including periodic consultation with grantee representatives. Starting in PY 1987, the Department adopted and implemented a model-based methodology to set individual grantee standards. Essentially the same statistical models with some minor changes are presently in use during the current PY 1988 period (July 1, 1988–June 30, 1989.

PY 1989 (July 1, 1989–June 30, 1990) will be the third program year in which standards are set for MSFW grantees using the multiple regression modeling technique. This modeling approach examines the statistical relationships between program outcomes, terminee characteristics, and local economic conditions in order to identify the important factors which influence grantee results on each performance measure (i.e., EER and CEE).

Some of these factors are found to be associated with better performance and other factors are related to weaker performance. Models are then developed that quantify the relationships between the various factors so that specific adjustments can be calculated for each individual grantee. Adding up the net effet of all factors in the model for each performance measure provides each grantee with its own individually adjusted performance standards.

For example, if a grantee serves a higher than average proportion of school dropouts, the model will yield a lower EER, all things being equal, resulting in easier standards for that grantee. However, if a grantee's program serves a higher proportion of high school graduates, then the model produces somewhat higher entered employment rate standards.

In summary, the adjustment model approach offers these advantages:

- It allows standards to be set on a consistent and equitable basis for grantees by accounting for a variety of factors affecting performance.
- It reduces inducements for concentrating on the easier to serve participants since grantees who serve only job ready participants will be held to stricter performance standards.
- It provides grantees with a useful tool in the planning process by estimating performance targets based on their own unique terminee characteristics and local conditions.
- It involves no disincentives for superior performance since grantees can be rated as superior performers in one year without making their standards more stringent in the subsequent year.

In addition to the above considerations, the model-based standard setting process provides MSFW grantees and the Department with objective criteria for assessing grantee performance on key program outcomes. Thus, well-managed programs should do better than the model-predicted performance while poorly managed programs can be expected to do worse.

Selection of Modeling Factors

The following criteria have been used to determine which factors are included in the models.

- Management practices have been excluded because they are regarded as within the control of program managers.
- There must be some variations among grantees on the factor.
- The relationship between the factor and the performance measure makes intuitive sense.
- The factor is objective and easily quantifiable.
- For local economic conditions, published sub-state level data is available nationwide.

Factors appearing in the models use three main types of data including terminee characteristics, program characteristics, and service area characteristics (local economic conditions). For the PY 1989 models, data have been used from the Annual Status Reports (ASRs) submitted by MSFW grantees for Program Years 1984, 1985, 1986, and 1987. These reports contain information from each grantee on outcomes achieved, services received by terminees, terminee characteristics, and related fiscal data. Data for local economic factors have been drawn from reports published by the Bureau of the Census and the Bureau of Labor Statistics.

The following 16 factors have been selected for inclusion in either one or both of the models for the two required MSFW performance measures in PY 1989:

Local factors	Models	
	EER	CEE
Pecent Migrants		X
Percent Aged 14–21	X	
Percent Elementary School Dropouts	X	
Percent Black	X	X
Percent Hispanic	X	
Percent Welfare Recipients	X	X
Percent Unemployed at Enrollment	X	X
Average Weeks Participated		X
Percent receiving Classroom Training		X
Percent in Tryout Employment or Work Experience		X
Local Unemployment Rate (Non-MSA)	X	X
Percent Employment in Manufacturing	X	
Average Earnings in Manufacturing		X
Population living on Farms (Non-MSA)		X
Population in Urban Areas (Non-MSA)	X	X
Median Family Income	X	X

Of the 16 factors listed in the table above, 13 of them have been used in the previous models for PY 1987 and/or PY 1988. *As described below, the three new factors are being added to the CEE for PY 1989.*

Although a number of other possible changes were examined in developing these PY 1989 models, the factors shown above proved to be the ones that make the largest contribution to the model's predictive ability. Also, the retention of these factors in the PY 1989 models make them consistent with the corresponding models for the given measures in PY 1987 and PY 1988. The status of each model and limited changes are summarized below.

Entered Employment Rate (EER) Model

The PY 1989 model for EER contains the same ten factors that were included in the PY 1988 EER model.

Cost Per Entered Employment (CEE) Model

Nine of the factors listed above for the PY 1989 model are retained from the PY 1988 model for the CEE. One of the new factors being added to the CEE model is *Average Earnings in Manufacturing.* This variable has been added as an additional local economic indicator because it proves to have a strong and significant effect on the cost outcome and makes a fairly sizeable contribution to the model's overall fit to the data. Moreover, as a measure of average wages for semi-skilled workers in the local labor market, this variable is expected to be an important determinant of cost per placement.

The other two new factors being added to the CEE model are program activity factors; namely, *Percent receiving Classroom Training* and *Percent in Tryout Employment or Work Experience.* The reasons for adding these factors to the CEE model are discussed in the following section.

Additional Modeling Results

In developing the models for PY 1989, special attention has been given to re-examining the question of whether program activity factors ("program mix") ought to be included. Previously, the Department's position has been that program mix is a matter that falls within management control and, hence, program activity was left out of the models for PY 1987 and PY 1988.

However, some grantees have expressed concern that performance standards may discourage the use of Classroom Training because it is more expensive even though needed and appropriate for a number of participants enrolled in the migrant and seasonal farmworker programs. *In consideration of such concerns, the model-building process for PY 1989 specifically addressed the question of how program activity factors would operate if they were added to the models.*

Based on program data reported by all grantees over the last several years, the annual national averages for proportions of MSFW terminees by program activity levels are shown in the table below.

[In percent]

	Program years		
	1984	1985	1986
Percent of Terminees in:			
Classroom Training	37.6	34.5	30.9
On-the-Job Training	29.6	30.8	36.5
Training Assistance	22.2	21.8	21.3
Tryout Employment	2.0	1.8	2.0
Work Experience	8.7	11.1	9.3

The above data indicate a trend towards decreased use of Classroom Training and increased use of On-the-Job Training. The other three categories have remained at the same levels during these years.

The detailed data analysis completed as part of the modeling process shows that those grantees who relied heavily on On-the-Job Training had substantially higher entered employment rates and lower average costs, thereby being more likely to having met or exceeded their standards. Leaving program mix out of the model might likely encourage grantees to continue relying on OJT, thus serving those who are most job ready.

Including program mix variables in the EER model proved to have mixed results. If program mix factors were to be added to the EER model, grantees relying on Classroom Training would be given somewhat easier standards. However, it would also give far easier standards to grantees who rely heavily on Training Assistance which is not seen as a desirable policy. Therefore, because of these mixed results, adding program mix to the EER model does not serve a useful purpose at this point in time.

For the CEE model, the addition of the program activity factors appears to be more productive. Adding program mix in the CEE model will give grantees relying on Classroom Training more relaxed cost standards compared to grantees relying on any of the other program activities. Therefore, program mix is being added to the CEE model as a way to encourage more Classroom Training, particularly for harder-to-serve participants.

Another special effort as part of the PY 1989 modeling process was to examine an alternative approach for defining each grantee's service area for purposes of calculating the local economic factors in the models. The Department received excellent cooperation of MSFW grantees through the Association of Farmworker Opportunity Programs (AFOP) in collecting data identifying each grantee's self-defined service areas within their states. However, the modeling results using the self-defined areas produced estimates for MSFW grantees that were at best on better and in some cases substantially worse than the "non-metropolitan" county approach used in the current models. Therefore, the previous service area definitions will continue to be used in calculating the local economic factors in the PY 1989 models.

Departure Points

As part of the modeling process, it is also necessary to establish an overall level around which adjustments are made for the various factors included in each model. These overall levels are referred to as *departure points*. The departure points for each of the measures are based on the national average performance levels compiled for all grantees during a given period. In the case of the PY 1987 and PY 1988 models, the time period used has been *one program year* from which data was most recently available.

However, further analysis has shown that using only one program year as the period for determining departure points can lead to problems if there are significant shifts up or down in the national averages from one particular year to the next. In order to avoid or minimize such abrupt shifts from year to year, depature points for the PY 1989 models will be based instead on pooled data over the most recent *three program years.*

End of Transition Period

At the time the new model-based process was introduced, the Department established a two-year transition period (PY 1987 and PY 1988) during which grantees' standards would be calculated partially by model adjustments and partially by a post performance weight for each measure. The purpose was to provide a way to mitigate changes involved in moving from the old past performance approach for setting grantee standards to the new adjustment model methodology.

For PY 1987, the weights for past performance were 45% for the EER and 49% for the CEE. *For PY 1988, the past performance weights were 25% both for the EER and for the CEE. For PY 1989, the models will no longer include a past performance weight since the transition phase is over.*

Acceptable Performance Ranges

According to procedures previously established for PY 1987 and PY 1988, a range of acceptable performance will be calculated around the performance goal for each measure in the PY 1989 modeling calculations consisting of three levels:

- A *recommended performance goal* that reflects the adjustments for terminee characteristics and other factors for the particular grantee.
- An *exemplary performance level* above the goal.
- A *minimally acceptable level* below the goal which represents the minimum performance the grantee should meet.

The size of ranges between minimum, goal, and exemplary levels depends upon the relative size of the grantee's program (i.e., number of terminees reported). Smaller grantees have wider performance ranges than larger grantees, reflecting the fact that statistics can fluctuate more substantially when there are smaller number of participants being served.

By using these ranges of acceptable performance, rather than a single level, the performance standards can acknowledge that there are other factors affecting performance that are not captured by the models and that may be outside management control.

Experience with PY 1987 Models

There has been a continuing pattern of improved performance among MSFW grantees on each of the two required measures over the last several program years. This same pattern continued in PY 1987 which marked completion of the

first program year (July 1, 1987–June 30, 1988) in which model-based standards have been used to assess grantee performance. For information purposes, the following data indicate how well MSFW grantees performed against their model-based levels in PY 1987.

[In percent]

	EER	CEE
Exemplary	39.6	45.3
Goal level	37.7	39.6
Minimum standard	20.8	11.3
Below minimum	1.9	3.8
Percent of total of all grantees	100.0	100.0

The proportions of MSFW grantees achieving the better performance ratings is relatively high and tends to exceed the expected distribution of grantees which is estimated at 15 percent exemplary and 15 percent below minimum. Thus, the model-generated levels did not impose overly stringent standards on the MSFW grantees during PY 1987.

PY 1989 Planning Instructions

The Department expects to provide performance standards worksheets based on the models described herein so that grantees can use the projected levels in their planning estimates for PY 1989. Additional planning instructions will be transmitted to MSFW grantees through a subsequent Farmworker Bulletin. Such instructions will furnish more detailed guidance on the specific provisions outlined in this notice together with any further changes that may be adopted for PY 1989.

Signed at Washington, DC this 16 day of March 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89–7307 Filed 3–27–89; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

[V–89–1]

Broad, Vogt & Conant, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of application for temporary variance and interim order; Grant of interim order; Denial of the request for permanent variance.

SUMMARY: This notice announces the application of Broad, Vogt & Conant, Inc. for a temporary variance and an interim order from the standard prescribed in 29 CFR 1926.550(g)(3)(ii)(C) concerning the installation of anti-two-blocking devices on cranes used to hoist personnel platforms. This notice also announces the granting of an interim order until a decision is rendered on the application and the denial of a request for a permanent variance.

DATES: The interim order became effective on March 2, 1989, the date of the letter granting the interim order. The interim order shall remain in effect until May 31, 1989 or until a decision is rendered on the application for variance, whichever occurs first. The last date for interested persons to submit comments on the temporary variance application is April 27, 1989. The last date for affected employers and employees to request a hearing is April 27, 1989.

ADDRESS: Send comments or request for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination at the above address. Telephone: (202) 523–7193 or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 1375 Peachtree Street NE., Suite 587, Atlanta, Georgia 30367

Notice of Application

Notice is hereby given that Broad, Vogt & Conant, Inc., (the applicant) 195 Campbell Street, River Rouge, Michigan 48218, has made application pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 655) and 29 CFR 1905.10 for a temporary variance and interim relief or, in the alternative, a permanent variance and interim relief under section 6(d) of the Act from the standard prescribed in 29 CFR 1926.550(g)(3)(ii)(C) which requires that cranes and derricks used to hoist personnel platforms be equipped with an anti-two-blocking device.

The place of employment affected by the temporary variance application is the dry dock enclosure at Kings Bay, Georgia. Broad, Vogt & Conant, Inc., has certified that a copy of the application has been posted in a conspicuous place at the Kings Bay jobsite and employees have also been informed of their right to petition the Occupational Safety and Health Administration.

Regarding the merits of the application, the applicant uses personnel platforms suspended from rented Manitowoc 4100 cranes and, despite its efforts both prior to and subsequent to the effective date of the pertinent standard, it has been unable to obtain the required anti-two-blocking devices. In particular, the application indicates that Manitowoc Engineering Company could take as long as three months to satisfy an order for an anti-two-blocking retrofit kit. The applicant further notes that it leases one of the cranes in question from the Jones group and the other from the Carlisle Construction Company, so that the lessors, not the applicant, would be the appropriate parties to obtain and install the required anti-two-blocking devices. The applicant states that those crane leasing companies currently lack the equipment and the experienced personnel for retrofitting their cranes. The applicant has documented that it contacted Columbia Crane Company, another crane rental agency, regarding the availability of anti-two-blocking devices on September 19, 1988.

The applicant has further indicated that, once a retrofit kit was obtained, the installation could take up to one week, effectively shutting down the jobsite and possibly exposing the applicant to a charge of $22,000 per day for a schedule delay.

In addition, the applicant has stated that it would cost $40,000 per crane to replace the cranes currently operating at Kings Bay with Manitowoc 4100 cranes which have anti-two-blocking devices, and that such a changeover would shut down the jobsite for over a week.

As discussed in the application, the applicant believes that the hoisting of personnel is the safest way to get employees into position to connect structural steel members. In particular, the applicant has stated that "it is not safe to ask a person to climb up a 10 story building (8 to 12 times a day) and expect them to do the physical labor required to connect the steel members." The application indicates that a stair tower and caged ladders are provided for use by craftsmen who, apparently, move up and down the structure less than connectors.

The basis for the request of an interim order is that, until the dry dock enclosure is completed, the applicant urgently needs a means of elevating employees during steel erection operations that is safer, even without the installation of anti-two-blocking devices, than the use of ladders or other

conventional means of access. Thus, Broad, Vogt & Conant, Inc., has requested relief from the requirements of 29 CFR 1926.550(g)(3)(ii)(C), so that it can continue to hoist personnel at the Kings Bay jobsite until May 31, 1989, by which time the project should be finished.

The applicant has described the alternative safety precautions which it has implemented and would continue to follow for the duration of an interim order. Those precautions are:

1. Requiring a minimum of 15 feet between the boom tip and personnel platform;

2. Marking the load line so that the operator can tell when the personnel platform is nearing the 15-foot area;

3. Training the crane operator to use this system safely; and

4. Training the jobsite supervisor to execute the procedures and to discipline employees for any deviation from procedures.

The applicant has also assured OSHA that every effort will be made to ensure that future projects which require the hoisting of personnel are undertaken using cranes which are equipped with positive acting anti-two-blocking devices.

OSHA is denying the application for a permanent variance for a limited period, because the safety precautions which the applicant proposes to use in lieu of positive-acting anti-two-blocking devices would not provide employment and places of employment which are as safe and healthful as those which would apply if the applicant complied with 29 CFR 1926.550(g)(3)(ii)(C). Indeed, OSHA made an explicit determination in the rulemaking for crane and derrick hoisted personnel platforms that ". . . because the Agency believes that only two-blocking preventive devices will provide the necessary employee protection, OSHA has not followed the pertinent ANSI standard (53 FR 29125, August 2, 1988).

Grant of Interim Order

It appears from the application for a temporary variance and an interim order and from the supporting data that Broad, Vogt & Conant, Inc., was, apparently, unable to comply with the requirement for anti-two-blocking devices in 29 CFR 1926.550(g)(3)(ii)(C) by the October 3, 1988 effective date because of unavailability of the anti-two-blocking devices. It further appears that Broad, Vogt & Conant, Inc., will take all available steps to safeguard its employees during the time needed to complete the Kings Bay facility. Thus, based on evidence, OSHA has decided that relief is warranted from the requirements of 29 CFR 1926.550(g)(3)(ii)(C) in the form of an interim order as authorized under 29 CFR 1905.10(c) of the temporary variance procedures. The Agency is directing Broad, Vogt & Conant, Inc., to implement alternative procedures which are in effect identical to those which were set in the interim order granted to Union Carbide (53 FR 47884, November 28, 1988), because OSHA believes that compliance with those terms provides the most reasonable assurance that hoisted employees will be adequately protected.

Therefore, pursuant to the authority in section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, 29 CFR 1905.10(c) and the Secretary of Labor's Order 9–83 (48 FR 35736) OSHA has ordered that Broad, Vogt & Conant, Inc., be granted, an interim order, (effective on March 2, 1989, the date of the letter granting the interim order) with which it will comply at its worksite in Kings Bay, Georgia instead of complying with the requirement in 29 CFR 1926.550(g)(3)(ii)(C).

The conditions and terms of the interim order are enumerated below:

1. One employee in the personnel platform and one employee at ground level shall be equipped with portable FM radios tuned to the FM frequency in the crane cab. These employees shall monitor the hoist to determine if the personnel platform is getting too close to the boom and take necessary action, such as warning the operator, to ensure that the personnel platform does not contact the boom.

2. When communication stops, is interrupted or fails, the hoisting operation shall be terminated until communication is restored and safe movement is ensured.

3. The employees in the personnel platform and at the ground level monitoring the crane-hoisted personnel platform shall be competent persons as defined in 29 CFR 1926.32(f).

4. The crane operator shall maintain visual contact with the personnel platform whenever possible. Where it is not possible to see the personnel platform itself, the operator shall ensure that the crane is positioned so that the operator can see enough of the hoist line to ensure that the minimum distance between the boom and the platform is being maintained.

5. The applicant shall prescribe a minimum distance that the operator shall maintain between the two blocks to prevent two-blocking. The distance will incorporate a safety margin and will also be sufficient to ensure, taking into account the dimensions of the personnel platform and the angle of the boom, that the personnel platform does not contact the boom.

6. The applicant shall ensure that vertical line speeds do not exceed 75 feet per minute during the hoisting of the personnel platform.

7. The applicant shall train its crane operators to determine accurately that the line speed is no greater than 75 feet per minute and determine how much line must remain between the boom and the personnel platform to ensure that two-blocking will not occur.

8. The applicant shall comply with all provisions of this order and with all applicable requirements of 29 CFR Part 1910 and 29 CFR Part 1926 except to the extent that it has been expressly granted relief from those requirements.

9. The applicant shall permit OSHA to inspect its personnel platform hoisting operations during normal business hours or upon appropriate notice at any time in connection with any aspect of this order.

10. The applicant shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the application for temporary variance and interim order.

The Assistant Secretary may revoke this order at any time, without prior notice whenever the applicant does not comply with any requirements of the order or relevant standards, or if other information indicates that revocation of the interim order is warranted. Unless revoked, the interim order will remain in effect until May 31, 1989, or until a decision is made on the application for temporary variance, whichever comes first.

Signed at Washington, DC this 22nd day of March 1989.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 89–7308 Filed 3–27–89; 8:45 am]

BILLING CODE 4510–26–M

[V–89–2]

Hoechst Celanese Corp., Engineering Plastics Division

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of application for temporary variance and interim order; and grant of interim order.

SUMMARY: This notice announces the application of Hoechst Celanese Corporation for a temporary variance and interim relief from the requirement prescribed in 29 CFR 1910.1048(f)(1) for

the implementation of engineering controls to reduce and maintain employee exposure to formaldehyde at or below the permissible exposure limits. This notice also announces the granting of an interim order pending a decision on the application for a variance.

DATES: The interim order became effective on March 2, 1989, the date of the letter granting the interim order. The interim order shall remain in effect until August 2, 1989 or until a decision is rendered on the application for variance, whichever comes first. The last date for interested persons to submit comments is April 27, 1989. The last date for affected employers and employees to request a hearing on the application is April 27, 1989.

ADDRESSES: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination, at the above address, Telephone (202) 523–7193

or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 525 Griffin Square, Room 602, Dallas, Texas 75202.

U.S. Department of Labor—OSHA, Government Plaza, Room 300, 400 Mann Street, Corpus Christi, Texas 78401.

Notice of Application

Notice is hereby given that the Hoechst Celanese Corporation, Engineering Plastics Division, P.O. Box 428, Bishop, Texas 78343, has made application pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 655) and 29 CFR 1905.10 for a temporary variance and an interim order pending a decision on the application for a variance from the standard, prescribed in 29 CFR 1910.1048(f)(1) which requires the implementation of engineering controls and work practices to reduce and maintain employee exposure to formaldehyde at or below the Persmissible Exposure Limits (PELs) no later than February 2, 1989.

The place of employment affected by the temporary variance application is the Hoechst Celanese plant in Bishop, Texas. Hoechst Celanese (the applicant) certifies that a copy of the application has been posted in an appropriate place for employees to examine and that employees have been notified of their right to send comments or to petition the Occupational Safety and Health Administration for a hearing.

Regarding the merits of the application, the applicant has stated that it could not comply with 29 CFR 1910.1048(f)(1) by the effective date, February 2, 1989, because, despite its best efforts, "Delays in equipment delivery and construction have caused the installation of the pneumatic conveying system to fall behind schedule."

The applicant states that, since becoming aware that the engineering contractor was falling behind schedule, plant personnel have worked with the contractor and equipment vendor to expedite delivery and installation efforts, and the applicant has leased trucks and air freighting equipment to minimize delays. The applicant further states that, if no further delays are encountered, full regulatory compliance is expected by August 2, 1989.

The application indicates that the delay in achieving compliance with 29 CFR 1910.1048(f)(1) will have a minimal effect on the employees at the Bishop plant. In particular, the applicant states that, "of the 800 Hoechst Celanese employees and the approximately 700 construction and contract employees at the plant, there are fewer than 34 Hoechst Celanese and 11 contractor employees potentially affected by this application for a variance."

As discussed in the application, the applicant has taken numerous measures to ensure employee safety during the time period necessary to install the engineering controls. The applicant has increased air monitoring, established administrative controls to limit the amount of time employees spend in regulated areas, provided respiratory protection, and continued to follow the existing comprehensive safety and health program described in the application which includes medical surveillance, personal protective clothing, employee information and training, and the designation of regulated areas.

Grant of Interim Order

It appears from the Hoechst Celanese Corporation application and supporting data that the applicant was, apparently, unable to comply with the standard by its February 2, 1989 effective date, because of the unavailability of the equipment and because the necessary construction and alteration could not be completed by the effective date. It appears that the applicant is taking all necessary steps to safeguard its employees during the time needed to come into compliance with the standard. It further appears that an interim order is necessary to prevent undue hardship to the applicant and its employees pending the completion of the necessary work and a decision on the variance. Thus, based on its review of the evidence, OSHA has decided that the Hoechst Celanese Corporation warrants relief, in the form of an interim order as authorized under 29 CFR 1905.10(c) of the temporary variance procedures, from the requirements of 29 CFR 1910.1048(f)(1).

Therefore, pursuant to the authority in section 6(b)(6)(A) of the Occupational Safety and Health Act 1970, in 29 CFR 1905.10(c) and in the Secretary of Labor's Order No. 9–83 (48 FR 35736) OSHA has ordered that the Hoechst Celanese Bishop Plant be granted an interim order, effective on March 2, 1989, the date of the letter granting the interim order. Instead of complying with the requirements in 29 CFR 1910.1048(f)(1), the applicant shall continue to enforce the existing comprehensive formaldehyde control program described in its application.

The applicant shall comply with all applicable requirements of 29 CFR Part 1910, except to the extent that the interim order has expressly granted relief from those requirements.

As soon as possible, the applicant shall give notice of this interim order to affected employees by the same means required to be used to inform them of the application.

The Assistant Secretary may revoke this order at any time, without prior notice, whenever the applicant does not comply with any requirements of the order or relevant standards, or if other information indicates that revocation of the interim order is warranted. Unless revoked, the interim order will remain in effect until August 2, 1989, or until a decision is made on the application for temporary variance, whichever comes first.

Signed at Washington, DC, this 22nd day of March 1989.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 89–7309 Filed 3–27–89; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[89-22]

NASA Advisory Council (NAC), Commercial Programs Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC, Commercial Programs Advisory Committee.

DATE AND TIME: April 12, 1989, 8:15 a.m. to 3 p.m.

ADDRESS: American Institute of Aeronautics and Astronautics, 10th Floor, Conference Room A, 901 D Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Stone, Office of Commercial Programs, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8720.

SUPPLEMENTARY INFORMATION: The Commercial Programs Advisory Committee is concerned with the overall NASA program supporting the commercial development of space, both relevant policies and program scope and content. The Committee is chaired by Mr. Edward Donley and is currently composed of 17 members.

The meeting will be closed to the public from 1:45 p.m. to 3 p.m. for a discussion of matters which are likely to disclose trade secrets and commercial or financial information obtained from a person, and privileged or confidential. Since this discussion will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that the meeting be closed to the public for this period of time. Prior to the closed session, the meeting will be open to the public up to the seating capacity of the room, which is approximately 40 persons including the Committee members and other participants.

Type of Meeting

Open—except for a closed session as noted in the agenda below.

AGENDA

April 12, 1989
8:15 a.m.—Welcome.
8:45 a.m.—Commercial Programs Update.
9:15 a.m.—Strategic Plan Factors Update.
10 a.m.—Subcommittee Reports.
1:45 p.m.—Closed Session.
3 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

March 22, 1989.

[FR Doc. 89-7234 Filed 3-27-89; 8:45 am]

BILLING CODE 7510-01-M

[88-21]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATE AND TIME: April 10, 1989, 8:30 a.m. to 5 p.m. and April 11, 1989, 8:30 a.m. to 3 p.m..

ADDRESS: Capital Gallery Building, 600 Maryland Avenue SW., Suite 235 (East), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. Laurence J. Adams and is composed of 20 members including individuals who also serve on other NASA advisory committees.

This meeting will be open to the public up to the seating capacity of the room, (which is approximately 50 persons including team members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

Type of Meeting

Open.

Agenda

April 10, 1989
8:30 a.m.—Administrative Items.
9 a.m.—Program Update. Hearings. Budget. Commercialization. Space Council.
10 a.m—Program Office Report. Requirements. Systems Engineering and Integration. Associate Contractor Arrangement.
11:30 a.m.—Discussion of Program Status.
1:30 p.m.—International Activities. Management. Joint Documents.
2:30 p.m.—Servicing Studies.
3:30 p.m.—Assured Crew Return Capability.
4 p.m.—Discussion.
5 p.m.—Adjourn.

April 11, 1989
8:30 a.m.—Systems Engineering and Integration Panel. Report. Plans.
9:30 a.m.—Requirements. Report. Plans. Activities During Next Meeting.
10:30 a.m.—Reports of Other NAC Activities.
11 a.m.—Discussion.
1 p.m.—Committee Procedures. Next Meeting. Future Topics. Operations and Utilization.
3 p.m.—Adjourn.

March 22, 1989.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-7235 Filed 3-27-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by April 27, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Status of Arts Education in Elementary and Secondary Schools.

Frequency of Collection: One-time.

Respondents: Individuals or households; State of local governments; Business or other for-profit; Non-profit institutions.

Use: The surveys are designed to determine the status of arts education in public and private elementary, middle, and secondary American schools. The surveys will be used to inform principals, arts supervisors, and teachers about the various demographic, instructional, and budgetary factors that currently characterize education in the arts.

Estimated Number of Respondents: 1,349.

Average Burden Hours per Response: 48 minutes.

Total Estimated Burden: 1,102.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89–7310 Filed 3–27–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corp.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–18 issued to Rochester Gas and Electric Corporation, (the licensee) for operation of the Ginna Nuclear Power Plant located in Ontario, New York.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would modify the Technical Specifications related to the safety injection and residual heat removal sump recirculation systems. Acceptable levels of performance for the pumps are changed for pump start, operation, and minimum discharge pressure for the designated flow rates. The discharge pressures that are listed are based on an assumed degradation of the pump head capacity due to potential wear of the pump. Also, the level and amount of boric acid in the storage tanks must be increased as a result of the modifications to the safety injection and residual heat removal systems.

The Need for the Proposed Actions

In response to NRC Generic Letter 88–04, Potential Safety-Related Pump Loss, plant modifications are necessary to the recirculation system for the residual heat removal and safety injection systems. These modifications are to increase the recirculation flow rates in order to offer an increased margin of pump protection during conditions which require pump operation at minimum flow and also parallel pump operation. These conditions could exist when the reactor coolant system pressure is higher than the shutoff head of the pumps. The increased recirculation flow rates are beneficial in that the potential of accelerated wear is reduced. Also, as a result of the recirculation modification, additional boric acid water is needed because of the larger recirculation piping system.

Environmental Impacts of the Proposed Action

The Commission has completed its initial evaluation of the proposed revisions to the Technical Specifications. The proposed changes improve operability of the components by reducing the potential for accelerated wear due to low flow operation, particularly during surveillance testing. The proposed changes do not increase the probability or consequence of accidents because the flow delivered to the reactor coolant system will remain above the required flow delivery with increased recirculation flow as required in the accident analysis. No changes are being made in the types of any effluents that may be released, or in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact.

With regard to the potential nonradiological impacts, the proposed changes to the Technical Specifications involve systems located within a restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. If the requested amendment were denied, the plant would continue to operate with current surveillance test requirements that could result in reduced pump reliability with a potential for adverse environmental effects.

Alternative Use of Resources

This action does not involve the use of any resources not considered in the Final Environmental Statement for the Ginna Nuclear Power Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for amendments dated November 21 and 29, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Rochester Public Library, 115 South Avenue, Rochester, NY 14610.

Dated at Rockville, Maryland, this 21st day of March, 1989.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 89–7327 Filed 3–27–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-312]

Sacramento Municipal Utility District; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50, Appendix J to the Sacramento Municipal Utility District (SMUD, the licensee) for the Rancho Seco Nuclear Generating Station located in Sacramento County, California.

Environmental Assessment

Identification of Proposed Action

The exemption would extend the interval between local leak rate tests of containment penetrations by a maximum of six months. The current interval between local leak rate tests is 24 months as delineated in 10 CFR Part 50, Appendix J. The exemption is in response to a licensee request dated February 15, 1989. Further details regarding the request are contained in a related application for amendment of the plant's Technical Specifications, dated December 30, 1988, as supplemented March 6, 1989.

The Need for the Proposed Action

Several of the local leak rate tests of containment penetrations can only be performed while the plant is in cold shutdown. Following a 27-month reactor shutdown during 1986 and 1987, plant preparations for restart commenced in the fall of 1987 in anticipation of reactor criticality that, due to various reasons, was delayed until March 1988. In preparation for the fall 1987 restart and an extended operating period following startup, local leak rate tests were completed during the summer of 1987. Since reaching criticality in March 1988, the plant has not been in cold shutdown for any appreciable time and the licensee has been able to complete all the local leak rate tests that, based on the 25-month interval, are due again in 1989. Rancho Seco is not scheduled to be in cold shutdown until the next refueling outage, which is expected during the fall of 1989. The current 24-month interval for some local leak ratae tests, which necessitates cold shutdown as a prerequisite, may expire prior to the projected refueling date. System perturbations associated with bringing the plant to cold shutdown and the increased potential for problems during this transient ofset the enhancement in safety resulting from timely completion of local leak rate tests. A one-time extension of the 24-month test requirement appears prudent.

Environmental Impact of the Proposed Action

A six month extension of the interval between local leak rate tests is not expected to have any impact on the environment. The test history of penetrations that may be affected by the extension indicates that the penetration isolation valves are reliable and there is little likelihood that both of the redundant valves on each penetration would fail and the failure remain undetected during the six month test extension. Furthermore, it is highly unlikely that the need to isolate containment would occur during the period of the six month extension.

Moreover, the proposed change would not involve a significant change in the probability or consequences of any accidents previously evaluated, nor does it involve a new or different kind of accident. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commision concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the action will not result in a significant increase in the individual or cumulative occupational radiation exposure.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defeined in 10 CFR Part 20. It would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there would be no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded there are no significant enrironmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested exemption. Denial of the request would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action would involve no use of resources not previously considered in the Final Environmental Statement (operating license) for Rancho Seco Nuclear Generating Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for the related amendment to the Rancho Seco Technical Specifications, which was submitted by letters dated December 30, 1988 and March 6, 1989. These submittals are available to the public at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 23rd day of March, 1989.

[FR Doc. 89-7328 Filed 3-27-89; 8:45 am]

BILLING CODE 7590-01-M

Wisconsin Electric Power Co., Point Beach Nuclear Plant, Unit Nos. 1 and 2;

[Docket Nos. 50-266 and 50-301] Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-24 and DPR-27, issued to the Wisconsin Electric Power Company for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located in Manitowoc County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to the design and operation of the Point Beach fuel cycle with upgraded core features and at higher core power peaking factors (F_Q and F_H) than are currently permitted by the plant TS.

The proposed action is in accordance with the licensee's application for amendment dated August 26, 1988, as

supplemented by letters dated October 28, November 30, and December 23, 1988; and as modified January 17, 1988 (sic).

The Need for the Proposed Action

The proposed change to the TS is required in order to permit the licensee to incorporate higher core power peaking factors which will allow the use of a low-low leakage loading pattern (L4P) fuel management strategy and will result in decreased neutron fluence to the reactor vessel. This fluence reduction will help address reactor vessel irradiation damage issues such as pressurized thermal shock, low upper shelf material toughness and pressure-temperature restrictions on heatup and cooldown. The higher core power peaking factors will allow additional fluence reduction measures, such as the use of peripheral power suppression assemblies, to be pursued.

In addition to the increase in core power peaking factors, the proposed changes would permit the use of an upgraded fuel product features package. The upgraded fuel product features include: removable top nozzles, integral fuel burnable absorbers, axial blankets, extended burnup geometry, and inclusion of a debris filter bottom nozzle. Finally, the reanalysis for this proposed amendment supports the removal of the fuel assembly thimble plugging devices and the elimination of the third segment of the K(z) curve.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TS and concludes that operation of the Point Beach Nuclear Plant with the higher core power peaking factors and with the upgraded fuel features is acceptable. The evaluation demonstrates that acceptable thermal limits are not exceeded with the proposed changes. Normal operations as well as the accidents and transients which required reevaluation remain within acceptable bounds. Use of the upgraded fuel features does not involve signficant modifications to the Point Beach reactor cores. Neither the nuclear physics nor the thermal-hydraulic parameters are significantly affected by the transition to the upgraded fuel features. Finally, sufficient conservatism has been demonstrated to permit the removal of the thimble plugging devices and the elimination of the third segment of the K(z) curve without compromising safety.

The environmental impacts of operating the Point Beach Nuclear Plant in the proposed manner are within the bounds of those impacts previously evaluated in the Final Environmental Statement with the exception of the Steam Generator Tube Rupture (SGTR) Accident. The SGTR accident was reevaluated to reflect an update to the safety injection termination requirements used in the current Point Beach SGTR recovery procedures. Although slightly higher because of higher calculated primary-to-secondary leakage during the transient, the doses calculated for the reevaluation of the SGTR accident remain a "small fraction" of the 10 CFR Part 100 exposure guidelines. The amendment does not otherwise affect radiological plant effluents during normal operations and occupational radiation exposure is unaffected. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on February 6, 1989 (54 FR 5707). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the TS will in no way affect environs located outside the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Point Beach Nuclear Plant Unit Nos. 1 and 2, dated May 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 26, 1988 as supplemented by letters dated October 28, November 30, and December 23, 1988; and as modified January 17, 1988 (sic), which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Joseph P. Mann Library, 1516 Sixteeth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 15th day of March 1989.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

FR Doc. 89-7329 Filed 3-27-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Human Factors

The ACRS Subcommittee on Human Factors will hold a meeting on April 19, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 19, 1989—8:30 a.m. Until the Conclusion of Business.

The Subcommittee will review the Human Factors Research Program Plan.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify

the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 301/492-7750) between 7:30 a.m. and 4:30 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meting to be advised of any changes in schedule, etc., which may have occurred.

Date: March 21, 1989.

Gary R. Quittschreiber,

Chief Project Review Branch No. 2.

[FR Doc. 89-7330 Filed 3-27-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Occupational and Environmental Protection Systems

The ACRS Subcommittee on Occupational and Environmental Protection Systems will hold a meeting on April 20, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, April 20, 1989—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the proposed interim standard for occupational exposure of the skin to beta radiation from small radioactive particles (hot particles).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advsied of any changes in schedule, etc., which may have occurred.

Date: March 21, 1989.

Gary R. Quittschreiber,

Chief Project Review Branch No. 2.

[FR Doc. 89-7331 Filed 3-27-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Containment Systems and Structural Engineering

The ACRS Subcommittee on Containment Systems and Structural Engineering will hold a meeting on April 18, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 18, 1989-8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the NRC staff current containment design criteria and plan future subcommittee action to develop containment criteria for future plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff members, Mr. Dean Houston (telephone 301/492-9521) or Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: March 21, 1989.

Gary R. Quittschreiber,

Chief Project Review Branch No. 2.

[FR Doc. 89-7332 Filed 3-27-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8724]

Chemetron Corp. (Harvard Avenue Site, Newburgh Heights, Ohio); Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated January 6, 1989, Dr. Klaus Romer, on behalf of McGean-Rohco, Inc. (McGean), requested, pursuant to 10 CFR 2.206, that the Nuclear Regulatory Commission (NRC) immediately compel the Chemetron Corporation (Chemetron) to commence decontamination of its Harvard Avenue site and impose sanctions on Chemetron should Chemetron fail to do so. McGean alleges the following basis for its request: (1) On November 14, 1988, Chemetron committed to begin decontaminating the Harvard Avenue site immediately and complete the job by March 17, 1989; (2) the NRC had stated that the March completion deadline would be relaxed

only if Chemetron made a compelling showing of diligent efforts to clean up the site and good cause; (3) Chemetron's letter to the NRC of December 12, 1988, which requests an extension of the deadline for good cause, fails to make a compelling showing of good cause; and; (4) Chemetron has not made a good faith effort to decontaminate the site.

Petitioner's request for immediate relief is denied because Chemetron is making minimally satisfactory progress toward beginning a meaningful decontamination of the Harvard Avenue site. Action on the remainder of McGean's request is deferred. The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The NRC will take appropriate action on this request within a reasonable time.

A copy of the Petition is available for inspection and copying in the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 22nd day of March, 1989.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-7333 Filed 3-27-89; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 7.8, Revision 1, "Load Combinations for the Structural Analysis of Shipping Casks for Radioactive Material," presents the initial conditions that are considered acceptable by the NRC staff for use in the structural analysis of Type B packages used to transport radioactive material within the United States.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 22nd day of March 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Ofice of Nuclear Regulatory Research.

[FR Doc. 89-7334 Filed 3-27-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318, License Nos. DPR-53 and DPR-69, EA 87-77]

Baltimore Gas and Electric Co., Calvert Cliffs, Units 1 and 2; Order Imposing Civil Monetary Penalty

I

Baltimore Gas and Electric Company, Baltimore, Maryland (the "licensee") is the holder of License Nos. DPR-53 and DPR-69 (the "licenses") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the operation of the Calvert Cliff's nuclear reactors in Lusby, Maryland.

II

An NRC safety inspection of the licensee's activities under the license was conducted on March 23-27, 1987. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated April 28, 1988. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the civil penalty amount for the violations. Two responses, dated July 12 and July 18, 1988, to the Notice of Violation and Proposed Imposition of Civil Penalty, were received from the licensee. In its response, the licensee admits the violations but requested reduction of the severity level of the violations and full or partial mitigation of the civil penalty.

III

Upon consideration of the responses received, the statements of fact, explanations, and arguments for remission or mitigation of the proposed civil penalty contained therein, and as set forth in the Appendix to this Order, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Support Operations has determined that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, *it is hereby ordered that:*

The licensee pay a civil penalty in the amount of Three Hundred Thousand Dollars ($300,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this order, request a hearing. A request for a hearing shall be clearly marked as a request for hearing and shall be addressed to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC, with a copy to the Regional Administrator, Region I.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within thirty days of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of the violations confirmed by the licensee in its July 12 and July 18, 1988 responses, this Order should be sustained.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Support Operations.

Dated at Rockville, Maryland this 20th day of March 1989.

Appendix—Evaluation and Conclusion

On April 28, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Baltimore Gas and Electric Company (licensee) for violations that occurred at Calvert Cliffs. The licensee responded to the Notice by two letters, dated July 12 and July 18, 1988, and admits the violations, but requested reduction of the severity level of the violations and full or partial mitigation of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's responses are as follows:

I. Restatement of Violations

10 CFR 50.49(d), (f), and (j), respectively, require, that (1) a list of electric equipment important to safety be prepared, and information concerning performance specifications, electrical characteristics and postulated environmental conditions for this equipment be maintained in a qualification file; (2) each item of electric equipment important to safety shall be qualified by testing and/or analysis of identical or similar equipment, and the qualification based on similarity shall include a supporting analysis to show that the equipment to be qualified is acceptable; and (3) a record of the qualification shall be maintained in an auditable form to permit verification that the electrical equipment important to safety is qualified and that the equipment meets the specified performance requirements under postulated environmental conditions.

Contrary to the above, as of March 27, 1987, certain environmental qualification files did not include the required documentation to demonstrate environmental qualification, or the listing of electrical equipment important to safety was found not to be complete. Examples of each violation include:

1. Tape splices, an item of electric equipment important to safety, were installed on Unit 1 and 2 components in various safety systems, including solenoid blocking valves, 4 KV motor terminations, 480 V motor splices, and 120 V control and instrument splices. These tape splices were made using standard electrical tape and neither test data nor analysis existed in a qualification file to demonstrate qualification of these splices. This condition existed since at least November 30, 1985.

2. Numerous other items of electric equipment important to safety were installed at both units but were not included on the list of electric equipment important to safety, and did not have a record file to demonstrate qualification. This condition existed since at least November 30, 1985 and the items included: (1) unqualified heat shrink assemblies (Raychem and Ideal); (2) unqualified terminal blocks (Buchanan 100, GE CR151, and unidentified phenolic-type); (3) unqualified relays (Square D, Struthers, Dunn, and Telemechanique); (4) weepholes in electrical junction boxes absent or not in the proper orientation; (5) T-drains in motor operated valves not installed; (6) an unqualified coil; and (7) unqualified hand switches.

These violations constitute an EQ category A problem.

Civil Penalty—$300,000 (These EQ violations existed in excess of 100 days of plant operation).

II. Summary of Licensee Response

The licensee, in its responses, admits the occurrence of the violations. However, the licensee contends that the NRC must first find, under the Modified Enforcement Policy Relating to 10 CFR 50.49 (Modified EQ Enforcement Policy) which was attached to Generic Letter 88-07, that a violation is safety significant before issuing a civil penalty. The licensee states that the NRC did not, in the April 28, 1988 letter and Notice, address this issue and submits that none of the violations were safety significant. In support of its argument, the licensee indicates that (1) both units were shutdown for two months, and before restarted, all EQ items were found to be operable, qualified or qualifiable; (2) it is inappropriate for the NRC not to consider the operability of equipment in determining safety significance and civil penalty assessment, i.e., it is inappropriate to assume that the unqualified equipment is inoperable; and (3) these violations were simply documentation violations, most of which were identified by the licensee after the NRC inspection and corrected prior to startup, and therefore, should be classified at Severity Level IV as would any NRC-identified EQ finding that is corrected by the licensee prior to completion of the inspection, or shortly thereafter.

The licensee also claimes that any NRC enforcement action must conform to 10 CFR Part 2, Appendix C, and that, should application of the Modified EQ Enforcement Policy result in civil penalties that would be inappropriate under 10 CFR Part 2, Appendix C, the penalties cannot stand. The licensee indicates that the importance of safety significance for purposes of NRC enforcement is one of the key elements of 10 CFR Part 2, Appendix C, and, since the proposed civil penalties have not, in the licensee's judgment, considered the safety significance of the violation, the civil penalties are inappropriate.

The licensee also requests that, if the NRC makes the determination that imposition of a civil penalty is appropriate, in accordance with the Modified EQ Enforcement Policy, the penalty should be substantially mitigated since (1) the licensee contends that the deficiencies at Calvert Cliffs constitute at most a Category C EQ problem, (2) if fairness and equity among licensee's is to be achieved, there should be comparability between the civil penalties assessed under 10 CFR Part 2, Appendix C and the Modified EQ Enforcement Policy, and (3) the NRC should have allowed the full 50% mitigation for the licensee's corrective actions rather than the 25% allowed.

III. NRC Evaluation of Licensee Response

With regard to the licensee's arguments concerning the safety significance of the violations and the categorization of the violations as a Category A problem, the NRC, under the Modified EQ Enforcement Policy, considers violations of EQ requirements to be safety significant because the electrical equipment required to be qualified are those which are important to safety. This is a case in which it appears that components were properly categorized as important to safety. If a licensee cannot demonstrate that such a component is qualified, for enforcement purposes, a significant violation has occurred. The only exceptions include those cases in which a documentation deficiency is essentially one of a minor nature which is readily correctable based on existing knowledge, tests, or analyses. These would then be considered at a Severity Level IV or V. In this case, the licensee failed to have sufficient documentation, including adequate analyses, in qualification files prior to November 30, 1985, to support the environmental qualification of equipment important to safety affecting many systems and components.

The NRC recognizes that most of the items were qualified or found to be qualifiable and corrected prior to startup. However, as set out in the Modified EQ Enforcement Policy, the NRC will assume, for enforcement purposes, that equipment whose qualification cannot be demonstrated could affect operability of the associated system. Furthermore, the items did not constitute simple documentation problems. Some of these components were replaced prior to startup. In addition, substantive engineering analyses were performed by the licensee during the shutdown, or would have been required to be performed to support qualification for those items which were replaced, and these reanalyses could not have been done within the period of an NRC inspection. Minor documentation deficiencies which can be corrected within a short period of time are considered by the NRC staff to be of lesser significance (Severity Level IV or V violations) whether or not identified during an inspection. Because substantive analyses were needed or would have been necessary had equipment not been replaced, the violations here are not appropriate for Severity Level IV or V classification. Furthermore, since these deficiencies affected many systems and components, the deficiencies constituted a Category A problem and the imposition of a civil penalty is clearly proper under the Modified EQ Enforcement Policy.

With respect to the licensee's arguments concerning the legality of issuance of civil penalties in accordance with the Modified EQ Enforcement Policy, the NRC rejects the licensee's claim that this action must conform with 10 CFR Part 2, Appendix C. 10 CFR Part 2, Appendix C, is a State of Policy and not a regulation. It was not promulgated in accordance with rule making procedures. As a Statement of Policy, it is the Commission's statement as to how it generally intends to approach enforcement of its requirements. In accordance with 10 CFR Part 2, Appendix C, the Commission may deviate from this guidance in circumstances when it is considered warranted. The Commission

established a special EQ enforcement policy (initially in August 1985 and modified in April 1988) because a departure from this guidance is warranted in the context of EQ to emphasize that, when the deadline for equipment qualification was established, the Commission expected it to be met. The April 1988 Modified EQ Enforcement Policy describes how the NRC will exercise its enforcement authority for licensees who did not comply with the EQ rule as of November 30, 1985.

With respect to the licensee's argument that the civil penalties under 10 CFR Part 2, Appendix C, and the Modified EQ Enforcement Policy should be comparable, the staff notes that the Commission established a special EQ enforcement policy because of the delays by licensees in achieving compliance with the requirements of 50.49. The purpose of this special policy was to send a message to all licensees that the Commission would issue significant civil penalties for licensees who had a clear opportunity but who failed to meet EQ requirements as of November 30, 1985. The Commission determined that these special circumstances required a different approach to enforcement than that specified by 10 CFR Part 2, Appendix C, and it exercised its discretion in accordance with 10 CFR Part 2, Appendix C, and Section 234 of the Atomic Energy Act of 1954, as amended, to create and implement a special enforcement policy for violations of EQ requirements in such circumstances.

With respect to the licensee's request for mitigation of the civil penalty, the NRC's escalation and mitigation factors set forth in the Modified EQ Enforcement Policy include (1) identification and reporting (Factor 1); (2) best efforts to complete the requirements within the deadline (Factor 2); (3) corrective actions (Factor 3); and (4) duration of the violation (Factor 4). In this case, the base civil penalty for the Category A problem at Calvert Cliffs was mitigated by 25% based on Factor 1 and 25% based on Factor 3, but was escalated 50% based on Factor 2.

The NRC maintains that it has appropriately evaluated the application of the factors when considering the licensee's actions taken after its initial identification of the tape splice deficiencies in December 1986. While the NRC recognizes that extensive corrective actions were taken after the NRC's follow-up inspection in March 1987, the corrective actions taken when the tape deficiencies were first identified in December 1986 were unacceptable and reflected a narrow review of the deficiencies. Thus, mitigation by not more than 25% based on this factor was appropriate. To give full mitigation for corrective actions under these circumstances would inappropriately reward the licensee's poor initial corrective actions. The NRC also recognizes that most of the violations were identified by the licensee and, therefore a 25% reduction based on this factor was appropriate. However, full 50% mitigation based on this factor was deemed inappropriate because it was the NRC inspection in March 1987 which identified additional EQ deficiencies and which caused the licensee to perform additional reviews and evaluations.

Therefore, in summary, the licensee's arguments do not provide an adequate basis for mitigation of the civil penalty.

IV. NRC Conclusion

The licensee did not provide a sufficient basis for reclassification of the severity of the problem or for mitigation of the amount of the civil penalty. Therefore, the NRC concludes that the deficiencies constitute an EQ Category A problem and a civil penalty of $300,000 should be imposed.

[FR Doc. 89-7335 Filed 3-27-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-261 License No. DPR-23 EA 88-88]

Carolina Power & Light Co., H. B. Robinson Steam Electric Generating Plant Unit 2; Order Imposing Civil Monetary Penalty

I

Carolina Power & Light Company (CP&L/licensee) is the holder of Operating License No. DPR-23 issued by the Nuclear Regulatory Commission (Commission/NRC) on July 31, 1970. The license authorizes the licensee to operate the H. B. Robinson Steam Electric Plant, Unit No. 2, in accordance with the conditions specified therein.

II

NRC inspections of the licensee's activities under the license were conducted on January 11—February 10, 1988, with a followup inspection conducted February 11—March 10, 1988, at the H. B. Robinson Steam Electric Plant, Unit No. 2, Hartsville, South Carolina. The results of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated June 15, 1988. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated July 15, 1988 denying the violation and requesting full mitigation of the civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support has determined, as set forth in the Appendix to this Order, that the violation occurred as stated without considering scenarios (2) and (3) and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of the Civil Penalty, as amended by withdrawing two failure scenarios ((2) and (3)), should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (ACT), 42 U.S.C. 2282 and 10 CFR 2.205, *It is hereby ordered that:*

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II, 101 Marietta Street, NW., Atlanta, Georgia 30323, and a copy to the NRC Resident Inspector, H. B. Robinson Steam Electric Plant.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions to this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced and amended in section III above, and (b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Dated at Rockville, Maryland this 17 day of March 1988.

Appendix—Evaluation and Conclusions

On June 15, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during NRC inspections. Carolina Power & Light Company (CP&L) responded to the Notice on July 15, 1988. In its response, the licensee denies the violation as stated in the Notice, and requests mitigation of the proposed civil penalty. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

I. Restatement of Violation

"10 CFR 50.46(a)(1) requires that emergency core cooling system (ECCS) cooling performance be calculated in accordance with an acceptable evaluation model.

10 CFR Part 50, Appendix K, sets forth standards for an acceptable model. Appendix K, Section D.1., "Single Failure Criterion" requires that in the accident evaluation the combination of ECCS subsystems assumed to be operative be those available after the most damaging single failure of ECCS equipment has taken place.

Contrary to the above, as of January 29, 1988, the combination of ECCS subsystems assumed to be operative in the evaluation model in the H. B. Robinson Undated * Safety Analysis Report (USAR) did not reflect certain more damaging single failures of ECCS equipment, particularly the Safety Injection (SI) System. Certain single failures could have rendered two of the three SI pumps inoperable while the H. B. Robinson USAR evaluation model assumed at most one SI pump being inoperable after the most damaging single failure. The four scenarios in which the SI safety function could have been lost only leaving one SI pump operable are (1) a single failure of the sequencer relay in the safeguard sequencing logic, (2) a single failure of the emergency diesel generator (EDG) field flash circuit after loss of offsite power and loss-of-coolant conditions, (3) a single failure of the DC control power during safeguard sequencing, and (4) a single active failure in the EDG system controls."

Summary of licensee's Response to Violation

The licensee denies the violation occurred. CP&L believes it was in compliance with 10 CFR 50.46(a)(1) and 10 CFR Part 50, Appendix K. CP&L states that analyses submitted to demonstrate compliance were within the scope outlined in Section 3.1 of the Updated Final Safety Analysis Report (UFSAR), "Conformance with General Design Criteria," specifically Section 3.1.2.41, which requires that the Engineered Safety Features (ESF) perform their intended functions while accommodating the failure of any single *active* component (emphasis added). Thus, a failure of one Emergency Diesel Generator was identified by the licensee as the most limiting single active failure. The licensee further states that "failures of batteries and wires breaking are failures of passive components which are outside the scope of the original design basis." Subsequently, the Appendix K model and analyses were submitted to the Atomic Energy Commission (AEC) in November 1974; and the AEC issued the Order for Modification of License on December 27, 1974, accepting the diesel failure as the worst-case single failure of ECCS performance. As a result of these documents and the lack of any additional questions from the AEC, the licensee asserts that it concluded that the original single failure scenarios, as accepted by the AEC, were appropriate. In July 1984, a new single failure analysis as part of the Appendix K submittal for Technical Specification revisions associated with Cycle 10 operations was submitted and again the NRC accepted the appropriateness of the single failure scenarios used for Appendix K analysis in the SER for Licensee Amendment 87.

NRC Evaluation

10 CFR 50.46 and Appendix K require that ECCS cooling performance be calculated in accordance with an acceptable evaluation model. Appendix K sets forth certain required features of evaluation models that include an analysis of possible failure modes of ECCS equipment and their effect on ECCS performance. The combination of ECCS subsystems allowed to be assumed operable are those available after the *most damaging single failure* of ECCS equipment has taken place. Appendix K has never distinguished between active and passive failures in determining the most damaging single failure.

10 CFR 50.46 further requires that the ECCS cooling performance design comply with Criterion 35 of 10 CFR Part 50, Appendix A, General Design Criteria, to assure that the safety system function can be accomplished, assuming a single failure. The applicable definition for single failure is contained in the Definitions and Explanations Section of Appendix A. Fluid and electrical systems are considered to be designed against an assumed single failure if neither (1) a single failure of any active component (assuming passive components function properly), nor (2) a single failure of any passive component (assuming active components function properly), results in the loss of the capability of the system to perform its safety functions. In other words, there is no distinction made between failures of active and passive components for electrical systems.

The Notice of Violation contains two scenarios where the failure of an active component (EDG system controls and ECCS sequencer relay) could render two of the three 50 percent capacity safety injection pumps inoperable. The other two scenarios contained in the Notice involve a malfunction of what the licensee contends are passive components in the EDG field flash circuit and DC control power, that could also render two safety injection pumps inoperable. The licensee's response did not address the other two active component failure scenarios, and therefore did not provide any new information not already considered.

The licensee's reponse focused on the assertion that H. B. Robinson Unit No. 2 was licensed to operate prior to the promulgation of 10 CFR 50.46 and Appendix K, and that its submitted analysis reiterated that the original ECCS design basis was a single active failure. Staff reviews of those analyses did not identify this variance from the regulations, but instead found the generic evaluation model to be appropriate and applicable for use in evaluation of the ECCS performance for H.B. Robinson Unit 2, as the sensitivity study for three-loop plant designs included a worse single failure assumption. Licensee submittals for the July 1984 Cycle 10 analysis also maintained that the ECCS was designed for a single active failure. The variance was not acted upon again, and the licensee indicates that the staff's tacit approval of consideration of only active failures may be deemed to be an implied exemption. Because of this circumstance, for purposes of this enforcement action, the staff has decided not to focus upon the two scenarios which the licensee claims are passive failures which could render the safety injection pumps inoperable. Resolution of passive failure design criteria will be pursued separately.

Notwithstanding the above, though CP&L believes that it communicated to the NRC that the ECCS could only meet single active failures, it is the licensee's responsibility to identify the worst case single failure and to consider the need to design against such a single failure which may result in the loss of capability of a safety system to perform its intended function. The original worst case single failures identified by CP&L were in error in that the postulated failure resulted in the inoperability of only one safety injection pump. Subsequent evaluations found four scenarios in which the single failure could render two of the three 50 percent capacity safety injection pumps inoperable. Each individual failure is therefore significant in itself.

II. Summary of Licensee's Request for Mitigation

The licensee states that even if the staff disagrees with CP&L's denial, that there are extenuating circumstances per 10 CFR Part 2, Appendix C, Section V.B., that justify mitigating the proposed civil penalty in full. CP&L argues that justification for full mitigation is based on:

1. prompt reporting of the identified single failures to the NRC,
2. prompt and aggressive corrective actions including shutdown of the plant,
3. results of a subsequent analysis, approved by the NRC, that demonstrated that at no time did a hazard to the public exist,
4. prior good performance in providing analyses in accordance with 10 CFR 50.46, and in not previously being cited for any violation related to 10 CFR 50.46, and
5. implementation of a formal Design Basis Reconstitution Program at H. B. Robinson.

NRC Evaluation

1. The violation described in this enforcement action was not identified as the result of a licensee initiative. Rather, the violation was identified as a result of an NRC

* This was a typographical error in the original Notice which should have read "Updated" rather the "Undated."

request for additional information regarding the B safety injection pump auto transfer scheme (NRC letter K. Eccleston to E. Utley, January 14, 1988) and subsequent inquiries by NRC inspectors on January 29, 1988 concerning plant response to certain other types of electrical system faults.

2. On January 29, 1988, the licensee's initial corrective action, after identifying that an unanalyzed condition existed, was to initiate a plant shutdown at 10 percent per hour such that the plant would be in hot shutdown in eight hours as required by Technical Specification ACTION STATEMENT 3.0. The licensee's review of the normal breaker configuration for powering the "B" SI pump from either of the two emergency buses revealed that realignment of the normal breaker configuration would prevent the problem. A procedure change was made, the breakers realigned, and the shutdown was terminated at 40 percent full power, with full power operation resumed less than six hours later. Less than six hours after the return to full power, the NRC Resident Inspector requested information concerning certain other types of faults in the electrical system which could also have a potential for resulting in automatically starting only one SI pump. One of the questions dealt with what effect a loss of the "A" battery bus would have on EDG "A" after having successfully loaded, i.e., SI pumps A and B, sequenced into it. While preparing an answer to this and other questions, the licensee identified another single failure, which with the normal plant configuration, would also result in only one SI pump being automatically available. At the time, the licensee decided that another procedure fix, though available, was unacceptable and elected to shut down the unit until a comprehensive single failure review could be performed and appropriate corrective action taken. Subsequently, four scenarios were identified which required plant procedure or equipment changes.

Thus, the initial correction for an unanalyzed condition was to make a procedure change without an in-depth analysis of the issue. Although initially this provided an acceptable solution for the then identified condition, had in-depth analyses been performed initially, the additional scenarios would have been identified.

3. The fact that subsequent analyses indicated the need for only one of the three SI pumps is not a basis for mitigation of the civil penalty in this case as it does not go to the central issue in this action; that is, the fact that an adequate technical evaluation model did not consider all possible damaging single failures of ECCS equipment.

4. In developing this enforcement action, the NRC considered, but rejected escalation of the civil penalty based on the licensee's prior performance under the provisions of 10 CFR Part 2, Appendix C, V.B.3. The NRC identified a number of design deficiencies during the Safety System Functional Inspection conducted in April 1987, and noted a lack of aggressive effort by CP&L to correct those deficiencies.

5. The policy allows mitigation to be considered when a violation is identified by a licensee audit program. The violation was not identified as a result of the referenced program activities, but rather through NRC requests for additional information.

Conclusion

The staff concludes that the violation occurred as modified above by withdrawing scenarios (2) and (3) described in the violation, and that a sufficient basis for mitigation of the civil penalty has not been provided. The basis for the civil penalty in this case was the failure to comply with 10 CFR 50.46 and not solely the number of individual failure scenarios described. The remaining two single failure scenarios are a sufficient basis to warrant issuance of a civil penalty. Consequently, the proposed civil penalty of $50,000 should be imposed.

[FR Doc. 89-7336 Filed 3-27-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Consideration of Issuance of Amendment To Provisional Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

The proposed amendment would revise provisions in the Palisades Plant Provisional Operating License relating to (1) the ownership of the facility, (2) the entities authorized to operate, possess, and use the facility, (3) the entity authorized to receive, possess and use special nuclear material as nuclear fuel, (4) the entity authorized to receive, possess, and use special nuclear material, byproduct, source, or special nuclear material in sealed neutron or other types of sealed sources or in fission detectors, or for use with sample analysis, instrument calibration, or associated apparatus, and (5) the entity authorized to possess but not separate byproduct and special nuclear materials as may be produced through operation of the Palisades Plant. The amendment would also specify the entity responsible for operation of the facility in accordance with the Technical Specifications, for record keeping and reporting, for completing certain fire protection modifications, and for implementing and maintaining physical security and safeguards requirements. Additionally, Section 5.1 of the Technical Specifications would be modified to be consistent with the above described changes.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 27, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall

be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore R. Quay: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 27, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 21st day of March 1989.

For the Nuclear Regulatory Commission.

Dominic C. Dilanni,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 89–7337 Filed 3–27–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–19378 License No. 37–13604–02 (Expired) EA 89–52]

Michael F. Dimun, M.D., Carnegie, Pennsylvania; Order To Cease and Desist and Order Related to Disposition of Byproduct Material Effective Immediately

I

Michael F. Dimun, M.D. (Dr. Dimun) previously held NRC License No. 37–13604–02 issued by the Nuclear Regulatory Commission (NRC or Commission) on February 24, 1982. This license expired without a request for timely renewal on February 28, 1987. (Dr. Dimun had also held License No. 37–13604–01, which also had previously expired on March 31, 1980 without a request for timely renewal). When in effect, License No. 37–13604–02 authorized Dr. Dimun to possess sealed sources (containing 0.12 curies of strontium-90) at his office in Carnegie, Pennsylvania for use in the treatment of eye diseases.

II

During a telephone call with Dr. Dimun on August 5, 1988, the NRC, Region I, learned that even though the license had expired, Dr. Dimun still possessed a radioactive source containing strontium-90. During that telephone call, Dr. Dimun also informed Region I that he did not intend to submit an application for a new license, but rather planned to dispose of this regulated material by transferring it to an authorized recipient. However, since the material had not been disposed of at that time, even though the license expired in February 1987, Region I sent Dr. Dimun a Notice of Violation (Notice) on September 21, 1988, citing him for possession of regulated material without a license. The Notice required Dr. Dimun to provide a response, within 30 days, describing the corrective action taken to transfer the source to an authorized recipient. As of February 16, 1989, the NRC Region I had not received a response to the Notice, and as a result, Region I again telephonically contacted Dr. Dimun on that date and was informed that he still possessed the strontium-90 sealed source.

III

NRC regulations, "Rules of General Applicability to Domestic Licensing of Byproduct Material," set forth in 10 CFR Part 30, require, in Section 30.3, that except for persons exempt as provided in 10 CFR Part 30 and 10 CFR Part 150, no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in Chapter I—Nuclear Regulatory Commission. Since Dr. Dimun no longer possesses a valid license to possess or use strontium-90 as a sealed source, and since he is not exempt from licensing requirements as provided in 10 CFR Part 30 and 10 CFR Part 150, possession or use of this regulated byproduct material constitutes a violation of 10 CFR 30.3. Dr. Dimun has indicated his intention not to seek another license, and has not yet transferred the source to an authorized recipient despite being clearly put on notice to do so by the Notice of Violation issued by the NRC on September 21, 1988. Continued possession of this source without being properly licensed could pose a threat to the health and safety of the public. Therefore, I have determined that immediate action shall be taken, in the interest of public health and safety, to ensure proper transfer of the source to an authorized recipient.

IV

Accordingly, in view of the foregoing, and pursuant to Sections 81, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and Part 30 of the NRC Regulations, *It is hereby ordered, effective immediately, that Michael F. Dimun, M.D. shall:*

1. Cease and desist from any further use of byproduct material now in his possession;

2. Promptly store the material in a safe storage location, and, with respect to such storage, comply with the provisions of 10 CFR Part 20, "Standards for Protection Against Radiation;"

3. Within thirty days of the date of this Order, cause the byproduct material now in his possession to be leak tested in accordance with Condition 14 of License No. 37–13604–02 (expired) and

transfer the byproduct material to a person authorized to receive it, and at least one working day prior to such transfer, notify the NRC of the name, address and location of the person to whom the material shall be transferred. The notification shall be made to Dr. Malcolm R. Knapp of the NRC Region I office (215) 337–5000; and

4. Within 10 days after the actual transfer of the material, certify to the NRC, under oath or affirmation, that all byproduct material has been transferred to an authorized recipient and that no radioactive material (regulated by the NRC pursuant to a general or specific license) is still in his possession. That certification shall be sent to the Regional Administrator, USNRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Dated at Rockville, Maryland this 17 day of March 1989.

[FR Doc. 89–7338 Filed 3–27–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Co.; Millstone Nuclear Power Station, Unit No. 1 Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Northeast Nuclear Energy Company (licensee) to amend Facility Operating License No. DPR–21, issued for the operation of Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut. Notice of Consideration of Issuance of this amendment was published in the Federal Register on August 12, 1987 (52 FR 29923).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to allow containment deinerting and entry during power operations for testing, surveillance or maintenance of equipment "necessary to ensure safe plant operation." Currently, the TS this only for equipment "important to safety." It is the staff's position that the current TS requirements for containment deinerting and entry are appropriate with regard to plant safety and personnel safety considerations.

The licensee was notified of the Commission's denial of the proposed TS amendment by a letter dated

By April 27, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

For further details with respect to this action, see (1) The application for amendment dated August 12, 1987, and (2) the Commission's letter to the licensee dated.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, CT 06385. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 21st day of March, 1989.

For the Nuclear Regulatory Commission

Michael L. Boyle,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–7339 Filed 3–27–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26653; File No. SR–Amex–87–25]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing and Trading of a Broad-Based Index Option Contract Based on the International Market Index

I. Introduction and Background

On October 2, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list for trading a new broad-based market index option contract based on the International Market Index ("IMI")—a group of 50 foreign stocks and American Depositary Receipts ("ADRs") [3] traded on the Amex or the New York Stock Exchange, Inc. ("NYSE") or quoted on the National Association of Securities Dealers Automated Quotations ("NASDAQ") system.[4]

The proposed rule change was noticed in Securities Exchange Act Release No. 25482 (March 17, 1988) 53 FR 9528. No comments were received on the proposed rule change.

II. Description of the Proposal

The IMI is a capitalization-weighted index [5] exclusively based on the prices of 50 foreign stocks whose domicile is located in the European Community,[6] Japan, Hong Kong, and Australia. The Index component stocks are traded in the U.S. either directly or as ADRs on the Amex, the NYSE, or through the NASDAQ system. All of the securities to be used in calculating the Index are registered with the SEC under the Act or are exempt from such registration under SEC Rule 12g3–2 [7] or section 12(f) [8] of

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] ADRs are negotiable certificates representing ownership of shares in a non-U.S. company. They are quoted and traded in U.S. dollars in the U.S. securities markets.

[4] Pursuant to section 2(a)(1)(B) of the Commodity Exchange Act ("CEA"), as amended by the Futures Trading Act of 1982 to reflect the terms of the jurisdictional accord between the Commission and the Commodity Futures Trading Commission ("CFTC"), the Commission forwarded to the CFTC a letter not objecting to the designation of the Coffee, Sugar, and Cocoa Exchange ("CSCE") as a contract market to trade futures on the IMI Stock Index. *See* Letter from Jonathan G. Katz, Secretary, SEC, to Dr. Paula A. Tosini, Director, Division of Economic Analysis, CFTC, dated September 1, 1988. On December 15, 1988, the CFTC approved the designation of the CSCE as a contract market for trading futures on the IMI.

[5] In a capitalization-weighted index, the relative weight of an issue in the total index value is determined by multiplying the price per share of a security by the total number of such securities outstanding. The total number of outstanding shares of the IMI components include those held by corporate insiders. In addition, as of December 31, 1988, the over-the-counter ("OTC") components of the IMI accounted for 36.87% of the capitalization weight of the Index.

[6] The members of the European Community which have companies currently included in the IMI are Denmark, Italy, the Netherlands, Norway, Spain, Sweden, and the United Kingdom ("U.K.").

[7] 17 CFR 240.12g3–2 (1988).

[8] 15 U.S.C. 78(1)(f) (1982).

the Act. The Amex proposes to trade standardized European-style (exercise at expiration only) options based on this new Index.

Options on the IMI would be traded pursuant to current Exchange rules governing the trading of index options.[9] These rules govern matters such as disclosure, account approval and suitability, position and exercise limits, margin, and trading halts and suspensions.[10]

The Index will be calculated and maintained by the Amex between 9:30 a.m. and 4:15 p.m., New York time, based on the trading of actual shares or ADR prices of component securities in U.S. markets. In calculating the Index, last sale price information for exchange-traded and NASDAQ National Market System ("NMS") [11] securities, and the arithmetic mean between the highest bid price and the lowest offer price as quoted on the NASDAQ market, for NASDAQ non-NMS securities, will be used. The Index value for purposes of settling specific IMI contracts will be calculated on the basis of ADR opening prices (or prices of the component stocks) in the U.S. markets for exchange traded securities and on the arithmetic mean of the NASDAQ inside market at 9:30 a.m. New York City time for NASDAQ NMS and non-NMS securities on the business day prior to the expiration date of the contracts, normally the Friday preceding expiration Saturday. The information will be disseminated to vendors through the Options Price Reporting Authority ("OPRA") system. A benchmark Index value of 200.00 has been established for the Index as of January 2, 1987. On December 28, 1988, the closing Index value was 300.42. The index multiplier will be 100.[12]

In order to be included in the Index the minimum market value in U.S. dollars of a foreign security, as measured by total worldwide shares outstanding, must be $100 million. In addition, at least 75% of the Index's component stocks each must have a minimum average monthly trading volume over a six month period in the U.S. market of 50,000 ADRs (or shares if the component does not trade as ADRs in the U.S.).[13] Also, if the security is traded through the NASDAQ system, the minimum number of market makers regularly making markets in the security must be eight. Moreover, the spreads between the bid and offer prices quoted for the NASDAQ securities must be reasonable in relation to the spreads for other securities traded through the NASDAQ system having similar trading characteristics and selling in the same general price range.

In maintaining the Index, the Amex reserves the right to substitute stocks or to increase the number of stocks included in the Index, based on changing international conditions or newly developed foreign equity securities traded in U.S. domestic markets.[14] The component weight of Index stocks will be periodically adjusted to account for certain corporate events such as additional stock issuances or repurchases, stock splits, or stock dividends.

The stocks comprising the IMI currently represent ten countries and approximately 20 different industry groups, including electronics, automobile companies, airlines, chemical and pharmaceutical companies, and financial institutions. Currently, the three highest capitalization-weighted countries comprising the Index are Japan, U.K., and the Netherlands with weights of 54.97%, 22.81%, and 9.36%, respectively.

III. Discussion

The IMI is the first stock index option contract exclusively based on stocks from non-U.S./Canadian countries. In addition, the IMI is the first index option based on ADR and foreign stock prices in the U.S. market. The unique structure of the IMI raises several concerns in connection with the trading of an option on the index.

First, the market for ADRs may be significantly less active or liquid than trading of the actual shares in the home country.[15] Second, many of the actual underlying shares comprising the IMI, especially the Japanese stocks, are traded on their foreign-based home markets during periods in which the ADRs are not being actively traded in the U.S. markets. Third, complete surveillance of the option is limited by the fact that the execution of surveillance sharing agreements between the Amex and all foreign exchanges on which IMI component stocks principally trade would be difficult. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these concerns.

A. Index Design and Structure

The broad diversification, large capitalization, and liquid markets of the Index's components stocks significantly minimize the potential for manipulation on the companies' home markets. The ten most highly capitalized stocks in the IMI account for approximately 55% of the Index's cumulative market value.[16] Although Toyota accounts for 11.28% of the IMI's cumulative market value, manipulation of the Index through trading in Toyota is made more difficult because the stock is widely held and actively traded.[17] Further, the index components are highly capitalized. The index component with the smallest capitalization was Norsk Data at $214.6 million, and the median and mean capitalization for the 50 firms was $5.02 billion and $9.63 billion, respectively.[18]

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[9] *See* Amex Rules 900C–980C.

[10] *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 which provides for a one hour trading halt in all index options traded on the Amex if the Dow Jones Industrial Average declines 250 points from the previous day's closing value.

[11] National Market System securities are those equity securities, both on exchanges and in the OTC market, for which real-time transaction reporting is required. *See* Rules 11Aa2–1 and 11Aa3–1 under the Act, 17 CFR 240.11Aa2–1 and 240.11Aa3–1 (1988).

[12] An index multiplier is a number which determines the total dollar value of each point of the difference between the exercise price of an option and the current level of the underlying index. A multiplier of 100 means that for each point by which an option is in the money, there is a $100 increase in intrinsic value.

[13] The remaining 25% of the index's component stocks each must have a minimum average monthly trading volume over a six month period in the U.S. market of 20,000 ADRs (or shares if the component does not trade as ADRs in the U.S.).

[14] The Amex requires that the IMI include a minimum of 50 stocks and that these 50 stocks continue to maintain certain eligibility criteria. In maintaining the Index, the Exchange will make an effort to ensure country dispersion within Europe and the Pacific Basin and industry dispersion across major manufacturing and non-manufacturing sectors. The Commission believes that a significant increase in the number of stocks currently included in the index would represent a material change to the terms of the Amex contract and require a re-examination of the contract by the Commission. In addition, a significant increase or reduction of weighting in the various national markets comprising the Index also would require Commission re-examination.

[15] *See, e.g.*, DeMaria, The Case Against Japanese A.D.R.s, *N.Y. Times*, Oct. 23, 1988, at F8, col. 3. There are several situations, however, in which the market for ADRs of IMI component stocks is more active or liquid than trading in certain IMI home markets. For example, KLM Royal Dutch Air has an Average Daily Volume ("ADV") in the Netherlands of 4,000 shares but an ADV of approximately 108,000 ADRs (representing 108,000 shares) in the U.S. In addition, Pharmacia AB has an ADV of 33,000 shares in Sweden but an ADV of approximately 158,000 ADRs (representing 118,500 shares) in the U.S.

[16] By comparison the 10 most highly price-weighted stocks in the Major Market Index ("XMI") account for approximately 70% of that Index's cumulative market value.

[17] Toyota's ADV between September 1987 and April 1988, on its home market, was 1,487,000 shares. Its ADV in the U.K. and U.S. during that same period of time was 50,000 shares and 26,600 shares (after adjusting for ADR-Share Ratio), respectively. In addition, as of June 1988, the total ADR float for Toyota was 1,120,031.

[18] Of the 50 securities comprising the IMI, 27 are listed on the NYSE, one on the Amex, and the

Continued

Moreover, the home markets for most of the Index's components are quite active.[19] Although several component stocks are lightly traded on their home market, they are actively traded as ADRs in the U.S.

In addition, the index inclusion criteria provide that at least 75% of the IMI component stocks must have an average monthly trading volume over the previous six month period in the U.S. market of at least 50,000 ADRs (or shares if the component does not trade as ADRs in the U.S.) and the remaining 25% of the component stocks must have average monthly trading volumes of no less than 20,000 ADRs (or shares if the component does not trade as ADRs in the U.S.) over this same period. The Japanese ADRs raise special concerns due to their heavy (55%) weighting in the IMI, the fact that trading in the home market closes 8½ hours before the IMI opening, and the instances of shortages in Japanese ADRs.[20] Based on correspondence from the Amex and ADR banks, however, it is the Commission's understanding that because ADRs are freely convertible into the ordinary shares which they represent, the Japanese ADRs are not necessarily less liquid or more volatile than the market for their underlying shares.[21] ADR bankers note that if purchase (sale) orders for Japanese ADRs can not be filled in the U.S. market, orders are easily filled through the conversion mechanism by creating new ADRs. Thus, Japanese ADR volatility and liquidity in the U.S. is a reflection of volatility and liquidity in the underlying foreign shares. In this regard, the Amex notes that the average annualized volatility of the present IMI components is 35.5% compared to 29.0% for the Amex's Institutional Index ("XII").[22]

Finally, based on data concerning the SEC-registered ADR levels versus the actual number of outstanding ADRs, the Commission believes that, while not impossible, it would be difficult to effect a physical squeeze in any of the current ADR components in IMI because the actual ADRs outstanding are substantially below the ceiling represented by SEC registration levels.[23] Moreover, discussions between Commission staff and ADR traders and bankers have revealed extensive systems and procedures by which ADR banks monitor outstanding float versus SEC registration levels. When the float levels begin to approach SEC registration levels the appropriate parties (*e.g.*, ADR banks) submit filings to the Commission to increase registration levels and those filings generally are processed expeditiously by the Commission.[24]

B. International Arbitrage

Aside from Index design, international ADR arbitrage will help to alleviate concerns over the relatively smaller ADR trading volume and will help to ensure that ADR prices reflect the pricing on the home market. The Commission understands that international arbitrage between the U.S. and the U.K. market for ADRs makes it difficult to affect significantly the prices of the component ADRs of the Index. Specifically, when spreads develop between the home market share prices and U.S. ADR prices, active ADR traders (usually in London or New York) will sell ADRs if the ADR trades at a premium to its underlying security. Similarly, if the ADR were trading at a discount to its underlying shares, arbitrage traders will purchase the ADRs, convert them into the underlying shares, and sell these shares at a profit in a foreign market trading the security. This arbitrage will act to limit the amount ADR prices in U.S. markets are out of line with home country prices or ADR prices in the U.K.

International arbitrage also will help ensure more reliable price determinations for settlement purposes.[25] Any abnormal price changes occurring in a component issue (in particular a Japanese component) or in foreign currency exchange rates during the interim between the closing of foreign home markets and the opening of the U.S. markets should be ameliorated by New York and London arbitrageurs in the London marketplace, as stocks comprising 94% of the capitalization weight of the Index actively trade on the SEAQ International[26] (mean ADV of 777,000 shares).[27] For exchange traded ADRs in

balance are in the NASDAQ system (15 of the 22 NASDAQ issues are NMS securities). Although the minimum number of market makers required to make markets regularly in the NASDAQ component issues is eight, at the present time the number of registered market makers for the NASDAQ issues exceeds that minimum requirement: each IMI NASDAQ issue has at least 12 market makers, and 12 of the issues (representing approximately 25% of the capitalization weight of the Index) have more than 20 market makers. In this regard, the Amex informed the Commission that no single market maker (or small group of market makers) dominates the trading in any particular NASDAQ issue which is a component of the IMI. Telephone conversation on August 31, 1988, between Steven Bloom, Assistant Vice President, New Products Development, Amex, and Ivan Davis, Attorney, Division of Market Regulation, SEC.

[19] As of June 1, 1988, the mean ADV for IMI's 50 components on their home markets was 1,767,100 shares.

[20] *See* note 24 *infra*

[21] *See* Letter from Nathan Most, Vice President, New Products Development, Amex, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated November 18, 1988, enclosing letter from Joseph M. Velli, Vice President, ADR Division, Bank of New York, to Lawrence DeMaria, Reporter, Financial Section, *N.Y. Times*, dated October 26, 1988, and letter from Ralph Marinello, Vice President, ADRs, Irving Trust, to Editor, *N.Y. Times*, dated October 31, 1988.

[22] The Amex suggests that the slightly higher volatility of the IMI components is largely attributable to foreign exchange rate movements, and that therefore IMI component ADRs are no more volatile than most U.S. blue chip securities. See Letter from Nathan Most, Vice President, New Products Development, Amex, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated November 18, 1988. Furthermore, the Amex provided data indicating that for the 15 Japanese securities included in the IMI, the average weekly volatility for the ADRs over the last 60 weeks was 30.473 compared to an average weekly volatility for the underlying stocks for the same period of 30.326. In addition, the Japanese security with the largest annualized volatility divergence between ADR and underlying share is Ito Yokado with an ADR annualized volatility of 26.8% and an annualized volatility of 24.2% for the underlying share. *See* Letter from Steven Bloom, Assistant Vice President, New Products Development, Amex, to Joseph Furey, Branch Chief, Division of Market Regulation, SEC, dated December 23, 1988.

[23] As of December 28, 1988, the two IMI component stocks whose actual outstanding ADR levels were closest to their SEC-registered ADR levels were KLM Royal Dutch (representing 0.2% of the capitalization weight of the Index) with approximately 12,366,955 ADRs outstanding and 15,000,000 SEC-registered ADRs and Beecham Group PLC (representing 1.26% of the capitalization weight of the Index) with approximately 19,779,000 ADRs outstanding and 20,000,000 SEC-registered ADRs. The Commission notes that Morgan Guaranty has filed a standard F-6 registration statement for an additional 20,000,000 Beecham Group ADRs.

[24] The Commission notes, however, that temporary shortages of ADRs have occurred in the past, especially in Japanese securities, and could affect ADR prices on a short term basis. *See* Sandler, Scarcity of Sony ADRs Helps Teach Lessons About Certain Intricacies of Global Trading, *Wall St. J.*, Sept. 17, 1987, at 69, col. 3. Due to the varied nationality of the Index's ADRs and the relatively low capitalization weighting of the largest component ADRs, the Commission believes it would be difficult to manipulate the Index through the creation of ADR shortages.

[25] ADR opening prices will occur either during active trading in foreign markets such as the U.K., where trading actually overlaps the opening of the U.S. markets, or after the close of trading in other markets, such as Japan, where the previous day's trading will have ceased 8½ hours prior to the opening of the U.S. markets.

[26] The Stock Exchange Automated Quotations International is the electronic communications facility of the International Stock Exchange ("ISE") covering international equities.

[27] The Amex informed the Commission that conversations it had with several ADR bankers and traders revealed that international arbitrage mechanisms (*e.g.*, conversion of ADRs into underlying shares and vice versa) continued to function during the volatile period in October 1987. Telephone conversation on August 2, 1988, between Steven Bloom, Assistant Vice President, New Products Development, Amex, and Ivan Davis, Attorney, Division of Market Regulation, SEC.

particular, the single-price auction opening on the NYSE or Amex will reflect pre-opening interest from arbitrageurs and the scrutiny that arbitrageurs will give to the setting of the opening price. For NASDAQ ADRs, many of the market makers submit pre-opening quotations, which also are subject to scrutiny by arbitrageurs and help to ensure that the opening quotation is reflective of competitive market maker activity.

C. Amex Surveillance

Due to the unique composition of the IMI and the special concerns emanating from reliance on ADR prices, the Amex has developed a special surveillance program for the IMI. First, all the procedures which currently apply to the Amex's existing stock index options surveillance program will apply to surveillance of the IMI.[28] Second, in response to the international nature of the Index, the Amex will conduct additional surveillance of Japanese and European stocks with capitalization weights in excess of 2.0% of the Index. Currently, these stocks represent approximately 65% of the entire capitalization weight of the Index. The Amex will capture on a daily basis, among other things, the following information for these stocks: (1) Tokyo market closing price information for Japanese components; (2) London market trade and quote information for the period extending from ½ hour before U.S. trading begins to the overlap period between U.S. and London trading for U.K. stocks; and (3) U.S. market trade information for NYSE, Amex, and NASDAQ NMS securities and quote information for NASDAQ non-NMS securities for the first hour of U.S. trading. The Amex will use this data to compare the opening prices in component stocks on ADRs with the closing prices in Japan and transactions being executed in the U.K. in an attempt to identify aberrant prices in the IMI at the opening of U.S. trading and any other unusual trading activity.

Third, the Commission consistently has noted that, to ensure that stock index options are not readily susceptible to manipulation, surveillance sharing agreements between the exchange on which the index option trades and the markets that trade the underlying securities are necessary. The exchange of surveillance data by the exchange trading a stock index option and the markets for the securities comprising the index is important to the detection and deterrence of intermarket manipulation. In this regard, the Commission notes that the Amex has the necessary surveillance sharing arrangement with the exchanges whose ADRs comprise the Index. Specifically, the Amex, NYSE, and National Association of Securities Dealers ("NASD") are members of the Intermarket Surveillance Group. As members, these markets are required to share surveillance information with one another.

Due to the fact that the home country trading of foreign securities can impact ADR prices in the U.S., the Commission believes that the Amex also should secure surveillance sharing agreements with the relevant foreign exchanges. Because U.K. and Japanese securities represent 77.78% of the weighting of the Index, the Commission has agreed with Amex's suggestion that, at least initially, the Exchange need only secure agreements with the two markets in these countries.[29]

Nevertheless, the Commission, of course, encourages the Amex to pursue such agreements with the countries whose stocks comprise the remaining 22% of the Index as a separate matter.

In regard to British stocks, the Amex has executed a surveillance sharing agreement with The Securities Association ("TSA").[30] This surveillance agreement will permit the Amex to obtain, where appropriate, trade and clearance information relating to U.K. securities underlying the IMI,[31] whether relating to a member(s) of Amex or TSA. Such surveillance information may include information concerning the identity and trading activities of individual customers as well as member firms.

In regard to Japanese component stocks, the Amex has executed a surveillance sharing agreement with the Tokyo Stock Exchange ("TSE") which obligates the parties to use their best efforts to compile and transmit information relating to "transactions on the [Amex or TSE], price quotations, clearing data, and the identity of persons holding large positions in IMI options or the underlying stocks."[32] The Amex/TSE Agreement also provides that the parties will resolve in good faith any disagreements regarding requests for such information or responses thereto. Although the Amex/TSE Agreement represents a substantial advance in regulatory cooperation between U.S. and Japanese securities markets it does contain several provisions that raise concerns as to the ability of the Amex to obtain information from the TSE in all cases.

In particular, the SEC is concerned about the operation of Article 106 of the Japanese Securities and Exchange Law[33] as it relates to the surveillance sharing agreement, and about confidentiality provisions in sections 2D and 3 of the agreement. The SEC, however, has discussed with the TSE its concerns regarding these provisions,[34]

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[28] In response to Commission concerns regarding opening settlement prices for NASDAQ IMI components, in addition to their regular option surveillance procedures, on expiration days the Amex will conduct special procedures to examine market maker activity and quotation changes in the NASDAQ IMI components. *See* Letter from Nathan Most, Vice President, New Products Development, AMEX, to Joseph Furey, Branch Chief, Division of Market Regulation, SEC, dated February 8, 1989.

[29] The majority of the component stocks of the countries comprising the remaining 22% of the Index (the Netherlands—9.36%, Australia—3.48%, Sweden—3.39%, Spain—2.06%, Denmark, Italy, and Norway combined—2.53%, and Hong Kong—1.42%) are more actively traded in the U.S.than on their home markets.

[30] Memorandum of Understanding Concerning the Provision of Information for the Purpose of Regulation and Enforcement, dated October 13, 1988 ("Amex/TSA MOU"). TSA came into existence as a result of an agreement between the ISE and the International Securities Regulatory Organization ("ISRO"). Under the terms of the agreement, the ISE was established as a recognized investment exchange with rights and obligations analogous to the NASD, and ISRO was reorganized as the TSA. Currently, the TSA is the selfregulatory organization responsible for regulating the U.K. equity securities market. Although all ISE members must be members of the TSA, TSA also consists of members which may not be active on the ISE. Thus, the Amex/TSA MOU will allow the Amex to obtain trading data from more U.K. securities market participants, whose activity may affect the IMI, than would an Amex/ISE agreement.

[31] Pursuant to the Amex/TSA MOU all securities traded through the SEAQ International, including foreign ADRs, are considered U.K. securities.

[32] Agreement Between the American Stock Exchange, Inc. and the Tokyo Stock Exchange to Share Market Surveillance Information ("Amex/TSE Agreement"), dated November 4, 1988. The TSE signed substantially identical agreements with the Chicago Board of Trade ("CBT") to cover trading of the CBT's TOPIX Index and the Chicago Mercantile Exchange ("CME") to cover trading of the CME's Nikkei Stock Average futures, as well as any contracts listed in the future.

[33] Article 106 provides: "No person who is or has been an officer or employee of a securities exchange shall divulge or make surreptitious use of secrets which he may have acquired in the course of performing his duties." Secret information, which includes the identity of persons holding large positions, could be divulged, however, "where the legal interest of making the information available is deemed greater than that of keeping the information confidential." Letter from Mitsuo Sato, Managing Director, TSE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 19, 1988, at 2. Such a determination would be made on a case-by-case basis, taking into consideration "(1) the degree of the need for the information requested; (2) the degree of the confidentiality of such information; and (3) the degree of the confidentiality with which the receiving party treats such information." *Id.*

[34] *See* Letter from Mitsuo Sato, Managing Director, TSE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 10, 1988; Letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Mitsuo Sato, Managing Director, TSE, dated August 11, 1988.

and has received assurances from the TSE as to its willingness to provide information to the extent not prohibited by law.[35]

In addition, if the TSE were to make a determination that pursuant to Article 106 it could not share certain information with the Amex, it could be required by Japanese law to provide the information to the Japanese Ministry of Finance ("MOF").[36] In that event, the Commission believes that the Memorandum of Understanding ("MOU") between the SEC and the MOF could be utilized by the SEC to acquire the information from the MOF on Amex's behalf.

D. Market Impact

The Commission believes that the listing and trading of IMI options on the Amex will not adversely impact the underlying securities markets in the U.S. First, as previously mentioned, existing Amex stock index options rules and surveillance procedures will apply to option contracts based on the IMI. Second, the Commission notes that the Index is broadbased and diversified and includes highly capitalized securities that generally are traded actively on their primary securities exchanges in addition to other securities markets abroad. In this regard, the Commission does not believe that the IMI will impact adversely foreign markets in which the underlying stocks or ADRs are traded.

The Commission believes that the availability of options on the IMI should help to remove impediments to a free and open global market and should facilitate transactions in securities because the IMI option will provide investors with a means to hedge exposure to market or systematic risk associated with foreign stock investments.

The Commission believes further that the trading of listed options on an index of foreign stocks will provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of foreign stocks, especially Japanese and U.K. stocks.[37] The IMI also will contribute further to the increasing internationalization of the world's securities markets. The Commission also believes that the IMI option will provide investors a means by which to make investment decisions in the non-U.S./Canadian world equity market, thus allowing them to establish positions or increase existing positions in foreign stocks cost efficiently. Finally, the Commission notes that investors also could pursue a strategy designed to supplement their dividend income by writing options on the IMI.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[38] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Dated: March 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7278 Filed 3-27-89; 8:45 am]

BILLING CODE 8010-01-M

[35] The SEC has the statutory authority to obtain any surveillance information provided the Amex by the TSE. *See* Letter from Mitsuo Sato, Managing Director, TSE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 19, 1988.

[36] *See* Letter from Mitsuo Sato, Managing Director, TSE, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated August 29, 1988. The relevant provision is Article 154 of the Japanese Securities and Exchange Law.

[37] In contrast to CEA regulations, the federal securities laws do not contain an explicit "economic purpose" test for new options products. Nevertheless, pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any new option proposal upon a finding that the introduction of such option is in the public interest. Such a finding would be difficult with respect to an option product that served no hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[38] 15 U.S.C. 78s(b)(2) (1982).

[39] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-26656; File No. SR-DTC-89-06]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Company Relating to Legal Deposit Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1989, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Prior to revision, DTC's legal deposit service provided full examination of every legal deposit and the fees were (as specified on Page T-106 of DTC's Participant Operating Procedures):

1 to 1500 deposits during the month...$9.00 each
Excess over 1500 to 2500 deposits during the month.....$6.00 each
Excess over 2500 deposits during the month.....$3.00 each
Virtually all Participants have been paying the.....$9.00 fee

Under the proposed rule change, DTC will offer a more limited service, termed "basic service," that will not include full examination or telephone notification. DTC will continue to provide full-service examination by DTC staff at a reduced price and will provide and charge for telephone notification only when required and elected in advance by the Participant. Tracking Service will also be optionally available. The proposed new fees are:

Full-Service Fee (DTC staff examination).....$4.50/deposit
Telephone Notification (optional addition).....$4.20/deposit
Basic Fee (no DTC staff examination)...$3.15/deposit
Tracking Service (both services)...$ .20/deposit

In addition, fees will no longer vary with deposit volume and, under the proposed rule change, if a transfer agent should reject a full-service deposit after it had been reviewed and accepted by DTC's staff, deposit reject fees would not normally be imposed.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A legal deposit consists of a registered certificate(s) deposited with DTC's special "Legal Deposit" form and any legal documentation required for the issuer's transfer agent to register transfer, such as a court appointment, a certified corporate resolution or a death certificate. Previously, DTC examined each legal deposit and rejected back to the Participant deposits found by DTC to lack sufficient documentation for reregistration.

The rule change is intended to bring legal deposit fees closer to DTC's cost and enhance service. As more fully explained in Exhibit 2 to the filing, under the proposed rule change Participants who themselves examine legal deposits before depositing at DTC may elect a basic, non-examination service and thus avoid fees for redundant processing; there will be a new, optional telephone notification service to eliminate unnecessary delay in processing deficient deposits; and a new tracking service will be optionally available for rapid response to Participants' inquiries via PTS, DTC's telecommunications network.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder in that it promotes the prompt and accurate clearance and settlement of securities transactions and eliminates unnecessary costs for persons facilitating transactions by and acting on behalf of investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC reviewed its legal deposit processing costs in response to questions raised by some Participants last year. DTC is offering a new optional, more limited and less expensive "basic" legal deposit service involving no review by DTC staff in response to comments by several Participants that, because legal deposits are carefully reviewed by their staffs before they are submitted to DTC, for them depository review is redundant and unnecessary. No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization.

All submissions should refer to DTC–89–6 and should be submitted by April 18, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 21, 1989.

[FR Doc. 89–7279 Filed 3–27–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16890; File No. 812–7238]

Preferred Life Insurance Co. of New York, et al.

March 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants

Preferred Life Insurance Company of New York (the "Company"), Preferred Life Variable Account C (the "Variable Account") and NALAC Financial Plans, Inc.

Relevant 1940 Act Sections

Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2).

Summary of Application

Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the 1940 Act to permit the issuance and sale of variable annuity contracts which provide for the assessment of a mortality and expense risk charge.

Filing Date

The application was filed on February 7, 1989.

Hearing or Notification

If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on April 18, 1989. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for attorneys, by certificate. Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicants, 15 Columbus Circle, Suite 902, New York, New York 10023.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272–3450 or Clifford E. Kirsch, Special Counsel, at (202) 272–3032 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's Commercial Copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Company is a stock life insurance company organized under the laws of the State of New York and is a wholly-owned subsidiary of North American Life and Casualty Company

("NALAC"). The Company established the Variable Account on February 26, 1988 pursuant to the provisions of New York insurance law. The Variable Account is a segregated investment account of the Company and is registered with the Securities and Exchange Commission as a unit investment trust pursuant to the provisions of the 1940 Act.

2. The Company proposes to offer individual flexible payment variable annuity contracts (the "Contracts") which are available for both Qualified and Non-Qualified Retirement Plans under the Internal Revenue Code. The minimum initial purchase payment for Contracts is $5,000 with minimum additional purchase payments of $2,000. No deductions are made from purchase payments; any premium taxes or other taxes payable to a state or other governmental entity will be charged against the Contract Values. The Contracts will be distributed through the principal underwriter, NALAC Financial Plans, Inc., a wholly-owned subsidiary of NALAC.

3. The purchase payments under the Contracts will be allocated to the Variable Account. The Variable Account is divided into Sub-Accounts. Each Sub-Account is invested solely in the shares of one of the Funds of Franklin Valuemark Funds (the "Trust"), a trust registered under the Act as a diversified open-end management investment company. The Trust is a series fund which is currently divided into fourteen separate funds consisting of an Equity Growth Fund, Precious Metals Fund, Real Estate Securities Fund, Utility Equity Fund, High Income Fund, Money Market Fund, Global Income Fund, Corporate Bond Fund, Income Securities Fund, U.S. Government Securities Fund, Zero Coupon Portfolio—1955, Zero Coupon Portfolio—2000, Zero Coupon Portfolio—2005 and Zero Coupon Portfolio—2010.

4. The Company will deduct an annual Contract Maintenance Charge of $30 from the Contract Value on each Contract Anniversary, and an Administrative Expense Charge, equal on an annual basis to .15% of the average daily net assets of the Variable Account, on each Valuation Date. These charges are to reimburse the Company for the expenses it incurs in the establishment and maintenance of the Contracts and the Variable Account. Applicants intend to rely upon Rule 26a-1 with respect to the deduction of the Contract Maintenance Charge and the Administrative Expense Charge.

5. The Contracts do not provide for a front end sales charge to be deducted from purchase payments. Instead, if all or a portion of the Surrender Value is surrendered, a Contingent Deferred Sales Charge (sales load) will be calculated at the time of each surrender and will be deducted from the Contract Value. The Contingent Deferred Sales Charge applies only to those purchase payments received within five (5) years of the surrender. In calculating the Contingent Deferred Sales Charge, purchase payments are allocated to the amount surrendered on a first-in, first-out basis. The amount of the Contingent Deferred Sales Charge is calculated by: (a) Allocating purchase payments to the amount surrendered; and (b) multiplying each allocated purchase payment that has been held under the Contract for the period shown below by the charge shown below:

Years since payment	Charge
0–1	5%
1–2	5%
2–3	4%
3–4	3%
4–5	1.5%
5+	0

and (c) adding the products of each multiplication in (b) above. A Contract Owner may, not more frequently than once annually on a cumulative basis, make a surrender each Contract Year of fifteen (15%) percent of purchase payments paid less any prior surrenders without incurring a Contingent Deferred Sales Charge. In no event will the aggregate Contingent Deferred Sales Charge exceed 9% of the total purchase payments made.

6. The Company proposes to assess each Sub-Account of the Variable Account with daily charges for mortality and expenses risks which amount to 1.25% per annum (consisting of approximately .90% for mortality risks and approximately .35% for expense risks). The mortality risk assumed by the Company arises from its contractual obligation to make annuity payments after the Income Date for the life of the Contract in accordance with the annuity rates guaranteed in the Contracts. The expense risk assumed by the Company is that all actual expenses involved in administering the Contracts, including Contract maintenance costs, administrative costs, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount received from the Contract Maintenance and the Administrative Expense Charge. If the morality and expense risk charge is insufficient to cover the actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to the Company. The Company expects a profit from this charge. the mortality and risk charge is guaranteed by the Company and cannot be increased.

7. Applicants represent that the 1.25% total which the Company proposes to charge for the mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants' representations are based upon an analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates, the expense risks taking into account the existence of charges against separate account assets for other than mortality and expense risks and the estimated costs, now and in the future, for certain products features as well as an examination of comparable annuity products. The Company will maintain at its principal office, available to the commission, a memorandum setting forth in detail this analysis.

8. Applicants acknowledge that the Contingent Deferred Sales Charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Contingent Deferred Sales Charge. In such circumstances a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the contracts. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commission.

9. The Company represents that the Variable Account will invest only in an underlying mutual funds which undertakes, in the event it should adopt any plan under Rule 12b-1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7354 Filed 3-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26655; File No. SR-PHLX-89-9]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Demarcation of Foreign Currency Options Trading Hours

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on March 10, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b-4, hereby proposes the following rule change: (Brackets indicate deletions; *italics* indicates additions.)

Specialist Performance Evaluation

Rule 511. (a) through (e) No change.

.... Supplementary Material.

.01 No change.

.02 No change.

.03 No change.

.04 Solely with respect to any extension of trading hours for any foreign currency option between the hours of 11 p.m. and 4:30 a.m. Philadelphia Time, a demarcation time shall be established whereby any extension of trading hours and associated specialist trading privileges prior to 3:20 a.m. shall be extended to the evening segment specialist and any extension of trading hours and associated specialist trading privileges after 3:40 a.m. shall be extended to the daytime segment specialist.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

In May 1988,[1] the Commission approved SR-PHLX-87-38. The rule change establishes, among other things, a general policy of according specialist privileges automatically, and mandatorily, to existing specialist units in products they trade in any extended trading segment touching and contiguous to their existing trading segment. With respect to the trading of PHLX foreign currency options, foreign currency options trading privileges are awarded to particular specialist units in the day trading segment (currently between 4:30 a.m. and 2:30 a.m.) and to a different specialist unit during evening hours (currently between 6:00 p.m. and 11:00 p.m.). In anticipation of an eventual extension of foreign currency options trading hours between 11:00 p.m. and 4:30 a.m., the Board has established a demarcation between evening and day specialist privileges. In establishing the 3:20 a.m. and 3:40 a.m. demarcation, the Board received oral statements from the affected specialist units, and considered how those hours coincided with the trading hours of the Far East (the hours generally associated with evening specialist trading privileges) and Europe (the hours generally associated with day specialist trading privileges).

The proposed rule change would permit the Board to extend foreign currency options trading hours in a flexible manner while assuring that the appropriate specialist unit that has the strongest nexus to those extended hours is granted the extended trading privileges.

The proposed rule change is consistent with section 6(b)(5) of the Act, particularly because it is designed to promote just and equitable principles of trade, facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and promote the public interest.

[1] *See* Securities Exchange Act Release No. 25647 (May 3, 1988), 53 FR 16829.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 18, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 21, 1989.

FR Doc. 89-7352 Filed 3-27-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 22, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange 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:

DWG Corporation
Common Stock, $0.10 Par Value (File No. 7-4277)
Entertainment Marketing Inc.
Common Stock, $0.01 Par Value (File No. 7-4278)
Hovnanian Enterprises, Inc.
Common Stock, $0.01 Par Value (File No. 7-4279)
Philippine Long Distance Telephone Co.
Common Stock, 5 Pesos Par Value (File No. 7-4280)
RAC Mortgage Investment Corp.
Common Stock, $0.01 Par Value (File No. 7-4281)
AmSouth Bancorporation
Common Stock, $1 Par Value (File No. 7-4282)
Chemical Banking Corporation
Class B Common Stock, $1 Par Value (File No. 7-4283)
Energen Corporation
Common Stock, $0.01 Par Value (File No. 7-4284)
Enterra Corporation
Common Stock, $1 Par Value (File No. 7-4285)
Petrolane Partners, L.P.
Limited Partner Units (File No. 7-4286)
Blue Arrow PLC
American Depositary Shares (File No. 7-4287)
Century Communications Corporation
Class A Common Stock, $0.01 Par Value (File No. 7-4288)
Corona Corporation
Class A Common Stock, No Par Value (File No. 7-4289)
Homestead Financial Corp.
Class A Common Stock, $0.01 Par Value (File No. 7-4290)
Michael Stores, Inc.
Common Stock, $0.10 Par Value (File No. 7-4291)
Springs Industries, Inc.
Class A Common Stock, $0.25 Par Value (File No. 7-4292)
Stanhome Inc.
Common Stock, $0.12 ½ Par Value (File No. 7-4293)
Brown Group, Inc.
Common Stock, $3.75 Par Value (File No. 7-4294)
California Energy Company, Inc.
Common Stock, $0.0648 Par Value (File No. 7-4295)
Central Louisiana Electric Company
Common Stock, $4 Par Value (File No. 7-4296)
Craig Corporation
Common Stock, $0.25 Par Value (File No. 7-4297)
Cross (A.T.) Company
Common Stock, $1 Par Value (File No. 7-4298)

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 April 12, 1989, 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., Wasington, 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. 89-7353 Filed 3-27-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1101]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: The Anti-Drug Abuse Act of 1988, provides that a United States passport shall not be issued to or shall be revoked for a person convicted of a federal or state drug offense involving the use of a U.S. passport or the crossing of an international border. The Department of State has prepared an information sheet to be sent to federal and state law enforcement and judicial authorities requesting certain information about drug convictions in order to take action. The following summarizes the information collection proposal submitted to OMB:

Type of request: New
Originating office: Bureau of Consular Affairs
Title of information collection: Denial and Revocation of Passports of Convicted Drug Traffickers
Frequency: On occasion
Respondents: State and local governments
Estimated number of respondents: 3,000
Average hours per response: 15 minutes
Total estimated burden hours: 750

Section 3504(h) of Pub. L. 96-511 was addressed in Departmental Regulation No. 108.881.

Additional information or comments: Copies of the proposed form and supportinq documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7340.

Dated: March 3, 1989.

Sheldon J. Krys,

Assistant Secretary for Administration and Information Management.

[FR Doc. 89-7260 Filed 3-27-89; 8:45 am]

BILLING CODE 4710-06-M

Office of the Secretary

[Public Notice 1100; Delegation of Authority No. 174]

Delegation to the Under Secretary for Management Providing for National Interest Certifications Under 18 U.S.C. Section 219 (Employment of Agents of Foreign Principals as Special Government Employees)

By virtue of the authority vested in me as Secretary of State, including by sections 2656 and 2658 of Title 22 of the United States Code, I hereby delegate to the Under Secretary for Management, and any person acting in that position due to absence, disability, or vacancy in office, the functions vested in me as head of the employing agency by section 219 of Title 18 of the United States Code.

Date: March 16, 1989.

James. A. Baker, III,

Secretary.

[FR Doc. 89-7261 Filed 3-27-89; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice (1102)]

Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 655 (44 FR 17846), March 23, 1979, the Department is submitting its August, September, October, November, December 1988, and January 1989 list of U.S. accredited Delegations which included private-sector representatives.

Publication of this list is required by Article III (c)(5) of guidelines published in the **Federal Register** on March 23, 1979.

February 24, 1989.

Frank R. Provyn,

Director, Office of International Conferences.

UNITED STATES DELEGATION TO THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL), SEVENTEENTH SESSION OF THE WORKING GROUP ON INTERNATIONAL PAYMENTS, NEW YORK, NEW YORK, JULY 5–15, 1988

Representative

John A. Spanogle, Jr., Professor of Law, State University of New York at Buffalo, Buffalo, New York

Alternate Representatives

Harold S. Burman, Office of the Legal Adviser, Department of State

Carl Felsenfeld, Professor of Law, Fordham University, New York, New York

Ernest Patrikis, General Counsel and Vice-President, Federal Reserve Bank of New York, New York, New York

Private Sector Adviser

Thomas Baxter, Associate General Counsel, Federal Reserve Bank of New York, New York, New York

UNITED STATES DELEGATION TO THE ORGANIZATION OF AMERICAN STATES INTER-AMERICAN TELECOMMUNICATION CONFERENCE (OAS/CITEL), PERMANENT TECHNICAL COMMITTEE (PTC) III—RADIOCOMMUNICATIONS, BUENOS AIRES, ARGENTINA, JULY 11–15, 1988

Representative

Theodore F. Brophy, Chairman, United States Delegation, WARC ORB (2), Bureau of International Communications and Information Policy, Department of State

Alternate Representative

Warren G. Richards, Office of Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State

Advisers

William T. Hatch, Program Manager, National Telecommunication and Information Administration, Department of Commerce

Cecily C. Holiday, Chief, Satellite Radio Branch, Common Carrier Bureau, Federal Communications Commission

Steven Selwyn, Mass Media Bureau, Federal Communications Commission

Private Sector Advisers

Robert A. Mazer, Nixon, Hargrave, Devans, and Doyle, Washington, DC

Leslie A. Taylor, Director, Government Affairs, GTE Spacenet Corporation, McLean, Virginia

Francis S. Urbany, BellSouth Corporation, Washington, DC

UNITED STATES DELEGATION TO THE ORGANIZATION OF AMERICAN STATES (OAS), INTER-AMERICAN TELECOMMUNICATIONS COMMISSION (CITEL), PERMANENT TECHNICAL COMMITTEE (PTC), I MONTEVIDEO, URUGUAY, AUGUST 8–12, 1988

Representative

Earl S. Barbely, Director, Office of Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Advisers

Daniel Clare, Special Assistant to the Under Secretary for Security Assistance, Science and Technology, Department of State

Wendell R. Harris, Assistant Bureau Chief—International, Common Carrier Bureau, Federal Communications Commission

Thomas Wasilewski, National Telecommunication and Information Administration, Department of Commerce

Private Sector Adviser

Cecil R. Crump, District Manager, AT&T Communications, Morristown, New Jersey

U.S. DELEGATION TO THE INTERNATIONAL TELECOMMUNICATION UNION (ITU), SECOND SESSION OF THE WORLD ADMINISTRATIVE RADIO CONFERENCE ON THE USE OF THE GEOSTATIONARY-SATELLITE ORBIT AND THE PLANNING OF SPACE SERVICES UTILIZING IT ([WARC ORB(2)], GENEVA, AUGUST 29–OCTOBER 6, 1988

Representative

Theodore F. Brophy (Chairman of U.S. Delegation), GTE Corporation, Greenwich, Connecticut

Alternate Representatives

Warren G. Richards (Executive Director of U.S. Delegation), Office of Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State

Robert A. Hedinger, Technical Supervisor, AT&T Bell Laboratories, Holmdel, New Jersey

Harold G. Kimball, Senior Technical Advisor, National Telecommunications and Information Administration, Department of Commerce

Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission

Advisers

Dexter Anderson, Communications Specialist, Regulatory Branch, Voice of America, United States Information Agency

James D. Earl, Economic, Business and Communications Affairs, Office of the Legal Adviser, Department of State

Rosalee C. Gorman, Attorney, Satellite Radio Branch, Common Carrier Bureau, Federal Communications Commission

William T. Hatch, Program Manager, National Telecommunications and Information Administration, Department of Commerce

Jerome H. Hoganson, Office of Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State

Cecily C. Holiday, Chief, Satellite Radio Branch, Common Carrier Bureau, Federal Communications Commission

Raymond D. Jennings, Senior Electronics Engineer, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce

John W. Kiebler, Program Manager, Radio Science and Support Studies, National Aeronautics and Space Administration
Alex C. Latker, International Conference Staff, Common Carrier Bureau, Federal Communications Commission
Steven W. Lett, International Conference Staff, Common Carrier Bureau, Federal Communications Commission
William G. Long, Jr., Assistant for Spectrum Utilization, Defense Communications Agency
Robert F. May, USAF Frequency Management Center, Department of the Air Force
Vernon McConnell, United States Military Communications, Electronics Board, Department of Defense
Edward F. Miller, Chief, Communications Systems Branch, NASA Lewis Research Center, Cleveland, Ohio
Paul E. Misener, International Affairs Engineer, National Telecommunications and Information Administration, Department of Commerce
John K. Morris, Lieutenant Colonel, Assistant to the Director, Mission Assessment and Evaluation Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, Department of Defense
Harold J. Ng, Satellite Radio Branch, Common Carrier Bureau, Federal Communications Commission
Lawrence M. Palmer, Radio Conference Program Manager, National Telecommunications and Information Administration, Department of Commerce
Richard Parlow, National Telecommunications and Information Administration, Department of Commerce
Ann Patterson, United States Mission, Geneva, Switzerland
Norbert W. Schroeder, Chief, Regulatory Branch, Voice of America, United States Information Agency
Steven Selwyn, Mass Media Bureau, Federal Communications Commission
Richard E. Shrum, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State
Milton T. Smith, Major, United States Air Force, Director of Space and International Law, Air Force Space Command, Peterson Air Force Base, Colorado
Robert M. Taylor, Spectrum Management Specialist, National Aeronautics and Space Administration
Francis K. Williams, Office of Engineering and Technology, Federal Communications Commission
Jeffrey B. Binckes, Principal Engineer, COMSAT—INTELSAT Satellite Services, Washington, DC
A. James Ebel, Lincoln, Nebraska
Richard G. Gould, President, Telecommunications Systems, Washington, DC
Donald Jansky, Jansky–Barmat Telecommunications, Inc., Washington, DC
Robert A. Mazer, Nixon, Hargrave, Devans and Doyle, Washington, DC
Robert F. McLaughlin, Manager, Group Tech. Industry Standards, AT&T Communications, Bedminster, New Jersey
Michael W. Mitchell, Consultant, Telecommunications Systems, Vienna, Virginia
James B. Potts, Consultant, Gaithersburg, Maryland
Samuel E. Probst, Senior Associate, Spectrum Engineering, ORI, Inc., Sterling, Virginia
Edward E. Reinhart, Consultant, McLean, Virginia
Julie Rones, Office of Research and Policy Analysis, National Cable Television Association, Washington, DC
Leslie A. Taylor, Director, Government Affairs, GTE Spacenet Corporation, McLean, Virginia
Edward E. Reinhart, Consultant, McLean, Virginia
Julie Rones, Office of Research and Policy Analysis, National Cable Television Association, Washington, DC
Leslie A. Taylor, Director, Government Affairs, GTE Spacenet Corporation, McLean, Virginia
Francis S. Urbany, Director, International and Agency Relations, BellSouth Corporation, Washington, DC
Julian Wakefield, Vice President, Technology, CONTEL ASC, Rockville, Maryland
Hans J. Weiss, Vice President, Technical Policy, Communications Satellite Corporation, Washington, DC

UNITED STATES DELEGATION TO THE MEETING OF EXPERTS ON FUNDING OF GLOBAL MARITIME DISTRESS AND SAFETY COMMUNICATIONS, INTERNATIONAL MARITIME SATELLITE ORGANIZATION (INMARSAT), LONDON, AUGUST 31–SEPTEMBER 2, 1988

Representative

Hilary J. Cunningham, Office of Regulatory and Treaty Affairs, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

Dana Starkweather, Captain, United States Coast Guard, Department of Transportation

Advisers

Steven C. Hall, Defense Mapping Agency
Larry D. Reed, Private Radio Bureau, Federal Communications Commission
Richard L. Swanson, National Telecommunications and Information Administration, Department of Commerce

Private Sector Adviser

Robert J. Oslund, Director, INMARSAT Relations, Communications Satellite Corporation, Washington, DC

UNITED STATES DELEGATION TO THE TWENTY SIXTH SESSION OF THE MARINE ENVIRONMENT PROTECTION COMMITTEE, INTERNATIONAL MARITIME ORGANIZATION (IMO), LONDON, SEPTEMBER 5–9, 1988

Representative

Joel D. Sipes, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Joseph J. Angelo, Assistant Chief, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Robert Blumberg, Deputy Director, Office of Ocean Law and Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Gregory T. Jones, Lieutenant Commander, Assistant Chief, Environmental Coordination Branch, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Timothy R. Keeney, Deputy General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce
David B. Pascoe, Commander, Chief, Environmental Coordination Branch, Marine Environmental Response Division, Office of Marine Safety,

Security and Environmental Protection, United States Coast Guard, Department of Transportation
Thaddeus A. Wastler, Office of Marine and Estuarine Protection, Environmental Protection Agency
Frits Wybenga, Hazardous Materials Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Advisers

Sally A. Lentz, Staff Attorney, Oceanic Society, Washington, DC
Sidney A. Wallace, Rear Admiral, USCG (Ret.), Chairman, Marine Board, National Academy of Sciences, Washington, DC

UNITED STATES DELEGATION TO THE SPECIAL GROUP ON INTERNATIONAL ORGANIZATIONS (SGIO) OF THE MARITIME TRANSPORT COMMITTEE (MTC), PARIS, SEPTEMBER 7–9, 1988

Representative

Thomas J. Wajda, Director, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Greg Hall, Office of International Affairs, Maritime Administration, Department of Transportation

Advisers

C. William Johnson, Transportation, Tourism & Marketing Industries Div., Office of Service Industries, International Trade Administration, Department of Commerce
USOECD,
Mission Officer, Paris

Private Sector Adviser

William Verdon, President, United Shipowners of America, Washington, DC

UNITED STATES DELEGATION TO THE TENTH SESSION OF THE FACILITATION DIVISION, INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO), MONTREAL, SEPTEMBER 7–23, 1988

Chief Delegate

Clifford W. Woodward, Jr., International Transportation Specialist, Office of International Transportation and Trade, Department of Transportation

Delegates

Harvey L. Adler, Deputy Assistant Commissioner, Inspections, Immigration and Naturalization Service, Department of Justice
Robert A. Bartol, Director, Office of Passenger Enforcement and Facilitation, United States Customs Service, Department of the Treasury
Roy S. Cole, Senior Operations Officer, Animal and Plant Health Inspection Service, Department of Agriculture
William L. Duncan, International Program Analyst, Office of International Affairs, United States Customs Service, Department of the Treasury
Joan S. Gravatt, Office of Aviation Programs and Policy, Bureau of Economic and Business Affairs, Department of State
David C. Leach, Special Assistant, Office of Civil Aviation Security, Federal Aviation Administration, Department of Transportation

Private Sector Advisers

James R. Gorson, Director of Passenger Facilitation, Air Transport Association of America, Washington, DC
Mary K. McMunn, Manager of Cargo System Automation, Air Transport Association of America, Washington, DC
William H. Stine, II, Manager of Plans and International Aviation, National Business Aircraft Association, Washington, DC

UNITED STATES DELEGATION TO THE 7TH SESSION OF THE MONITORING COMMITTEE ON THE ACTION PLAN FOR THE CARIBBEAN ENVIRONMENT PROGRAM AND THE SPECIAL MEETING OF THE BUREAU OF CONTRACTING PARTIES TO THE CONVENTION OF THE CARIBBEAN ENVIRONMENT PROGRAM, UNITED NATIONS ENVIRONMENTAL PROGRAM (UNEP), MEXICO CITY, SEPTEMBER 12–14, 1988

7th Session of the Monitoring Committee, (September 12–14, 1988)

Principal Observer

Scott A. Hajost, Acting Associate Administrator, Office of International Activities, Environmental Protection Agency

Observers

Daniel Bodansky, Office of the Legal Adviser, Department of State
Andre DeGeorges, Regional Environmental Management Specialist, Agency for International Development, Bridgetown, Barbados
Pedro Gelabert, Director, Caribbean Field Office, Environmental Protection Agency
Myron Knudsen, Water Management Director, Region IV, Environmental Protection Agency
Robert Layton, Regional Administrator, Region VI, Environmental Protection Agency
Nicholas MacNeil, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Arthur Paterson, International and Intergovernmental Liaison, Office of International Affairs, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Observers

Thomas Henderson, Special Assistant to the Commissioner, Texas Land Commission, State of Texas, Austin, Texas
Garry Mauro, Commissioner, Texas Land Commission, State of Texas, Austin, Texas
Miranda Wecker, Associate Director, Council on Ocean Law, Washington, DC

Meeting of the Bureau of Contracting Parties, (September 12–14, 1988)

Representative

Scott A. Hajost, Acting Associate Administrator, Office of International Activities, Environmental Protection Agency

Advisers

Daniel Bodansky, Office of the Legal Adviser, Department of State
Andre DeGeorges, Regional Environmental Management Specialist, Agency for International Development, Bridgetown, Barbados
Pedro Gelabert, Director, Caribbean Field Office, Environmental Protection Agency
Myron Knudsen, Water Management Director, Region IV, Environmental Protection Agency
Robert Layton, Regional Administrator, Region VI, Environmental Protection Agency
Nicholas MacNeil, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Arthur Paterson, International and Intergovernmental Liaison, Office of International Affairs, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Advisers

Thomas Henderson, Special Assistant to the Commissioner, Texas Land Commission, State of Texas, Austin, Texas
Garry Mauro, Commissioner, Texas Land Commission, State of Texas, Austin, Texas
Miranda Wecker, Associate Director, Council on Ocean Law, Washington, DC

UNITED STATES DELEGATION TO THE MEETING OF THE CONVENTION FOR THE CONSERVATION OF ANTARCTIC SEALS, LONDON, SEPTEMBER 12–16, 1988

Representative

Raymond V. Arnaudo, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Alternate Representative

Robert Hofman, Senior Scientific Adviser, Marine Mammal Commission

Advisers

John Bengtson, Program Manager, Marine Mammal Laboratory, National Marine Fishieries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Seattle, Washington
Susan Biniaz, Office of the Legal Adviser, Department of State
James Burkrt, United States Embassy, London
J. Scott Monier, United States Embassy, London
Michael Tillman, Chief Scientist, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Robin Tuttle, Office of International Fisheries, National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Bruce S. Manheim, Environmental Defense Fund, Washington, DC

UNITED STATES DELEGATION TO THE 41ST SESSION OF THE SUBCOMMITTE ON THE CARRIAGE OF DANGEROUS GOODS, INTERNATIONAL MARITIME ORGANIZATION, (IMO) LONDON, SEPTEMBER 12–16, 1988

Representative

R.W. Tanner, Commander, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

P.C. Olenik, Lieutenant Commander, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Charles Ke, Chemist, Sciences Branch, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation
E.P. Pfersich, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
J.O'Steen, Chief, Engineering and Sciences Division, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation

Private Sector Advisers

R.F. Bohn, Hazardous Materials Coordinator, National Cargo Bureau, Inc., New York, New York
Dr. W.L. Sprout, Staff Medical Consultant, E.I. Du Pont De Nemours & Co., Inc., Newark, Delaware
S. Saltzman, Hazardous Materials Consultant, E.I. Du Pont De Nemours & Co., Inc., Wilmington, Delaware
Office of International Conferences, Department of State, September 16, 1988

UNITED STATES DELEGATION TO THE 28TH SESSION OF THE WORKING PARTY ON FACILITATION OF INTERNATIONAL TRADE PROCEDURES, ECONOMIC COMMISSION FOR EUROPE (ECE), GENEVA, SEPTEMBER 12–16, 1988

Representative

Bruce Butterworth, Chief, Trade, Facilitation and Technical Issues Division, Office of International Transportation and Trade, Department of Transportation

Advisers

Vicki Hodziewich, Acting Director, Day One Task Force, United States Customs Service, Department of the Treasury
William H. Kenworthey, Jr., Data Systems Manager, Office of the Deputy Assistant Secretary of Defense for Management Systems, Department of Defense
Sharon Reid, Director, Business Systems Division, Office of Data Systems, United States Customs Service, Department of the Treasury
Alice Rigdon, Customs Attache, United States Mission to the European Communities, Brussels

Private Sector Advisers

Earl J. Bass, EDI, Inc., Gaitherburg, Maryland
Michael W. Gerus, Standards Coordinator, Automotive Industry Action Group, Southfield, Michigan
Eugene A. Hemley, Executive Director, National Council on International Trade Documentation, New York, New York
Dennis McGinnis, North American Philips Corporation, New York, New York
Jeff Sturrock, Director, EDI Systems, Texas Instruments, Inc., Plano, Texas
Thomas Warner, Senior Business Consultant, McDonnell Douglas EDI Systems Co., St. Louis, Missouri
Nicole Willenz, Price Waterhouse, Chicago, Illinois

UNITED STATES DELEGATION TO THE 49TH SESSION, COMMITTEE ON HOUSING, BUILDING, AND PLANNING, ECONOMIC COMMISSION FOR EUROPE (ECE), GENEVA, SEPTEMBER 13–16, 1988

Representative

The Honorable Theodore R. Britton, Jr., Assistant to the Secretary for International Affairs, Department of Housing and Urban Development

Private Sector Advisers

James J. Matison, President, JM Group, Tucson, Arizona
Nancy J. Matison, Tucson, Arizona
Mary E. Paumen, Urban Planner, Anthony J. Dunleavy Associates, Inc., Upper Darby, Pennsylvania

UNITED STATES DELEGATION TO THE 25TH SESSION OF THE NORTH ATLANTIC SYSTEMS PLANNING GROUP, INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO), PARIS, SEPTEMBER 19–30, 1988

Member

Russell M. Scarberry, Manager, Enroute Procedures Branch, Federal Aviation Administration, Department of Transportation

Alternate Members

Howard E. Hess, Aviation Safety Inspector, Federal Aviation Administration, Department of Transportation

Robert Howard, Assistant Manager (Oceanic), Federal Aviation Administration, Department of Transportation, Ronkonkoma, New York
Dale Livingston, Supervisor, Analysis Branch, FAA Technical Center, Federal Aviation Administration, Department of Transportation, Atlantic City, New Jersey
Gerald Richard, International Program Specialist, Federal Aviation Administration, Department of Transportation

Private Sector Advisers

Richard Covell, Aeronautical Radio Inc., Annapolis, Maryland
Ray J. Hilton, Director, Air Traffic Management, Air Transport Association of America, Washington, DC

UNITED STATES DELEGATION TO THE COUNCIL AND EXECUTIVE BOARD SESSION, INTERNATIONAL COFFEE AGREEMENT (ICO), LONDON, SEPTEMBER 19–30, 1988

Representative

Jon Rosenbaum, Assistant U.S. Trade Representative, Office of the U.S. Trade Representative, Executive Office of the President

Alternate Representative

Ralph Ives, Primary Products Division, U.S. Department of Commerce

Advisers

Martin Bailey, Economic Advisor, Office of the Undersecretary for Economic Affairs, U.S. Department of State
James Burkhart, Resources Officer, U.S. Embassy, London
Scott Monier, Resources Officer, U.S. Embassy, London
Rick Ruebensaal, Office of Food Policy, Bureau of Economic and Business Affairs, U.S. Department of State

Private Sector Advisers

John Bederka, Woodhouse, Drake & Carey, 127 John Street, New York, New York
David Brown, General Foods, Inc., 120 Wall Street, New York, New York
John C.K. Buckley, Nestle Food Corporation, 100 Manhattenville Rd., Purchase, New York
Kenneth Dunnivant, Procter and Gamble, Inc., Cincinnati, Ohio
John Hayes, Coffees of Hawaii, Honolulu, Hawaii
John Heuman, Dine-Mor Foods Inc., 11090 Cloverleaf Circle, Boca Raton, Florida
Howard Katz, J. Aron and Company, New York, New York
Andrew Scholtz, Cargill, Inc., 55 Broadway, New York, New York
Grady Tiller, Coca Cola Company, Inc., P.O. Box 20179, Houston, Texas
Dean Wood, National Coffee Service Association, Williamsburg Square, Fairfax, Virginia

UNITED STATES DELEGATION TO THE TRADE AND DEVELOPMENT BOARD, 35TH SESSION UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD) GENEVA, SEPTEMBER 19–30, 1988

Representative

The Honorable, Joseph Petrone, Ambassador, U.S. Mission to International Organizations, Geneva

Alternative Representatives

Bernard Engel, Economic Counselor, U.S. Mission to International Organizations, Geneva
Fred Montgomery, Deputy Chief of Mission, Office of the U.S. Trade Representative, Geneva

Advisers

Frank Buchholz, Office of International Economic Policy, Bureau of International Organizations Affairs, Department of State
Melissa Coyle, Director, UNCTAD Affairs, Office of the U.S. Trade Representative, Executive Office of the President
Lawrence Cohen, Office of Development Finance, Bureau of Economic and Business Affairs, Department of State
Gordon Foote, U.S. Mission, Geneva
Nancy Katz, Department of the Treasury
Christina Lund, Office of the U.S. Trade Representative, Geneva
David Patterson, U.S. Mission, Geneva
Kyle Scott, U.S. Mission, Geneva
James Thomas, U.S. Mission, Geneva

Private Sector Adviser

Tyrone Fahner, Chicago, Illinois

UNITED STATES DELEGATION TO THE 84TH SESSION OF THE COAL COMMITTEE ECONOMIC COMMISSION FOR EUROPE (ECE) GENEVA, SEPTEMBER 26–29, 1988

Representative

Thomas Cutler, Office of International Affairs, Department of Energy

Alternate Representative

Miles Greenbaum, Office of Fossil Energy, Department of Energy

Private Sector Advisers

Ernst Upmeyer, Chairman, Mississippi Valley Coal Exporters Council, New Orleans, Louisiana
Susan Wingfield, President, Mississippi Valley Coal Exporters Council, New Orleans, Louisiana

UNITED STATES DELEGATION TO THE MEETING OF THE CHEMICALS GROUP AND MANAGEMENT COMMITTEE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), PARIS, SEPTEMBER 28–30, 1988

Representative

John A. Moore, Deputy Administrator, Environmental Protection Agency

Alternate Representative

Breck Milroy, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Margaret Rostker, Office of Pesticides and Toxic Substances, Environmental Protection Agency
Jane Kim, Office of International Activities, Environmental Protection Agency

Private Industry Advisers

Donald McCollister, The Dow Chemical Company, Midland, Michigan
Frances Irwin, The Conservation Foundation, Washington, DC

UNITED STATES DELEGATION TO THE GROUP OF EXPERTS ON PERIODIC SURVEY OF THE CHEMICAL INDUSTRY, 14TH SESSION, AND CHEMICAL INDUSTRY COMMITTEE MEETING, 21ST SESSION, ECONOMIC COMMISSION FOR EUROPE (ECE), GENEVA, OCTOBER 3–7, 1988

Representative

Vincent J. Kamenicky, Director, Office of Chemicals, Department of Commerce

Private Sector Adviser

K. James O'Connor, Jr., Manager, Chemical Manufacturers Association, Washington, DC

UNITED STATES DELEGATION TO THE ELEVENTH CONSULTATIVE MEETING OF THE PARTIES TO THE LONDON DUMPING CONVENTION OF THE INTERNATIONAL MARITIME ORGANIZATION (IMO), LONDON, OCTOBER 3–7, 1988

Representative

The Honorable Frederick M. Bernthal, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, Department of State

Alternate Representative

The Honorable Kent Burton, Assistant Secretary of Commerce for Oceans and Atmosphere, National Oceanic

and Atmospheric Admistration, Department of Commerce
Tudor Davies, Director, Office of Marine and Estuarine Protection, Environmental Protection Agency

Advisers

David Barrows, Assistant for Regulatory Programs, Office of Civil Works, Department of the Army
Daniel Bodansky, Office of the Legal Adviser, Department of State
John A. Dugger, Executive Officer, Office of International Energy Research and Development Policy, Department of Energy
Robert S. Dyer, Environmental Scientist, Office of Radiation Programs, Environmental Protection Agency
Robert Engler, Senior Scientist, United States Army Corps of Engineers, Department of the Army
David M. Hardy, Commander, Office of the Assistant Secretary of Defense for International Security Affairs, Department of Defense
Brian J. Hoyle, Director, Office of Ocean Law and Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Stephen Hughes, Commander, Chief, Port Operations Branch, Port Safety and Security Division, United States Coast Guard, Department of Transportation
Nicholas MacNeil, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
James Mangeno, Naval Sea Systems Command, Department of Defense
Jean C. Nietzke, Shipping Attache, United States Embassy, London
Alan B. Sielen, Deputy Associate Administrator, Office of International Activities, Environmental Protection Agency

Private Sector Adviser

William S. Griffin, Jr., American Petroleum Institute, Washington, DC

UNITED STATES DELEGATION TO THE INTERNATIONAL COUNCIL FOR THE EXPLORATION OF THE SEA (ICES) 76TH STATUTORY MEETING, BERGEN, NORWAY, OCTOBER 6–14, 1988

Representatives

Glenn Flittner, Acting Director, Office of Research and Environment Information, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
John H. Steele, President and Director, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts

Advisers

Vaughn C. Anthony, Chief, Utilization and Conservation, Northeast Fisheries Center, Woods Hole Laboratory, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts
Dorothy Bergamaschi, Office of Ocean Science and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Robert Miller, Deputy Director, National Marine Mammal Laboratory, Northwest Alaska Center
Steven A. Murawski, Northeast Fisheries Center, Woods Hole Laboratory, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts
Allen E. Peterson, Director, Northeast Fisheries Center, Woods Hole Laboratory, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts
Fredric M. Serchuk, Northeast Fisheries Center, Woods Hole Laboratory, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts
Michael Sissenwine, Chief, Fisheries Ecology Division, Woods Hole Laboratory, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts
James Weaver, United States Fish and Wildlife Service, Department of the Interior, Newton Corner, Massachusetts

Private Sector Advisers

D. Vance Holliday, Tracor, Incorporated, San Diego, California
Edward Houde, Chesapeake Biological Laboratory, University of Maryland, Solomons, Maryland
Thomas Osborn, The Chesapeake Bay Institute, Johns Hopkins University, Baltimore, Maryland
Charles H. Peterson, Institute of Marine Science, University of North Carolina, Chapel Hill, Morehead City, North Carolina
Brian Rothschild, Chesapeake Biological Laboratory, University of Maryland, Solomons, Maryland

UNITED STATES DELEGATION TO THE GENERAL ASSEMBLY MEETING OF THE INTERNATIONAL INSTITUTE FOR COTTON (IIC) AND THE PLENARY MEETING OF THE INTERNATIONAL COTTON ADVISORY COMMITTEE, LIMA, PERU, OCTOBER 8–14, 1988

Delegate

William L. Davis, Assistant Administrator, Commodity and Marketing Programs, Foreign Agriculture Service, Department of Agriculture

Alternate

Harry C. Bryan, Director of Tobacco, Cotton & Seeds Division, USDA
Geron E. Rathell, Marketing Specialist, Tobacco, Cotton & Seeds Division, Foreign Agricultural Service

Advisors

Charles V. Cunningham, Deputy Director, Analysis Division, Agricultural Stabilization and Cooperative Service, Department of Agriculture
Russell E. Barlowe, Fibers Analyst, World Agricultural Outlook Board, Department of Agriculture
Gary Groves, Agricultural Attache, U.S. Embassy Lima

Private Sector Advisors

Herman A. Propst, President, Cotton Council International
Jack Montgomery Jr., President, American Cotton Shippers Association
Donald B. Conlin, Chairman, New York Cotton Exchange
Earl W. Sears, Executive Vice President, National Cotton Council of America
J. Berrye Worsham, Manager, Fiber & Economic Analysis, Cotton Incorporated
Billy E. May, Vice President, Special Projects, American Cotton Shippers Association
Dean Ethridge, Director, Economic Services, National Cotton Council of America
Office of International Conferences, Department of State, October 17, 1988

UNITED STATES DELEGATION TO THE 60TH SESSION OF THE LEGAL COMMITTEE OF THE INTERNATIONAL MARITIME ORGANIZATION (IMO), LONDON, OCTOBER 10–14, 1988

Representative

Frederick F. Burgess, Jr., Captain, Chief, Maritime and International Law Division, Office of Chief Counsel,

United States Coast Guard, Department of Transportation

Alternate Representatives

Robert C. Blumberg, Deputy Director, Office of Ocean Law and Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Frederick Mr. Rosa, Jr., Lieutenant Commander, International Law Division, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Adviser

Michael D. Morrissette, Chief, Hazard Evaluation Section, Hazardous Materials Branch, Marine Technical and Hazardous Materials Division, United States Coast Guard, Department of Transportation

Private Sector Advisers

David W. Carroll, Director, Environmental Programs, Chemical Manufacturers Association, Washington, DC

Ernest J. Corrado, President, American Institute of Merchant Shipping, Washington, DC

Neil D. Hobson, Chairman, Maritime Law Association Committee on Transportation of Hazardous Substances, New Orleans, Louisiana

UNITED STATES OBSERVER DELEGATION TO THE CONFERENCE OF PARTIES TO THE CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS (CMS), GENEVA, OCTOBER 11–14, 1988

Principal Observer

Lawrence N. Mason, Chief, Office of International Affairs, United States Fish and Wildlife Service, Department of the Interior

Observer

Mark W. Willis, Office of Environment, Health and Natural Resources, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Private Sector Observer

Carroll D. Besadny, Secretary, Department of Natural Resources, State of Wisconsin, Madison, Wisconsin

UNITED STATES DELEGATION TO THE 23RD SESSION OF THE LEGAL AND ADMINISTRATIVE COMMITTEE UNION FOR THE PROTECTION OF NEW PLANT VARIETIES (UPOV), GENEVA, OCTOBER 11–14, 1988

Representative

H. Dieter Hoinkes, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce

Private Sector Advisers

Dale L. Porter, General Counsel, Pioneer Hybrid International, Inc., Des Moines, Iowa

William Schapaugh, Executive Vice President, American Seed Trade Association, Washington, DC

Sidney Williams, General Counsel for Patents, Upjohn Company, Kalamazoo, Michigan

UNITED STATES DELEGATION TO THE COMMITTEE FOR THE COORDINATION OF OFFSHORE PROSPECTING FOR MINERAL RESOURCES IN THE SOUTH PACIFIC (CCOP/SOPAC), 17TH SESSION, ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC (ESCAP), SUVA, OCTOBER 13–22, 1988

Representative

William A. Erb, Director, Office of Marine Science and Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Adviser

H. Gary Greene, Branch of Pacific Marine Geology, United States Geological Survey, Menlo Park, California

Private Sector Advisers

Louis Garrison, Deputy Director, Ocean Drilling Program, Texas A & M University, College Station, Texas

Charles E. Helsley, Director, Hawaiian Institute of Geophysics, University of Hawaii, Honolulu, Hawaii

Jacqueline Mammericx, Geological Research Division, Scripps Institution of Oceanography, La Jolla, California

UNITED STATES DELEGATION TO THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE (UNCITRAL), WORKING GROUP ON THE NEW INTERNATIONAL ECONOMIC ORDER (NIEO), VIENNA, AUSTRIA, OCTOBER 17–28, 1988

Representative

Don Wallace, Jr., Professor, Georgetown Law Center, Washington, DC

Alternate Representative

Harold S. Burman, Office of Private International Law, Office of the Legal Adviser, Department of State

Private Sector Adviser

Philip Stansbury, Covington and Burling, Washington, DC

UNITED STATES DELEGATION TO THE GROUP OF EXPERTS ON THE TRANSPORT OF PERISHABLE FOODSTUFFS, 44TH SESSION, ECONOMIC COMMISSION FOR EUROPE (ECE), GENEVA, OCTOBER 17–21, 1988

Representative

Brian M. McGregor, ATP Manager, Office of Transportation, Department of Agriculture

Advisers

David Patterson, United States Mission, Geneva

James A. Truran, United States Mission, Geneva

Private Sector Adviser

Charles Grogen, Manager, Equipment Engineering, Sea-Land Service Inc., Edison, New York

UNITED STATES DELEGATION TO THE 38TH SESSION OF THE CONSULTATIVE COMMITTEE AND THE 22ND SESSION OF THE COUNCIL OF THE UNION FOR THE PROTECTION OF NEW PLANT VARIETIES (UPOV), GENEVA, OCTOBER 17–19, 1988

Representative

H. Dieter Hoinkes, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce

Adviser

Joseph Richardson, United States Mission, Geneva

Private Sector Advisers

Dale L. Porter, General Counsel, Pioneer Hybrid International, Inc., Des Moines, Iowa

William Schapaugh, Executive Vice President, American Seed Trade Association, Washington, DC

Sidney Williams, General Counsel for Patents, Upjohn Company, Kalamazoo, Michigan

UNITED STATES DELEGATION TO THE INTERGOVERNMENTAL GROUP ON BANANAS, 10TH SESSION, FOOD AND AGRICULTURE ORGANIZATION (FAO), ROME, OCTOBER 18–21, 1988

Representative

Diana Tasnadi, Primary Commodities Division, Department of Commerce

Alternate Representative

Richard M. Seifman, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

Private Sector Advisers

Warren G. Breck, International Banana Specialist, International Banana Association, Inc., Washington, DC
Robert M. Moore, President, International Banana Association, Inc., Washington, DC

UNITED STATES DELEGATION TO THE INSURANCE COMMITTEE AND ITS WORKING GROUP ON INSURANCE STATISTICS; AD HOC GROUP ON LIBERALIZATION: AND WORKING GROUP ON INSURANCE IN DEVELOPING COUNTRIES ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), PARIS, OCTOBER 24–28, 1988

Representative

Wray 0. Candilis, Office of Service Industries, Department of Commerce

Adviser

Allen Rodriguez, US Mission to the OECD, Paris

Private Sector Advisers

James P. Corcoran, Superintendent of Insurance, State of New York, Albany, New York
Thomas R. Fenwick, Thomas Fenwick Associates, Washington, DC
Harold D. Skipper, Jr., Professor of Risk Management and Insurance, Georgia State University, Atlanta, Georgia

UNITED STATES DELEGATION TO THE SEVENTH SESSION OF THE COMMISSION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES AND THE SCIENTIFIC COMMITTEE HOBART, TASMANIA, OCTOBER 24–NOVEMBER 4, 1988

Representative

R. Tucker Scully, Director, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Alternate Representative

Robert Hofman, Senior Scientific Adviser, Marine Mammal Commission

Advisers

Raymond Arnaudo, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Dr. Polly Penhale, Program Manager, Polar Biology Program, Division of Polar Programs, National Science Foundation

Private Sector Adviser

Bruce S. Manheim, Environmental Defense Fund, Washington, DC

UNITED STATES DELEGATION TO THE MEETING OF EXPERTS TO DRAFT A PROTOCOL ON SPECIALLY PROTECTED AREAS AND WILDLIFE UNDER THE CARTAGENA CONVENTION UNITED NATIONS ENVIRONMENT PROGRAM (UNEP), ST. CROIX, OCTOBER 24–26, 1988

Representative

Walter B. Lockwood, Jr., Director, Office of Ecology, Health and Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Alternate Representative

Robert Baker, Regional Director, Southeast, National Park Service, Department of Interior

Advisers

Daniel M. Bodansky, Office of the Legal Adviser, Department of State
Nancy Foster, Director, Protected Resources and Habitat, National Oceanic and Atmospheric Administration, Department of Commerce
Pedro Gelabert, Caribbean Field Office, Environmental Protection Agency
Herbert Raffaele, Office of International Affairs, United States Fish and Wildlife Service, Department of Interior
Carolyn Rogers, Marine Biologist, National Park Service, Department of Interior
Joseph Uravitch, Chief, Marine Estuarine Management Division, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Advisers

Melvin Goodwin, Director, South Carolina Sea Grant Program, Charleston, South Carolina
Laverne Ragster, Professor of Marine Biology, University of the Virgin Islands, St. Thomas, U.S. Virgin Islands
Jose Vivaldi, Endangered Species Coordinator, Department of Natural Resources, Commonwealth of Puerto Rico

UNITED STATES DELEGATION TO THE 56TH SESSION OF THE MARITIME SAFETY COMMITTEE INTERNATIONAL MARITIME ORGANIZATION (IMO), LONDON, OCTOBER 24–28, 1988

Representative

Joel D. Sipes, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Daniel F. Sheehan, Technical Adviser, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

James M. MacDonald, Chief, Merchant Vessel Inspection Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Thomas H. Robinson, Captain, Chief, Port Safety and Security Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
John S. Spencer, Chief, Naval Architecture Branch, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Gerard P. Yoest, Deputy Chief, International Affairs Staff, United States Coast Guard, Department of Transportation

Private Sector Adviser

Donald Liu, American Bureau of Shipping, Paramus, New Jersey

UNITED STATES DELEGATION TO THE UNITED NATIONS REVIEW CONFERENCE ON THE CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, GENEVA, OCTOBER 27–NOVEMBER 18, 1988

Representative

Jeffrey N. Shane, Deputy Assistant Secretary for Transportation Affairs, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Thomas J. Wajda, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Advisers

Gregory Hall, Office of International Activities, Maritime Administration, Department of Transportation
C. William Johnson, Office of Service Industries, Department of Commerce
Stephen M. Miller, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State
Peter Schumaier, Maritime Policy Staff, Department of Transportation

Congressional Staff Advisers

Barry Kalinsky, Merchant Marine Subcommittee, Committee on Commerce, Science and Transportation, United States Senator
Gerald Seifert, Merchant Marine and Fisheries Committee, United States House of Representatives

Private Sector Advisers

Richard V. Collins, Shippers for Competitive Ocean Transport, Washington, DC
H. Clayton Cook, Jr., Maritime Law Association, Washington, DC
Rebecca Lodmell Litton, Transportation Institute, Camp Spring, Maryland
Philip J. Loree, Federation of American Controlled Shipping, New York, New York
Albert E. May, United Shipowners of America, Washington, DC
Michael M. Murphy, United Ship Owners of America, Washington, DC
Donald O'Hare, United Shipowners of America, Washington, DC
William P. Verdon, United Shipowners of America, Washington, DC
Julian P. Walters, Joint Maritime Congress, Washington, DC

UNITED STATES DELEGATION TO THE XXIV MEETING OF THE PERMANENT EXECUTIVE COMMITTEE, PAN AMERICAN HIGHWAY CONGRESS (PAHC), ORGANIZATION OF AMERICAN STATES (OAS), BUENOS AIRES, OCTOBER 31–NOVEMBER 4, 1988

Representative

David K. Phillips, Associate Administrator for Research, Development and Technology, Federal Highways Administration, Department of Transportation

Alternate Representative

Gregory C. Speier, International Highway Programs Office, Federal Highways Administration, Department of Transportation

Private Sector Advisers

Lupe Carvajal, Consultant, Federal Highways Administration, Phoenix, Arizona
Charles Wallace, Consultant, Federal Highways Administration, Gainsville, Florida

UNITED STATES DELEGATION TO THE INTERNATIONAL CONFERENCES ON THE GLOBAL MARITIME DISTRESS AND SAFETY SYSTEM, AND THE GLOBAL MARITIME DISTRESS AND SAFETY SYSTEM PROTOCOL, INTERNATIONAL MARITIME ORGANIZATION (IMO), LONDON, OCTOBER 31–NOVEMBER 11, 1988

Global Maritime Distress and Safety System (Oct. 31–Nov. 11, 1988)

Representative

Joel D. Sipes, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Dana W. Starkweather, Captain, Chief, Telecommunication Systems Division, United States Coast Guard, Department of Transportation

Advisers

Steven C. Hall, Chief, Hydrographic Requirements Division, Defense Mapping Agency
Joseph D. Hersey, Jr., Chief, Marine Radio Policy Branch, United States Coast Guard, Department of Transportation
Robert Horowitz, Maritime and International Law Division, Office of the Chief Counsel, United States Coast Guard, Department of Transportation
William Luther, International Adviser, Field Operations Bureau, Federal Communications Commission
Robert McIntyre, Engineer, Private Radio Bureau, Federal Communications Commission
Daniel F. Sheehan, Technical Adviser, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Gerard P. Yoest, Deputy Chief, International Affairs Staff, United States Coast Guard, Department of Transportation

Private Sector Advisers

Don Derryberry, Exxon Company, USA, Houston, Texas
John Fueschel, Captain, USCG. (Ret.), Director of Government Marketing, COMSAT Space Communications Division, Clarksburg, Maryland
Edward V. Kelly, Vice President, Marine Engineers Beneficial Association, Associated Maritime Officers, Washington, DC

Global Maritime Distress and Safety System Protocol (Oct. 31–Nov. 11, 1988)

Representative

Joel D. Sipes, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Dana W. Starkweather, Captain, Chief, Telecommunication Systems Division, United States Coast Guard, Department of Transportation

Advisers

Steven C. Hall, Chief, Hydrographic Requirements Division, Defense Mapping Agency
Joseph D. Hersey, Jr., Chief, Marine Radio Policy Branch, United States Coast Guard, Department of Transportation
Robert Horowitz, Maritime and International Law Division, Office of the Chief Counsel, United States Coast Guard, Department of Transportation
William Luther, International Adviser, Field Operations Bureau, Federal Communications Commission
Robert McIntyre, Engineer, Private Radio Bureau, Federal Communications Commission
Daniel F. Sheehan, Technical Adviser, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Gerard P. Yoest, Deputy Chief, International Affairs Staff, United States Coast Guard, Department of Transportation

Private Sector Advisers

Don Derryberry, Exxon Company, USA, Houston, Texas
John Fueschel, Captain, USCG. (Ret.), Director of Government Marketing, COMSAT Space Communications Division, Clarksburg, Maryland
Edward V. Kelly, Vice President, Marine Engineers Beneficial Association, Associated Maritime Officers, Washington, DC

UNITED STATES DELEGATION TO THE 35TH ANNUAL MEETING OF THE INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION (INPFC), TOKYO, JAPAN, OCTOBER 31–NOVEMBER 4, 1988

Commissioners

The Honorable (Head of Delegation) Clement V. Tillion, Fisherman, Halibut Cove, Alaska
The Honorable Dayton L. Alverson, Managing Partner, Natural Resources Consultants, Inc., Seattle, Washington
The Honorable James Brooks, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
The Honorable Richard B. Lauber, Vice President and Alaska Manager, Pacific Seafood Processor's Association, Juneau, Alaska

Congressional Staff Advisers

James K. McCallum, Staff Member, Committee on Merchant Marine and Fisheries, United States House of Representatives
Rodney Moore, Staff Member, Subcommittee on Fisheries, Committee on Merchant Marine and Fisheries, United States House of Representatives
Jeffrey Pike, Staff Member, Subcommittee on Fisheries, Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, United States House of Representatives

Advisers

Robert J. Ford, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
George Herrforth, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
James Salisbury, Regional Fisheries Attaché, United States Embassy, Tokyo

Private Sector Advisers

David L. Allison, Attorney, Juneau, Alaska
Robert Alverson, Fishing Vessel Owners Association, Seattle, Washington
David Benton, Alaska Department of Fish and Game, Juneau, Alaska
Joan L. Bergy, Consumer Adviser, Mercer Island, Washington
Alvin P. Burch, Fisherman, Kodiak, Alaska
Sam Cotton, U.S. Advisory Committee, International North Pacific Fisheries Commission, Juneau, Alaska
George P. Easley, Fisherman, Astoria, Oregon
John Gilbert, Vice Chairman, Advisory Committee, Seattle, Washington
William E. Gilbert, Fisherman, Bainbridge Islands, Washington
Gordon Jensen, Petersburg Vessel Owners Association, Petersburg, Alaska
Adelheid Herrman, U.S. Advisory Committee, International North Pacific Fisheries Commission, Juneau, Alaska
M.E. Islieb, Fisherman, Juneau, Alaska
Charles H. Meacham, Fisheries Consultant, Anchorage, Alaska
Henry Mitchell, Director, Bering Sea Fishermen's Association, Anchorage, Alaska
Robert H. Moss, Chairman, Advisory Committee, Homer, Alaska
Steve Pennoyer, Deputy Commissioner, Alaska Department of Fish and Game, Juneau, Alaska
Hugh Reilly, Fisherman, Seattle, Washington
Keith Specking, Fisherman, Hope, Alaska
Jeffrey R. Stephan, United Fishermen's Marketing Association, Kodiak, Alaska
Jane A. Sturgulewski, Alaska State Senator, Anchorage, Alaska
Fred Zharoff, Senator, Alaska State Legislature, Kodiak, Alaska
Office of International Conferences, Department of State, November 7, 1988

UNITED STATES DELEGATION TO THE 35TH ANNUAL MEETING OF THE INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION (INPFC), TOKYO, JAPAN, OCTOBER 31–NOVEMBER 4, 1988

Commissioners

The Honorable (Head of Delegation), Clement V. Tillion, Fisherman, Halibut Cove, Alaska
The Honorable, Dayton L. Alverson, Managing Partner, Natural Resources Consultants, Inc., Seattle, Washington
The Honorable, James Brooks, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
The Honorable, Richard B. Lauber, Vice President and Alaska Manager, Pacific Seafood Processor's Association, Juneau, Alaska

Congressional Staff Advisers

James K. McCallum, Staff Member, Committee on Merchant Marine and Fisheries, United States House of Representatives
Rodney Moore, Staff Member, Subcommittee on Fisheries, Committee on Merchant Marine and Fisheries, United States House of Representatives
Jeffrey Pike, Staff Member, Subcommittee on Fisheries, Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, United States House of Representatives

Advisers

Robert J. Ford, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
George Herrforth, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
James Salisbury, Regional Fisheries Attache, United States Embassy, Tokyo

Private Sector Advisers

David L. Allison, Attorney, Juneau, Alaska
Robert Alverson, Fishing Vessel Owners Association, Seattle, Washington
David Benton, Alaska Department of Fish and Game, Juneau, Alaska
Joan L. Bergy, Consumer Adviser, Mercer Island, Washington
Alvin P. Burch, Fisherman, Kodiak, Alaska
Sam Cotton, U.S. Advisory Committee, International North Pacific Fisheries Commission, Juneau, Alaska
George P. Easley, Fisherman, Astoria, Oregon
John Gilbert, Vice Chairman, Advisory Committee, Seattle, Washington
William E. Gilbert, Fisherman, Bainbridge Islands, Washington
Gordon Jensen, Petersburg Vessel Owners Association, Petersburg, Alaska
Adelheid Herrman, U.S. Advisory Committee, International North Pacific Fisheries Commission, Juneau, Alaska
M. E. Islieb, Fisherman, Juneau, Alaska
Charles H. Meacham, Fisheries Consultant, Anchorage, Alaska
Henry Mitchell, Director, Bering Sea Fishermen's Association, Anchorage, Alaska
Robert H. Moss, Chairman, Advisory Committee, Homer, Alaska
Steve Pennoyer, Deputy Commissioner, Alaska Department of Fish and Game, Juneau, Alaska
Hugh Reilly, Fisherman, Seattle, Washington
Keith Specking, Fisherman, Hope, Alaska
Jeffrey R. Stephan, United Fishermen's Marketing Association, Kodiak, Alaska

Jane A. Sturgulewski, Alaska State Senator, Anchorage, Alaska
Fred Zharoff, Senator, Alaska State Legislature, Kodiak, Alaska

UNITED STATES DELEGATION TO THE MEETING OF THE EXECUTIVE BODY OF THE CONVENTION ON LONG RANGE TRANSBOUNDARY AIR POLLUTION (LRTAP), ECONOMIC COMMISSION FOR EUROPE (ECE), SOFIA, OCTOBER 31–NOVEMBER 4, 1988

Representative

The Honorable Lee M. Thomas, Administrator, Environmental Protection Agency

Alternate Representative

William A. Nitze, Deputy Assistant Secretary for Environment, Health and Natural Resources, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Francis X. Cunningham, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Scott A. Hajost, Acting Associate Administrator, Environmental Protection Agency
Stanley J. Koehler, International Air Expert, Office of International Activities, Environmental Protection Agency
Courtney Riordan, Director, Office of Environmental Processes and Effects Research, Environmental Protection Agency
Edward R. Williams, Director, Office of Environmental Analysis, Department of Energy

Congressional Staff Advisers

David B. Finnegan, Majority Staff Counsel, Committee on Energy and Commerce, United States House of Representatives
Teresa A. Gorman, Minority Staff Economist, Committee on Energy and Commerce, United States House of Representatives

Private Sector Adviser

Robert A. Beck, Director of Clean Air, Fossil Fuels and Natural Resources, Edison Electric Institute, Washington, DC
Jon M. Heuss, General Motors, Warren, Michigan

UNITED STATES DELEGATION TO THE INTERNATIONAL CONFERENCE ON THE HARMONIZED SYSTEM OF SURVEY AND CERTIFICATION INTERNATIONAL MARITIME ORGANIZATION (IMO), LONDON, OCTOBER 31–NOVEMBER 11, 1988

Representative

Joel D. Sipes, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Joseph Angelo, Assistant Chief, Merchant Vessel Inspection and Documentation Division, United States Coast Guard, Department of Transportation
John S. Spencer, Chief, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Advisers

Joseph Cox, Vice President, American Institute of Merchant Shipping, Washington, DC
James Dolan, Vice President, American Bureau of Shipping, Paramus, New Jersey

UNITED STATES DELEGATION TO THE 11TH REGULAR MEETING OF THE INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS (ICCAT), MADRID, NOVEMBER 2–16, 1988

Commissioners

The Honorable Carmen J. Blondin (Head of Delegation), Deputy Assistant Secretary for International Trade, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
The Honorable Michael B. Montgomery, San Marino, California
The Honorable Leon J. Weddig, National Fisheries Institute, Washington, DC

Advisers

Bradford E. Brown, Southeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
David Crestin, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Brian S. Hallman, Deputy Director, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Rebecca Rootes, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Richard Stone, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Walter Nelson, Southeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Gordon C. Broadhead, Living Marine Resources, Incorporated, San Diego, California

UNITED STATES DELEGATION TO THE INTERNATIONAL JUTE ORGANIZATION (IJO) TENTH COUNCIL SESSION, NEW DELHI, NOVEMBER 4–8, 1988

Representative

William Falkner, Economic Counselor, United States Embassy, Dhaka

Alternate Representatives

Douglas Hartwick, Economic Officer, U.S. Embassy, New Delhi
Patricia Haslach, Agricultural Attache, U.S. Embassy, New Delhi

Private Sector Advisers

Carroll B.Hart, Jr., Belton Industries Inc., Belton, South Carolina
James McCowan, Vice President, Belton Industries Inc., Belton, South Carolina

UNITED STATES DELEGATION TO THE COMMITTEE ON TUNGSTEN, 20TH SESSION, UN CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD), GENEVA, NOVEMBER 7–11, 1988

Representative

Frederick W. Siesseger, Director, International Resources Division, Department of Commerce

Alternate Representative

Christina Lund, Office of the Deputy U.S. Trade Representative, Geneva

Advisers

Karen Malzahn, Industrial and Strategic Materials Division, Bureau of Economic and Business Affairs, Department of State
Gerald R. Smith, Bureau of Mines, Department of Interior

Private Sector Advisers

Donald R. Bernens, Vice President of Administration, Teledyne Firth, Lavergne, Tennessee
Peter K. Johnson, Administrative Director, Refractory Metals Association, Princeton, New Jersey
Philip T. Stafford, Marketing Manager, Curtis Tungsten Inc., Upland, California

UNITED STATES DELEGATION TO THE MEETING OF THE INTERNATIONAL TROPICAL TIMBER COUNCIL AND COMMITTEES, INTERNATIONAL TROPICAL TIMBER ORGANIZATION, YOKOHAMA, NOVEMBER 9–16, 1988

Representative

John Medeiros, Director, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Advisers

Stephanie Caswell, Office of Environment and Natural Resources, Bureau of Oceans and International Environment and Scientific Affairs, Department of State
Thomas Engle, Economic Officer, U.S. Embassy, Tokyo
Ian Morrison, Research /Forester, Agency for International Development, Washington, DC
Diana Tasnadi, Primary Commodities Division, Department of Commerce

Private Sector Advisers

Robert Buschbacher, Director, Tropical Forestry Program, World Wildlife Fund, Washington, DC
Robert R. Maeglin, Coordinator, Tropical Forestry Research, Forest Products Laboratory, Madison, Wisconsin
Richard C. Newman, President, Plywood Tropics USA, Inc., Portland, Oregon

UNITED STATES DELEGATION TO THE STEEL COMMITTEE WORKING PARTY, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), PARIS, NOVEMBER 15–16, 1988

Representative

Ralph Thompson, Director, Iron and Steel Division, Bureau of Industrial Economics, International Trade Administration, Department of Commerce

Advisers

Jean Bonilla, Office of Special Trade Activities, Bureau of Economic and Business Affairs, Department of State
Jane Richards, Office of International Economic Affairs, Bureau of International Labor Affairs, Department of Labor
Appropriate USOECD Mission Officer, Paris

Private Sector Advisers

Frank Fenton, Vice President, International Trade and Economics, American Iron and Steel Institute, Washington, DC
Peter B. Mulloney, Vice President and Assistant to the Chairman, United States Steel Corporation, Pittsburgh, Pennsylvania
John J. Sheehan, Assistant to the President and Director of Legislative Affairs, United Steelworkers of America, Washington, DC

UNITED STATES DELEGATION TO THE COMMITTEE ON THE CHALLENGES OF MODERN SOCIETY, NORTH ATLANTIC TREATY ORGANIZATION (NATO), BRUSSELS, NOVEMBER 14–15, 1988

Representative

Alan B. Sielen, Director, Multilateral Staff, Office of International Activities, Environmental Protection Agency

Advisers

William T. Harris, CCMS Officer, Bureau of European and Canadian Affairs, Department of State
Frederick Kutz, Office of Research and Development, Environmental Protection Agency
Lynn Schoolfield, CCMS Projects Officer, Office of International Activities, Environmental Protection Agency
Christine Shelly, CCMS Officer, Economic Section, U.S. Mission to NATO, Brussels

Private Sector Adviser

William Whittaker, Carnegie-Mellon University, Pittsburgh, Pennsylvania

UNITED STATES DELEGATION TO THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO), COMMITTEE OF EXPERTS ON INTELLECTUAL PROPERTY IN RESPECT OF INTEGRATED CIRCUITS, FOURTH SESSION, GENEVA, SWITZERLAND, NOVEMBER 7–22, 1988

Representative

Ralph Oman, Register of Copyrights, Library of Congress

Alternate Representatives

Michael Keplinger, Attorney Adviser, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce
Dorothy Schrader, General Counsel, Copyright Office, Library of Congress

Adviser

William H. Skok, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State

Congressional Staff Adviser

David Keaney, Chief Counsel, Foreign Relations Committee, United States Senate

Private Sector Advisers

Edward Brown, Computer and Business Equipment Manufacturer's Association, Washington, DC
Edward Cray, Semiconductor Industries Association, Cupertino, California

UNITED STATES DELEGATION TO THE WORKING PARTY SIX ON SHIPBUILDING, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), TOKYO AND KYONG–JU, KOREA, NOVEMBER 14–23, 1988

Tokyo Meeting November 14–17, 1988

Representative

Alford W. Cooley, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Adviser

Simon Schuchat, Economic Section, United States Embassy, Tokyo

Private Sector Advisers

David H. Klinges, President, Marine Construction Group, Bethlehen Steel Corporation, Bethlehem, Pennsylvania
John J. Stocker, President, Shipbuilders Council of America, Washington, DC

Kyong-Ju, Korea Meeting November 20–23, 1988

Representative

Alford W. Cooley, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Adviser

Patricia Hanigan, Economic Section, United States Embassy, Seoul

UNITED STATES DELEGATION TO THE INTERNATIONAL TELECOMMUNICATION UNION (ITU), INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT), IXTH PLENARY ASSEMBLY, MELBOURNE, AUSTRALIA, NOVEMBER 14–25, 1988

Representative

Earl S. Barbely, Director, Office of Telecommunication and Information Standards, International Communications and Information Policy, Department of State

Alternate Representatives

Douglas V. Davis, Senior Attorney/Adviser, Common Carrier Bureau, International Conference Staff, Federal Communications Commission
Gary M. Fereno, Deputy Director, Office of Telecommunication and Information Standards, International Communications and Information Policy, Department of State
William E. Utlaut, Associate Administrator, National Telecommunications and Information Administration, Department of Commerce

Advisers

Richard C. Beaird, Deputy United States Coordinator, International Communications and Information Policy, Department of State
Robert M. Fenichel, Office of Technology and Standards, National Communications System
Wendell R. Harris, Assistant Bureau Chief/International, Common Carrier Bureau, Federal Communications Commission
Gerard T. Keeler, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce
Richard E. Shrum, Director, Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State
Milton Weiner, Adviser, Office of Telecommunication and Information Standards, International Communications and Information Policy, Department of State

Private Sector Advisers

Robert M. Amy, Manager, Network Standards, IBM Corporation, Research Triangle Park, North Carolina
David R. Cairns, Director, Technology, Northern Telecom, Inc., Mountain View, California
Donald P. Casey, Director, Regulatory Affairs, Western Union Corporation, Upper Saddle River, New Jersey
Lawrence Cordocovi, Vice President, International Services, RCA Globcom, Inc., Piscataway, New Jersey
Cecil R. Crump, District Manager, AT&T Communications, Morristown, New Jersey
Edmond N. Elowe, President, ELOCORP International, Brunswick, Maine
John W. Gurzick, Sr., Manager, Technical Standards, MCI Telecommunications Corporation, McLean, Virginia
Richard J. Holleman, Director, Standards Practices, IBM Corporation, Purchase, New York
Ralph E. Jensen, Manager, Technical Standards, Bell Communications Research, Red Bank, New Jersey
Anita Kaufman, CCITT Representative, Western Union International, Inc., Rye Brook, New York
Ivor N. Knight, Director, Comsat Corporation, Washington, DC
Henry Marchese, Division Manager, Technical Standards, AT&T, Bedminster, New Jersey
Theodore H. Myer, Director, Standards, Telenet Communications, Reston, Virginia
John O'Boyle, Vice President, Private Line Services, World Communication International, New York, New York
Phillip Onstad, Director, Control Data Corporation, Edison, New Jersey
John S. Ryan, Chairman, CCITT Committee XI, AT&T Bell Laboratories, Holmdel, New Jersey
Robert Smith, Associate Director, NYNEX, Boston, Massachusetts
Frances S. Urbany, Director, International, BellSouth Corporation, Washington, DC
Michael E. Varrassi, Technical Adviser, Federal Express Corporation, Memphis, Tennessee
Richard Weadon, Manager, Technical Standards, Southwest Bell Corporation, St. Louis, Missouri

UNITED STATES DELEGATION TO THE FIRST MEETING OF THE AERONAUTICAL MOBILE-SATELLITE SERVICE PANEL, INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO), MONTREAL, NOVEMBER 7–25, 1988

Member

Victor E. Foose, Program Manager, Advanced System Design Service, Federal Aviation Administration

Alternate Member

Robert D. Till, Technical Program Manager, Airborne Systems Technical Branch, Federal Aviation Administration, Atlantic City, New Jersey

Advisers

Larry Reed, Electronics Engineer, International Liaison Staff, Private Radio Bureau, Federal Communications Commission
George Sakai, Assistant Manager, Spectrum Management Division, Federal Aviation Administration

Private Sector Advisers

Richard Bowers, Manager, Navigation and Flight Systems, Air Transportation Association of America Washington, DC
Joseph R. Child, Satellite System Design Consultant, CTA, Inc., McLean, Virginia
Victor A. Orlando, MIT Lincoln Laboratory, Lexington, Massachusetts
Walter Scales, MITRE Corporation, McLean, Virginia
George Swetnam, MITRE Corporation, McLean, Virginia
M. Loren Wood, MIT Lincoln Laboratory, Lexington, Massachusetts

UNITED STATES DELEGATION TO THE COUNCIL AND COMMITTEE MEETINGS, INTERNATIONAL NATURAL RUBBER ORGANIZATION (INRO), KUALA LUMPUR, NOVEMBER 14–25, 1988

INRO Council, Buffet Stock, Other Measures and Statistics Committees

Representative:

Frederic W. Siesseger, Director, Primary Commodities Division, Department of Commerce

Alternate Representative:

Jeffrey R. Cunningham, Industrial and Strategic Materials Division, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Adviser:

A. David Miller, Commodities Officer, U.S. Embassy, Kuala Lumpur

Administrative Committee

Representative:

Jeffrey R. Cunningham, Industrial and Strategic Materials Division, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Alternate Representative:

A. David Miller, Commodities Officer, U.S. Embassy, Kuala Lumpur

Private Sector Advisers

H. Ross Miller, Managing Director, Goodrich Company Private, Ltd., Singapore

Charles B. Pettit, Managing Director, Firestone Singapore Private, Ltd., Singapore
James N. Walsh, Director of Natural Rubber Purchases, Goodyear Tire and Rubber Company, Akron, Ohio

UNITED STATES DELEGATION TO THE 2nd INTERGOVERNMENTAL CONFERENCE OF MINISTERS AND SENIOR OFFICIALS RESPONSIBLE FOR PHYSICAL EDUCATION AND SPORTS, UN EDUCATION, SCIENTIFIC, AND CULTURAL ORGANIZATION (UNESCO), MOSCOW, NOVEMBER 21–25, 1988

Representative

Richard T. Miller, U.S. Observer to the UN Education, Scientific, and Cultural Organization (UNESCO), Paris

Private Sector Advisers

Simon A. McNeely, Executive Director, Society of State Directors of Health, Physical Education and Recreation, Washington, DC
Carl A. Troester, Secretary General, International Council of Health, Physical Education and Sport, Washington, DC

UNITED STATES DELEGATION TO THE INTERNATIONAL TELECOMMUNICATION UNION (ITU), WORLD ADMINISTRATIVE TELEGRAPH AND TELEPHONE CONFERENCE (WATTC–88), MELBOURNE, AUSTRALIA, NOVEMBER 28–DECEMBER 9, 1988

Representative

The Honorable, Arthur C. Latno, Jr., Ambassador, Chairman, United States Delegation, Pacific Telesis, San Francisco, California

Alternate Representative

Carol Balassa, Office of the United States Trade Representative, Executive Office of the President
Earl S. Barbely, Director, Office of Telecommunication and Information Standards, Bureau of International Communications and Information Policy, Department of State
Jack W. Blumenstein, Director, Telecommunications Practices, IBM, Purchase, New York
Daniel H. Clare, III, Executive Director, United States Delegation, International Communications and Information Policy, Department of State
Cecil R. Crump, International Organizations and Standards, AT&T, Morristown, New Jersey
R.T. Gregg, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce
Wendell R. Harris, Assistant Bureau Chief/International, Common Carrier Bureau, Federal Communications Commission
Phillip C. Onstad, Director, Telecommunications and Information Policy, Control Data Corporation, Edison, New Jersey

Congressional Staff Advisers

Ralph B. Everett, Chief Counsel and Staff Director, Commerce, Science and Transportation Committee, United States Senate
Regina Markey Keeney, Subcommittee on Communications, Commerce, Science and Transportation Committee, United States Senate
Walter B. McCormick, Jr., Minority General Counsel, Commerce, Science and Transportation Committee, United States Senate
John D. Windhausen, Jr., Subcommittee on Communications, Commerce, Science and Transportation Committee, United States Senate

Advisers

Norman L. Achilles, Bureau of International Communications and Information Policy, Department of State
Richard Beaird, Deputy Assistant Secretary, Bureau of International Communications and Information Policy, Department of State
Gerald Brock, Chief, Common Carrier Bureau, Federal Communications Commission
Donald R. Cleveland, Embassy of the United States, Canberra, Australia
Douglas V. Davis, Senior Attorney/Advisor, Common Carrier Bureau, International Conference Staff, Federal Communications Commission
James D. Earl, Office of the Legal Adviser, Department of State
Michael T. N. Fitch, Office of the Chairman, Federal Communications Commission
Dennis Patrick, Chairman, Federal Communications Commission
Richard E. Shrum, Director, Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State
Donald C. Tice, Director, International Programs and Technology Affairs, National Security Council, Executive Office of the President
Thomas V. Wasilewski, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce
Milton Weiner, Bureau of International Communications and Information Policy, Department of State

Private Sector Advisers

David R. Cairns, Director, Technology Standards and Technical Requirements, Northern Telecom Incorporated, Mountain View, California
Warren B. French, Shenandoah Telecommunications Company, Edinburg, Virginia
Kris E. Hutchison, Director, Frequency Management, Aeronautical Radio Incorporated, Annapolis, Maryland
Ivor N. Knight, Director, International Systems Standards, Communications Satellite Corporation, Washington, DC
Leland W. Schmidt, Vice President, Industry Affairs, GTE Service Corporation, Stamford, Connecticut
John J. Smith, Senior Attorney, Digital Equipment Corporation, Maynard, Massachusetts
Robert Smith, Office of Science and Technology, NYNEX Corporation, Boston, Massachusetts
Carmine Taglialatela, MCI, Washington, DC
Dana Theus, Government Affairs Representative, Electronic Data Systems, Washington, DC
Deborah Tumey, International Telecommunications Specialist, CITICORP, New York, New York
Donald L. Walton, Atlantic Richfield Company, Los Angeles, California
Ward White, Vice President, Government and Public Affairs, U.S. Telephone Association, Washington, DC

UNITED STATES DELEGATION TO THE 32ND SESSION OF THE SUBCOMMITTEE ON SHIP DESIGN AND EQUIPMENT, INTERNATIONAL MARITIME ORGANIZATION (IMO), LONDON, DECEMBER 5–9, 1988

Representative

J.C. Maxham, Captain, Chief, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Edward F. Murphy, Commander, Chief, Engineering Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Paul J. Pluta, Captain, Commanding Officer, Marine Safety Office, United States Coast Guard, Department of Transportation, Wilmington, North Carolina
George R. Speight, Commander, Chief, Offshore Activities Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Peter A. Richardson, Lieutenant Commander, Assistant Chief, Engineering Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
John S. Spencer, Chief, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Adviser

James J. Gaughan, American Bureau of Shipping, Paramus, New Jersey

UNITED STATES DELEGATION TO THE 6TH MEETING OF THE REVIEW OF GENERAL CONCEPT OF SEPARATION PANEL, INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO), MONTREAL, NOVEMBER 28–DECEMBER 15, 1988

Member

Jerry W. Bradley, Manager, Requirements and CNS Concepts Branch, Federal Aviation Administration, Department of Transportation

Alternate Member

Brian F. Colamosca, Technical Program Manager, Vertical Separation Standards Program, Federal Aviation Administration, Department of Transportation, Atlantic City, New Jersey

Advisers

Wayne Dean, Air Traffic Control Specialist, Enroute Procedures Branch, Federal Aviation Administration, Department of Transportation
Roy Grimes, Air Navigation Specialist, Flight Technical Programs Branch, Federal Aviation Administration, Department of Transportation
Dale A. Livingston, Technical Program Manager, Horizontal Separation Standards Program, Federal Aviation Administration, Department of Transportation, Atlantic City, New Jersey
Harold W. Sell, Major, Chief, Navigation Systems, United States Air Force Headquarters, Department of the Air Force

Private Sector Advisers

William M. Russell, III, Director, Flight Technology, Air Transport Association, Washington, DC
Alex P. Schust, Manager, Aerospace Systems Group, ARINC Research Corporation, Annapolis, Maryland
Kimberly T. Joyce, Aviation Systems Engineer, ARINC Research Corporation, Annapolis, Maryland

UNITED STATES DELEGATION TO THE 18TH SESSION OF THE FACILITATION COMMITTEE INTERNATIONAL MARITIME ORGANIZATION (IMO), LONDON, DECEMBER 12–16, 1988

Representative

Bruce R. Butterworth, Chief, Trade, Facilitation and Technical Issues Division, Office of International Transportation and Trade, Office of the Secretary, Department of Transportation

Advisers

Charles H. Dudley, United States Embassy, London
Stephen Knox, Program Manager, Office of Inspection and Control, United States Customs Service, Department of the Treasury
Joseph Rachis, Inspector/Program Officer, Office of Commercial Operations, United States Customs Service, Department of the Treasury

Private Sector Adviser

Nicole V. Willenz, Chairman, North American EDIFACT Board, Price Waterhouse, Chicago, Illinois

UNITED STATES DELEGATION TO THE FIFTH SESSION, JOINT INTERGOVERNMENTAL GROUP OF EXPERTS ON MARITIME LIENS AND MORTGAGES INTERNATIONAL MARITIME ORGANIZATION UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD), GENEVA, DECEMBER 12–20, 1988

Representative

Frederick F. Burgess, Captain, Chief, Maritime and International Law Division, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Alternate Representative

Frederick M. Rosa, Lieutenant Commander, Maritime and International Law Division, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Private Sector Adviser

Emery W. Harper, Maritime Law Association of the United States, New York, New York

UNITED STATES DELEGATION TO THE GROUP ON URBAN AFFAIRS—13TH SESSION ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), PARIS, DECMEBER 13–16, 1988

Representative

The Honorable, Theodore R. Britton, Jr., Assistant to the Secretary for International Affairs, Department of Housing and Urban Development

Adviser

Christopher G. Wye, Director, Office of Program Analysis and Evaluation, Department of Housing and Urban Development
Appropriate USOECD, Mission Officer, Paris

Private Sector Adviser

Costis Toregas, President, Public Technology Inc., Washington, DC
Charles A. Vincent, Vice President, Long and Foster Realtors, Fairfax, Virginia

UNITED STATES DELEGATION TO THE COMMITTEE ON GAS–35TH SESSION, GENEVA, JANUARY 16–19, 1989

Representative

Robert S. Price, Director, International Energy Organizations and Policy Development, Department of Energy

Advisers

Jeffrey Hardy, Economist, International Energy Organizations and Policy Development, Department of Energy
Appropriate Officer, U.S. Mission, Geneva

Private Sector Adviser

Stewart B. Kean, President, Utility Propane, Elizabeth, New Jersey

UNITED STATES DELEGATION TO THE 6TH SESSION OF THE ASSEMBLY OF THE INTERNATIONAL MARITIME SATELLITE ORGANIZATION (INMARSAT), LONDON, JANUARY 17–19, 1989

Representative

Randolph C. Earnest, Director, Office of Regulatory and Treaty Affairs, Bureau of International Communications and Information Policy, Department of State

Advisers

James L. Ball, Federal Communications Commission
Hilary J. Cunningham, Office of Regulatory and Treaty Affairs, Bureau of International Communications and Information Policy, Department of State
Gregg Daffner, National Telecommunications and Information Administration, Department of Commerce
Charles Dudley, United States Embassy, London
James Earl, Office of the Legal Adviser, Department of State

Private Sector Advisers

Ronald Mario, Communications Satellite Corporation, Washington, DC
Robert J. Oslund, Director, INMARSAT Relations, Communications Satellite Corporation, Washington, DC

UNITED STATES DELEGATION TO THE 35TH SESSION OF THE SUBCOMMITTEE ON SAFETY OF NAVIGATION, INTERNATIONAL MARITIME ORGANIZATION (IMO), LONDON, JANUARY 23–27, 1989

Representative

James R. White, Captain, Chief, Short Range Aids to Navigation Division, Office of Navigation, United States Coast Guard, Department of Transportation

Alternate Representative

Edward J. LaRue, Jr., Short Range Aids to Navigation Division, Office of Navigation, United States Coast Guard, Department of Transportation

Advisers

James E. Ayres, Scientific Adviser for Hydrography, Defense Mapping Agency, Department of Defense
Thomas J. Meyers, Commander, Chief, Navigation Rules and Information Branch, Office of Navigation, United States Coast Guard, Department of Transportation
Elroy A. Soluri, Chief, Hydrographic Requirements Division, Plans and Requirements Directorate, Defense Mapping Agency, Department of Defense
Christopher M. Young, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Adviser

Mortimer Rogoff, President, Digital Directions Corporation, Washington, DC

[FR Doc. 89–7132 Filed 3–27–89; 8:45 am]
BILLING CODE 4710–19–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–89–11]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: April 17, 1989.

ADDRESS: Send comments on any peition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. ————, 800 Indpendence Avenue, SW., Washington, DC 20591.

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

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 21, 1989

Denise Donohue Hall,

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

Petitions for exemption

Docket No.: 25091
Petitioner: Garrett Engine Division of Allied-Signal Aerospace Company
Regulations Affected: 14 CFR 21.325(b)(1)
Description of Relief Sought: To allow Class I, II, and III products that are assembled and tested by Rolls-Royce Limited in East Kilbride, Scotland, to be eligible for issuance of export airworthiness approvals.
Docket No.: 18881
Petitioner: Experimental Aircraft Association
Regulations Affected: 14 CFR 91.22(a)(1)
Description of Relief Sought/ Disposition: To extend Exemption No. 2689, as amended, that allows members of the International Aerobatic Club to participate and practice for participation in aerobatic competition without meeting the fuel requirement for flight under visual flight rules. *GRANT, March 16, 1989, Exemption No. 2689E.*
Docket No.: 25116
Petitioner: Clark Air Base Aero Club
Sections of the FAR Affected: 14 CFR 91.171 and 91.172
Description of Relief Sought/ Disposition: To allow petitioner to utilize the U.S. Air Force 3rd Tactical Fighter Wing (Maintenance Branch), in lieu of an FAA-certificated repair station, to test and inspect the altimeter, transponder, and automatic pressure altitude reporting instrument on its U.S.-registered general aviation aircraft. *GRANT, March 8, 1989, Exemption No. 5026.*
Docket No.: 25601
Petitioner: McCarthy Air
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow pilots employed by petitioner to perform the preventive maintenance function of removing and/or replacing the passenger seats of aircraft used in FAR Part 135 operations. *GRANT, March 14, 1989, Exemption No. 5028.*
Docket No.: 25623
Petitioner: United States Skyships
Sections of the FAR Affected: 14 CFR 61.135
Description of Relief Sought/ Disposition: To allow petitioner's pilots to obtain a commercial pilot certificate with airship rating without meeting the requirements of: (1) 10 hours of night flight in airships; and (2) 10 hours of instrument time in airships. *GRANT, MARCH 17, 1989, Exemption No. 5031.*
Docket No.: 25648
Petitioner: WestAir Commuter Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To allow petitioner to use certain vendors that are the original

equipment manufacturers of the airframes, engines, and components of its British Aerospace BAe–146–200A aircraft in order to support the maintenance requirements of those aircraft. *GRANT, March 14, 1989, Exemption No. 5027.*

[FR Doc. 89–7236 Filed 3–27–89; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–89–12]

Petitions for Exemption; Summary of Petitions Received

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

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains summaries of petitions received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summaries is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before April 17, 1989.

ADDRESS: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

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

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 22, 1989.

Denise Donohue Hall,

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

Petitions for Exemption

Docket No. 25770
Petitioner: Puerto Rico Police Department Air Ops Office
Regulations Affected: 14 CFR 91.65(a) and (b), 91.70(a), (b), and (c), 91.73(a) and (b), 91.79(c), 91.85(b), and 91.102(a)
Description of Relief Sought: The petitioner requests an exemption from various sections of Part 91 to conduct local law enforcement anti-smuggling operations in conjunction with official U.S. Customs initiatives.
Docket No. 25778
Petitioner: Clark Outdoor Spraying Company, Inc.
Regulations Affected: 14 CFR 91.24
Description of Relief Sought: The petitioner seeks a permanent exemption from the revised navigation equipment requirement for aircraft operations being conducted within a terminal control area that will become effective on July 1, 1989.
Docket No. 25755
Petitioner: Soaring Society of America
Regulations Affected: 14 CFR 91.24(a)(1) and (2), 91.24(c), and TSO–C–74b or TSO–C74c and TSO–C112
Description of Relief Sought: Petitioner requests exemption from section 91.24(a)(1) and (2) and 91.24(c) for gliders and delay of TSO requirement for equipment manufacturers.
Docket No. 23609
Petitioner: Department of General Services
Regulations Affected: 14 CFR 91.109(a)
Description of Relief Sought: Petitioner requests renewal of an existing exemption (No. 4785) from section 91.109, VFR Altitude, for direction of flight while conducting aerial mapping.

[FR Doc. 89–7237 Filed 3–27–89; 8:45 am]
BILLING CODE 4910–13–M

Flight Service Station at Emmet County Airport, Pellston, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on March 1, 1989, the Flight Service Station (FSS) at Emmet County Airport, Pellston, Michigan, was closed. Services to the aviation public in the Pellston flight plan area, formerly provided by the Pellston FSS, will be provided by the new automated flight service station (AFSS) at Lansing, Michigan. This information will be reflected in the FAA organization statement the next time it is reissued.

[Sec. 313 (a), 72 Stat. 752; 49 U.S.C. 1354.]

Timothy P. Forte,

Regional Administrator, Great Lakes Region.

[FR Doc. 89–7248 Filed 3–27–89; 8:45 am]
BILLING CODE 4910–13–M

Fire Resistant Aircraft Sheet and Structural Material

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of cancellation of technical standard order (TSO).

SUMMARY: Technical standard order C17a prescribed the minimum performance standards that fire resistant aircraft sheet and structural material were required to meet to be identified with the marking "TSO–C17a." Aeronautical Material Specification (AMS) 3851A, which was referenced in the TSO, established the flammability standards for aircraft materials and was cancelled in January 1987. Therefore, the cancellation of TSO–C17a will be effective on the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Certification Service—File No. TSO–C17a, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Background

TSO–C17a, which became effective February 1, 1955, prescribed the minimum performance standards for fire resistant aircraft sheet and structural material. This TSO referenced the fire test procedure standards set forth in the Society of Automotive Engineers (SAE), AMS 3851A, "Fire Resistant Properties for Aircraft Materials," revised November 1, 1954.

AMS 3851A was cancelled by the SAE in January 1987. Nevertheless, flammability standards for transport category aircraft currently are covered in FAR § 25.853, § 25.855 and Appendix F of Part 25.

This TSO is being cancelled because of its general lack of usage and the cancellation of AMS 3851A. The fact that only one approval has been granted under this TSO indicates that aircraft manufacturers and modifiers choose to obtain approval of fire resistant material, which is widely used in aircraft designs, through established certification procedures rather than under the TSO system. The cancellation of this TSO, pursuant to FAR § 21.621,

does not preclude the TSO Authorization holder from the continued manufacture of previously approved material after the date of this Notice.

Issued in Washington, DC on February 23, 1989.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89-7249 Filed 3-27-89; 8:45 am]

BILLING CODE 4910-13-M

Grants and Cooperative Agreements; Availability; Airport Improvement Programs, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to consider grant applications; correction.

SUMMARY: On Thursday, March 16, 1989, a Notice of Intent to Consider Grant Applications was printed in the **Federal Register** (54 FR 11105) to replace a similar notice which had been lost in transition. This notice was printed to comply with section 340 of Pub. L. 100-457, which makes available to the Federal Aviation Administration $100,000 for the purpose of issuing grants to carry out emergency repairs to airports sustaining storm-related damage. The lost notice, which had an application submittal date of March 31, was subsequently found and inadvertently published in the **Federal Register** on Friday, March 17, 1989 (54 FR 11317). It is the Federal Aviation Administration's intent to consider grant applications submitted in accordance with the notice in 54 FR 11105 no later than 30 days (April 15, 1989) from the date published in the **Federal Register**.

Issued in Washington, DC on March 23, 1988.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 89-7365 Filed 3-27-89; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. EX89-1; Notice 2]

Panther Motor Car Co. Ltd.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice grants the petition by the Panther Motor Car Company, Ltd., of Byfleet, Surrey, England, for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208, *Occupant Restraint Systems*, on the basis "that compliance would cause [it] substantial economic hardship, and that [it] has, in good faith, attempted to comply with [the] standard from which it requests to be exempted." (15 U.S.C. 1410(a)(1)(A)).

Notice of receipt of the petition was published on January 26, 1989 (54 FR 3898), and an opportunity afforded for comment.

Panther manufacturers the Kallista, a roadster in the style of the 1930's. In the 12-month period October 1987-88 it produced 215 such passenger cars. Ssanyong Motors of Korea, a motor vehicle manufacturer, holds an 80% interest in Panther. The total motor vehicle production of Ssanyong in 1987 was 4660 units. Because the combined total of Panther and Ssanyong vehicle production did not exceed 10,000 units in the year preceding the filing of the petition, the agency found that Panther was eligible to apply for a temporary exemption on the basis that compliance would cause it substantial economic hardship.

Petitioner requested a 2-year exemption from the passive restraint requirements of Standard No. 208 which become effective for convertibles such as the Kallista that are manufactured on and after September 1, 1989. The company is involved in a feasibility study of an airbag system, and has determined that certain major vehicle components will have to be modified to incorporate it. These involve changes to the steering wheel, modification to the steering column to accommodate the steering wheel, the development of knee bolsters to absorb energy and limit femur loads, the development of mounting positions of an accelerator sensor and to determine "trigger level (i.e., utilize several vehicles to determine firing level)", the installation of an electronic module, and seat development to prevent submarining. Computer modeling would be validated by sled testing, and subsequently a slow speed crash test. "Rough" road tests would be required to "check for sensor closure threshhold". Prototypes would follow, and finally validation with the final production system. The company estimates that the above would take at least 24 months and cost 500,000 Pounds Sterling ($900,000 at $1.80 to the Pound). Panther has experienced a "loss on ordinary activities after taxation for the financial year" of slightly over 1,000,000 Pounds Sterling in each year from 1984 through 1987.

According to Panther, failure to receive an exemption would result in its withdrawal from the American market, creating a "significant financial penalty". It intends to comply at the end of the exemption period. Petitioner argued that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act, in that its withdrawal from the American market would render it unable to provide "very necessary parts and service back-up" to existing owners of Panther cars.

One comment was received on the petition. In support of Panther, Isis Imports of San Francisco, importer of the Morgan passenger car, stated that an exemption would be in the public interest, as it would "allow Panther to continue to contribute towards the variety of vehicles on sale in this country during the period in which they are developing their supplemental restraint system." The comment was also made that it is difficult for a small volume manufacturer to acquire the expertise and componentry required for such systems before they are available in volume in the market place, and that none of the major British manufacturers offer air bag systems in their vehicles at the present time.

The agency has decided to grant Panther's petition. In the past, the agency has tended to equate net financial losses over a period of time as constituting a *per se* showing of hardship. Even where a small enterprise manages a net profit, if compliance costs would consume all or much of that profit the agency may find that hardship exists. In the instant case, to require immediate compliance could require an expenditure that is the equivalent of approximately 50% of the net loss experienced in each of the "financial years" 1984 through 1987. In addition, to require immediate compliance would also require a temporary suspension of its sales in the American market, which would diminish petitioner's income. The company's economic position appears more precarious than that of Aston Martin Lagonda which received an exemption from Standard No. 208 in 1987 (52 FR 26760). Aston Martin had realized a slight net profit in the year preceding the filing of its petition, but the expenditure required for conformance would have reduced it by more than 50%. Thus, the agency finds that to require immediate compliance by Panther would create substantial economic hardship within the meaning of the statute.

Panther has provided arguments as to its ongoing efforts to conform, supported by a commenter conversant with the automobile industry in the Panther's (and Aston Martin's) country of origin. These arguments indicate that airbag

technology is not readily available in Great Britain, and that the larger manufacturers have not at this point developed it. In this context, the agency also finds that Panther has in good faith attempted to meet the requirements of the standard from which it requests temporary exemption. Finally, an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act by maintaining the existing diversity of motor vehicles, and affording temporary relief to small manufacturers.

Therefore, in consideration of the foregoing, Panther is hereby granted NHTSA Exemption No. EX89–1 from paragraph S4.1.4 (requiring compliance with S4.1.2.1) of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems*, expiring September 1, 1991.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50)

Issued on: March 22, 1989.

Diane K. Steed,

Administrator.

[FR Doc. 89–7268 Filed 3–27–89; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

[Docket No. NPDA–2, Notice 3]

City of New York; Application for Non-Preemption Determination; Invitation to Comment

SUMMARY: On September 9, 1985, the Department of Transportation denied the application of the City of New York for waiver of statutory preemption of the City's ordinance that effectively bans the transportation of radioactive materials through City limits. On December 8, 1988, the United States District Court for the Southern District of New York vacated the Department's decision denying the City's application and remanded the matter to the Department for a new decision. This Notice reopens the docket in this proceeding and invites public comment in order to update and supplement that docket.

DATES: Comments received on or before April 27, 1989 will be considered before issuance of a decision on the City's application for a waiver of preemption.

ADDRESSES: The application, past agency notices and rulings, and all related correspondence and comments may be reviewed in the RSPA Dockets Branch, Room 8421, 400 Seventh Street SW., Washington, DC 20590. Comments on the application may be submitted to the Dockets Branch at the above address. To ensure proper handling, indicate Docket No. NPDA–2, Notice 3 on your submission. Three copies of each submission are requested.

A copy of each comment must also be sent to: Barry Schwartz, Department of Environmental Protection, City of New York, 2353 Municipal Building, New York, New York 10007. Each comment submitted to the Dockets Branch must include a certification of the fact that a copy has been sent to Mr. Barry L. Schwartz of the New York City Department of Environmental Protection (for example, "I hereby certify that a copy of this comment has been sent to Mr. Barry L. Schwartz at the address noted in the **Federal Register**.").

FOR FURTHER INFORMATION CONTACT: Barbara Betsock, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590 (202) 366–4400.

SUPPLEMENTARY INFORMATION:

Background and Judicial Action

The City of New York adopted an ordinance in 1976 that effectively bans the transportation of certain radioactive materials, including spent nuclear fuel, through the City limits. The Department of Transportation has adopted a safety regulation that provides for the selection by carriers of appropriate highway routes for the shipment of such materials. 49 CFR 177.825. The City's ordinance is inconsistent with the Department's regulation and thus is preempted by section 112(a) of the Hazardous Materials Transportation Act (HMTA).

The City filed an application with the Department seeking a waiver of that preemption in accordance with section 112(b) of the HMTA. Following a public proceeding in accordance with the Department's regulations, in a decision known as NPD–1, the Department denied the application on the grounds that the City had failed to demonstrate exceptional circumstances. Because the Department views the "exceptional circumstances" demonstration as a threshold requirement, the Department did not evaluate the City's application in light of the two criteria prescribed in section 112(b). Following the Department's denial of its appeal of the decision, the City sought judicial review of NPD–1 in the United States District Court for the Southern District of New York. In a decision issued December 8, 1988, the Court held that the Department erred in applying a threshold requirement to applications filed pursuant to section 112(b), vacated NPD–1, and remanded the City's application to the Department for evaluation in light of the two statutory crtieria. The Department did not appeal the Court's decision.

The Department's Handling of the Remand

On remand, the Department will consider the City's application for a waiver of preemption in light of the two criteria which are explicitly specified in section 112(b) of the HMTA. Thus the Department will grant a waiver of preemption of the City's ordinance if, based on the record, the Department finds that the City's ordinance (1) affords an equal or greater level of protection to the public than is afforded by the HMTA or the Federal regulations established under it, and (2) does not unreasonably burden commerce. In evaluating the ordinance with respect to the latter criterion, the Department will consider the four factors prescribed in 49 CFR 107.221(b) of the Department's procedural regulations as well as relevant case law. If the record does not support the grant exactly as requested in the City's application, the Department will consider whether the record supports the grant of a waiver limited in some manner; if so, the Department will grant such a waiver.

Following the close of the comment period and the close of any rebuttal period requested by the City, the Department will evaluate any additional data received, as well as the data and arguments already in the docket and render its decision within 90 days. If a decision cannot be reached within that time, the Department will publish a notice to that effect in the **Federal Register** together with a revised date for the decision.

Reopening of the Docket for Additional Data

Because of the lapse of time since the City filed its application in December 1984, the existing record may not adequately reflect the present circumstances so as to allow reasonably informed decision-making by the Department. For example, the Department believes that the City's selection of a base route in its comparative safety analysis was based in part on the existence of bridge and tunnel authority rules, the existence of which may have affected routing choices even though such rules were preempted by operation of section 112(a) of the HMTA. In an inconsistency ruling (IR–20), issued June 23, 1987 (52 FR 24396; 52 FR 29468), the Department issued its opinion that certain

Triborough Bridge and Tunnel Authority rules were in fact preempted. Following that ruling, the Triborough Bridge and Tunnel Authority amended its rules to void preemption. Other changes, some of which might have a significant impact on the Department's evaluation, may have occurred without the Department's knowledge. Accordingly, a brief reopening of the existing docket to allow the filing of updating data is appropriate.

In addition to the opportunity to update the docket, a brief reopening will allow the City and commenters to supplement existing information in the docket in areas where that information is incomplete. For example, is there any data available which would aid in assigning a public health and economic risk factor to waterborne shipments of spent fuel across Long Island Sound? In reopening the docket and soliciting new comments, the Department does not intend to obtain additional comments that merely repeat information or rephrase arguements favoring or opposing the City's application. The existing docket is already extensive and the Department's review will not benefit from the filing of repetitive comments. The Department's decision will not be based on poll-taking, but on the substantive relevant information available to the Department.

Commenters supplying additional data to update the docket to reflect changes in circumstances or to supplement previously submitted materials to fill gaps in that data are requested to consider the following issues in presenting their comments:

1. What are the preferred routes (determined in accordance with 49 CFR 177.825) that a motor carrier might reasonably select to transport spent nuclear fuel from Long Island to Idaho Falls, Idaho? Has New York or any surrounding state designated other routes which may or must be used?

2. Have circumstances changed which make any of these routes more likely to be selected than the one on which the City based its study?

3. Is the route used by the City as its base case actually a preferred route under 49 CFR 177.825; for example, would use of the route reduce time in transit?

4. What are the likely alternatives to a route through the City; for example, barging to Bridgeport, Connecticut or to another port such as Perth Amboy, New Jersey, or Newburgh, New York? Are there additional costs associated with these, such as port user fees and costs of waterborne transportation, and what are they?

5. Are these routes practically available; for example, is waterborne transportation available commercially?

6. What is the overall impact on "time in transit" of a route which would bypass the City?

7. Is it valid to assign no value to the risk of waterborne transportation? In particular, is there data available concerning public health and economic risk of shipments across Long Island Sound? Could tidal action and sea conditions result in significant delays in waterborne shipment across the Sound?

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC, on March 23, 1989.

[FR Doc. 89-7343 Filed 3-27-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: March 22, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0068.

Form Number: CF-28.

Type of Review: Extension.

Title: Request for Information.

Description: Customs Form 28 is the instrument used to obtain information to properly clarify and appraise merchandise being imported in the U.S. The form is also used to determine whether the goods have been correctly invoiced.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 150,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 82,500 hours.

Clearance Officer: Dennis Dore (202) 566-7529, Paperwork Management Branch, U.S. Customs Service, Room 6311, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-7276 Filed 3-27-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 22, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0496.

Form Number: None.

Type of Review: Extension.

Title: Use of the Word "Light" (Lite) in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages.

Description: Use of the words "light" and "lite" have been used to connote products that are low or reduced in calories. Consumers who are conscious of their caloric intake, in particular, will be able to purchase alcoholic beverages in accordance with their needs, and will be able to compare the calories in the "light" (lite) product with that of the producer's or competitor's regular product.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 303.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–7277 Filed 3–27–89; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 58
Tuesday, March 28, 1989

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).

COUNCIL ON ENVIRONMENTAL QUALITY

DATE, TIME, PLACE: Thursday, April 13, 1989, 10:00 am, Council on Environmental Quality Conference Room, First Floor, 722 Jackson Place NW., Washington, DC 20503; Monday, April 17, 1989, 1:00 pm, Industrial Education Building at the County Fairgrounds, 1121 Chance Avenue, Fresno, California.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. On February 2, 1989, the Acting Administrator of the Environmental Protection Agency (EPA) referred to the Council on Environmental Quality (CEQ) the proposal by the Department of Interior's Bureau of Reclamation (BuRec) to renew long-term water contracts for the Orange Cove and other Friant Unit irrigation districts of the Central Valley Project (CVP). The referral to CEQ was made pursuant to Section 309 of the Clean Air Act and the CEQ regulations implementing the provisions of the National Environmental Policy Act (NEPA) (40 CFR 1504.1(b)). The referral process is a procedure for resolving federal interagency disagreements concerning proposed major federal actions that might cause unsatisfactory environmental effects.

On February 9, 1989, CEQ published a notice in the **Federal Register** stating that the referral had been received from EPA and announcing a twenty-five day comment period during which the Department of the Interior (DOI) and any other interested persons could respond to the referral from EPA. Specifically, the notice asked for comments relating to the issue of whether CEQ should proceed with the referral. CEQ asked that comments addressing the merits of the issue raised in the referral be deferred pending that decision. 54 FR 6316. In response to that notice, CEQ received approximately 30 letters. All letters received have been made available to the public upon request to CEQ.

During this period, CEQ urged the Department of the Interior and the Enviromental Protection Agency to meet and attempt to resolve their differences. While a number of meetings between those two agencies did take place during this period, a mutually acceptable resolution was not achieved.

The Department of the Interior stated in its response to CEQ that it did not believe that CEQ should accept the referral. Specifically, it raised the issues of EPA's authority to refer the matter under section 309 of the Clean Air Act (because DOI has determined that no environmental impact statement (EIS) was required under section 102(2)(C) for the actions in question), CEQ's jurisdiction to accept the referral, and the ongoing litigation over the issue raised in the referral.

After consideration of the comments received, CEQ has now determined that it will accept the referral. A review of early Congressional statements regarding section 309 of the Clean Air Act supports a broad interpretation of the EPA Administrator's authority to refer matters to CEQ.[1] CEQ has previously accepted a referral under section 309 of the Clean Air Act concerning an action for which no EIS was prepared.[2] Finally, CEQ is closely coordinating its activities with the Department of Justice to avoid potential conflict between the referral process and the ongoing litigation.

CEQ will hold two meetings, open to the public under the Government in the Sunshine Act, to take comment on the following issue:

Whether the renewal of the long-term water contracts for the Friant Unit irrigation districts of the Central Valley Project constitutes a major federal action significantly affecting the quality of the human environment and, accordingly, that the contract renewal action falls under section 102(2)(C) of NEPA?

It is well established through statute, judicial decisions and national policy that the State of California has the responsibility for water rights permits based upon the doctrine of beneficial use, water quality effects and other factors. CEQ's examination in this referral will focus *exclusively* on the applicability of the National Environmental Policy Act as it relates to the obligations of the federal government in the renewal of these contracts.

The first meeting will be held at 10:00 a.m. on April 13, 1989, at CEQ, 722 Jackson Place NW., Washington, DC. The second meeting will be held at the Industrial Education Building at the County Fairgrounds, 1121 Chance Ave., Fresno, California, at 1:00 p.m. on April 17, 1989, and will continue with an evening meeting commencing that date at 7:00 p.m., if necessary.

Persons wishing to present comments at these meetings should notify Sara Nero in the CEQ General Counsel's office no later than twenty-four (24) hours before the date of the relevant meeting. Oral presentations should be limited to ten minutes per speaker. Written comments on these issues may be submitted to CEQ no later than April 28, 1989. Following the end of the comment period, CEQ may issue Findings and Recommendations.

Written comments should be submitted to the Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20503.

2. Other matters may be discussed.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, CEQ, (202) 395-5754. Communications regarding intent to present oral comments at the meeting should be directed to Sara Nero, General Counsel's Office, CEQ, (202) 395-5754.

A. Alan Hill,
Chairman.

[FR Doc. 89-7369 Filed 3-23-89; 4:56 pm]

BILLING CODE 3125-01-M

[1] Senate Public Works Committee Hearings on the Nomination of William Ruckelshaus as EPA Administrator, 91st Cong., 2d Session (Comm. Print, 1970).

[2] See Recommendations of the Council on Environmental Quality regarding the proposed amendments to the Army Corps of Engineers' Procedures Implementing the National Environmental Policy Act, 52 FR 22517 (June 12, 1987).

FEDERAL ENERGY REGULATORY COMMISSION

March 22, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 u.s.c. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND PLACE: March 29, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Item listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 893rd Meeting—March 29, 1989, Regular Meeting (10:00 a.m.)

CAP–1.
Project No. 2179–003, Merced Irrigation District
CAP–2.
Project No. 10667–001, Youghiogheny Hydroelectric Authority
CAP–3.
Project No. 8377–014, Central Hydroelectric Corporation
CAP–4.
Project No. 10674–001, Midtec Paper Company
CAP–5.
Project No. 9248–002, Town of Telluride, Colorado
CAP–6.
Project No. 8396–005, BES Hydro, Inc.
CAP–7.
Project No. 2389–000, Augusta Development Corporation
CAP–8.
Docket No. ER89–207–000, Public Service Company of New Hampshire
CAP–9.
Docket Nos. ER89–228–000, ER89–125–000 and ER89–86–000, Canal Electric Company
CAP–10.
Docket No. ER88–142–001, Michigan Power Company
CAP–11.
Docket No. ER84–705–010, Boston Edison Company
CAP–12.
Docket No. ER82–774–009, Tapoco, Inc.
CAP–13.
Docket No. QF88–452–000, Allegheny Electric Cooperative, Inc.
CAP–14.
Docket No. QF88–507–000, U.S. Army Corps of Engineers
CAP–15.
Docket No. EL88–22–000, Western Area Power Administration v. Pacific Gas & Electric Company, The Northern California Power Agency, and the Cities of Alameda, Healdsburg, Ukiah, Santa Clara, Lodi, and Lompoc, California
CAP–16.
Docket No. ER88–302–003, Pacific Gas and Electric Company
CAP–17.
Project No. 7267–004, Joseph Martin Keating
CAP–18.
Project Nos. 7802–006 and 10488–000, Natural Energy Resources Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. FA85–71–002, Central Illinois Public Service Company
CAM–2.
Docket No. FA87–65–001, Connecticut Light and Power Company
CAM–3.
Docket No. FA85–65–001, Mississippi Power & Light Company
Docket No. FA85–58–002, Arkansas Power & Light Company
CAM–4.
Docket No. FA85–58–001, Arkansas Power & Light Company
CAM–5.
Docket No. GP88–4–001, Barnhart Company
CAM–6.
Docket No. GP84–42–000, The Oil Conservation Division of the State of New Mexico
CAM–7.
Docket No. SA87–48–002, APX Corporation (Formerly Pan Eastern Exploration Company)
CAM–8.
Docket No. SA88–6–002, Crosstex Pipeline Partners, Ltd. d/b/a Crosstex Pipeline Company
CAM–9.
Docket No. SA88–8–001, The Tekas Corporation
CAM–10.
Docket No. RA82–24–000, Charter Oil Company
CAM–11.
Docket No. RO88–4–000, Tonkawa Refining Company
CAM–12.
Docket No. RO87–28–000, Lantern Petroleum Corporation

Consent Gas Agenda

CAG–1.
Omitted
CAG–2.
Docket No. RP88–259–007, Northern Natural Gas Company
CAG–3.
Docket No. RP89–49–002, National Fuel Gas Supply Corporation
CAG–4.
Docket No. RP89–65–000, Inland Gas Company
CAG–5.
Docket No. RP89–70–000, Stingray Pipeline Company
CAG–6.
Docket No. RP89–73–000, Pelican Interstate Gas System
CAG–7.
Docket No. RP89–75–000, Black Marlin Pipeline Company
CAG–8.
Docket No. RP89–77–000, Florida Gas Transmission Company
CAG–9.
Docket No. RP89–79–000, Texas Sea Rim Pipeline Company, Inc.
CAG–10.
Docket No. RP89–82–000, High Island Offshore System
CAG–11.
Docket No. RP89–84–000, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
CAG–12.
Docket No. RP89–86–000, Chandeleur Pipe Line Company
CAG–13.
Docket No. RP89–87–000, Mitco Pipeline Company
CAG–14.
Docket No. RP88–88–005, Panhandle Eastern Pipe Line Company
CAG–15.
Docket No. RP89–96–000, Northwest Pipeline Company
CAG–16.
Docket Nos. CP86–578–021 and RP85–13–029, Northwest Pipeline Company
CAG–17.
Docket No. RP89–99–000, U–T Offshore System
CAG–18.
Docket No. RP89–66–000, Natural Gas Pipeline Company of America
CAG–19
Omitted
CAG–20.
Docket No. RP89–72–000, Northern Natural Gas Company
CAG–21.
Docket No. RP89–74–000, Southern Natural Gas Company
CAG–22.
Docket No. RP89–76–000, Transcontinental Gas Pipe Line Corporation
CAG–23.
Docket No. RP89–80–000, CNG Transmission Corporation
CAG–24.
Docket No. RP89–81–000, Tarpon Transmission Company
CAG–25.
Docket Nos. RP89–90–000 and RP89–83–000, Superior Offshore Pipeline Company
CAG–26.
Docket Nos. RP89–85–000 and 001, Sea Robin Pipeline Company
CAG–27.
Docket No. RP89–88–000, ANR Pipeline Company
CAG–28.
Docket No. RP89–89–000, United Gas Pipe Line Company
CAG–29.
Omitted
CAG–30.
Docket No. RP89–92–000, El Paso Natural Gas Company
CAG–31.
Docket Nos. RP89–94–000 and RP89–94–001, Columbia Gulf Transmission Company
CAG–32.
Docket No. RP89–95–000, Texas Eastern Transmission Corporation
CAG–33.
Docket No. RP89–98–000, Colorado Interstate Gas Company
CAG–34.
Docket No. TA89–1–7–000, Southern Natural Gas Company
CAG–35.
Docket Nos. TA89–1–31–000 and RP89–62–000, Arkla Energy Resources, Inc.
CAG–36.
Docket No. TA89–1–37–000, Northwest Pipeline Corporation
CAG–37.
Docket No. TA89–2–5–000, Midwestern Gas Transmission Company
CAG–38.

Docket No. TQ89-2-1-000, Alabama-Tennessee Natural Gas Company
CAG-39.
Docket Nos. TM89-3-16-000, TM89-3-16-001 and TM89-3-16-002, National Fuel Gas Supply Corporation
CAG-40.
Docket No. TM89-4-17-000, Texas Eastern Transmission Corporation
CAG-41.
Docket Nos. RP88-267-000 and RP88-267-001, South Georgia Natural Gas Company
CAG-42.
Docket Nos. RP89-117-005, RP89-117-006 and RP89-117-007, Northern Natural Gas Company
CAG-43.
Docket No. TA88-4-29-000, Transcontinental Gas Pipe Line Corporation
CAG-44.
Docket No. RP88-228-011, Tennessee Gas Pipeline Company
CAG-45.
Docket No. RP88-221-005, Texas Eastern Transmission Corporation
CAG-46.
Docket No. RP88-228-010, Tennessee Gas Pipeline Company
CAG-47.
Docket No. RP89-29-002, Tennessee Gas Pipeline Company
CAG-48.
Docket Nos. RP88-93-007 and RP88-40-007, Questar Pipeline Company
CAG-49.
Docket No. RP89-48-001, Transwestern Pipeline Company
CAG-50.
Docket No. RP88-211-005, CNG Transmission Corporation
CAG-51.
Docket Nos. RP88-81-010 and RP88-81-011, Texas Eastern Transmission Corporation
CAG-52.
Docket No. RP89-49-003, National Fuel Gas Supply Corporation
CAG-53.
Docket No. RP80-97-059, Tennessee Gas Pipeline Company
CAG-54.
Docket No. RP88-94-016, Natural Gas Pipeline Company of America
CAG-55.
Docket No. RP88-187-015, Columbia Gas Transmission Corporation
CAG-56.
Docket No. RP88-259-008, Northern Natural Gas Company, Division of Enron Corp.
CAG-57.
Docket Nos. RP86-578-020 and RP85-13-028, Northwest Pipeline Company
CAG-58.
Docket No. RP89-51-001, United Gas Pipe Line Company
CAG-59.
Docket Nos. RP88-263-007 and RP88-92-011, United Gas Pipe Line Company
CAG-60.
Docket Nos. TQ89-1-46-003, RP86-165-003 and RP86-166-003, Kentucky West Virginia Gas Company
CAG-61.
Docket Nos. RP85-122-013 and RP87-30-019, Colorado Interstate Gas Company
CAG-62.
Docket No. RP88-240-004, Panhandle Eastern Pipe Line Company
CAG-63.
Docket No. RP89-23-001, Northern Natural Gas Company, Division of Enron Corp.
CAG-64.
Docket No. RP87-14-005, Algonquin Gas Transmission Company
CAG-65.
Docket No. RP86-87-000, Questar Pipeline Inc. (Formerly Mountain Fuel Resources Inc.)
CAG-66.
Docket No. RP85-169-000, Consolidated Gas Transmission Corporation
CAG-67.
Docket No. RP86-41-000, Algonquin Gas Transmission Corporation
CAG-68.
Docket No. RP85-47-000, East Tennessee Natural Gas Company
CAG-69.
Omitted
CAG-70.
Docket No. RP89-53-000, Canadian Petroleum Association
CAG-71.
Omitted
CAG-72.
Docket Nos. CP88-680-000 and CP86-203-000, Northern Natural Gas Company, Division of Enron, Inc.
CAG-73.
Omitted
CAG-74.
Docket No. CI85-673-005, LaSER Marketing Company, a Division of LaSalle Energy Corp.
Docket No. CI86-27-006, Transco Energy Marketing Company
Docket No. CI86-168-005, Tenngasco Corporation and Tenngasco Exchange Corporation
Docket No. CI86-503-003, Sonat Marketing Company
Docket No. CI87-476-002, TXG Gas Marketing Company
Docket No. CI87-547-003, Enron Gas Marketing, Inc.
Docket No. CI87-734-002, Williams Gas Supply Company (formerly Northwest Marketing Company)
Docket No. CI87-738-003, Williams Gas Marketing Company
Docket No. CI87-786-002, Val Gas, L.P.
Docket No. CI87-811-002, CNG Trading Company
Docket No. CI87-825-002, V.H.C. Gas Systems, L.P.
Docket No. CI87-883-002, Meridian Oil Trading Inc.
Docket No. CI88-328-001, Ringwood Gas Marketing Company
Docket No. CI88-481-001, CNG Producing Company
Docket No. CI88-490-001, Texcol Gas Services, Inc.
Docket No. CI88-648-001, Western Gas Marketing USA, Ltd.
Docket No. CI89-7-001, Pacific Atlantic Marketing, Inc.
CAG-75.
Docket No. CP88-400-000, Tennessee Gas Pipeline Company
Docket No. CI88-563-000, Conoco Inc., Oxy USA, Inc., Texaco Producing Inc., and Arco Oil & Gas
CAG-76.
Docket No. ST89-481-000, Phillips Natural Gas Company
CAG-77.
Docket Nos. ST88-3008-000, ST88-4082-000, ST89-292-000 and ST89-489-000, The Tekas Corporation
CAG-78.
Docket Nos. ST88-2555-000, ST88-2905-000, ST88-3337-000, ST88-4985-000, ST88-229-000, ST89-1708-000 and ST89-1775-000, Louisiana Intrastate Gas Corporation
CAG-79.
Docket No. ST88-4246-000, Mississippi Valley Gas Company
CAG-80.
Docket Nos. CP81-225-007 and CP88-397-003, Great Lakes Gas Transmission Company
CAG-81.
Docket Nos. CP89-93-000 and CP89-93-001, Williams Natural Gas Company
CAG-82.
Docket Nos. TC87-8-001 and TC87-9-001, Natural Gas Pipeline Company of America
CAG-83.
Docket No. CP87-195-001, CNG Transmission Corporation
CAG-84.
Docket No. CP87-225-001, South Jersey Gas Company, Complainant v. Sunolin Chemical Company, Respondent
CAG-85.
Docket No. CP88-598-001, Black Marlin Pipeline Company
Docket Nos. CP88-374-001, CP89-70-001, CP88-834-001 and CP89-240-001, Pelican Interstate Gas System
Docket Nos. CP88-426-001, CP88-427-001, CP88-591-001, CP88-621-001 and CP89-303-001, High Island Offshore System
CAG-86.
Docket No. CP88-679-000, Viking Gas Transmission Company and Midwestern Gas Transmission Company
CAG-87.
Docket No. CP87-480-009, Wyoming-California Pipeline Company
CAG-88.
Docket No. CP88-463-000, Placid Oil Company
CAG-89.
Docket Nos. CP63-222-000, CP63-222-001, CP70-193-000 and CP70-193-001, Transcontinental Gas Pipe Line Corporation
CAG-90.
Docket No. CP84-718-002, El Paso Natural Gas Company
CAG-91.
Docket Nos. CP86-725-001 and CP86-725-002, United Gas Pipe Company and Trunkline Gas Company
CAG-92.
Docket No. CP84-31-004, Texas Gas Transmission Corporation and CSX NGL Corporation
CAG-93.
Docket No. RP82-114-004, Williams Natural Gas Company

I. Licensed Project Matters

P-1.
Project Nos. 8142-005, 8142-006 and 8142-007, Henwood Associates, Inc. Issues regarding appeal and rehearing request concerning the Dynamo Pond Project.

II. Electric Rate Matters

ER-1.
Docket No. EC89-5-000, Southern California Edison and San Diego Gas and Electric Company. Order concerning proposed merger.

ER-2.
Docket No. ER79-97-002, Alamito Company. Order on reasonableness of fuel charges.

Miscellaneous Agenda

M-1.
Reserved

M-2.
Reserved

M-3.
Docket No. RM87-33-000, Hydroelectric Relicensing Regulations Under the Federal Power Act. Final Rule.

I. Pipeline Rate Matters

RP-1.
Reserved

RP-2.
Docket Nos. RP84-94-000 and RP85-66-000, Trailblazer Pipeline Company. Order on initial decision concerning rate design.

RP-3.
Docket Nos. CP82-487-000 and TA87-4-49-002 (Phase V), Williston Basin Interstate Pipeline Company. Order on initial decision concerning take-or-pay buyout and buydown costs.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 89-7356 Filed 3-23-89; 4:53 pm]

BILLING CODE 6717-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 11605, March 21, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Friday, March 24, 1989.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting (that commenced at 10:45 a.m.):

Consideration of legislation relating to banking structure.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: March 24, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-7452 Filed 3-24-89; 3:11 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 3, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: .

1. Proposed purchase of computers within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 24, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-7453 Filed 3-24-89; 3:11 pm]

BILLING CODE 6210-01-M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 4:00 p.m., Thursday, March 23, 1989.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(9)(B) (dislosure would significantly frustrate implementation of a proposed Agency section) and exemption (10) (deliberations concern . . . the Board's participation in a civil action . . . or disposition by the Board of particular . . . unfair labor practice proceedings . . . or any court proceedings, collateral or ancillary thereto).

MATTERS TO BE CONSIDERED: Public disclosure of Agency records.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone (202) 254-9430.

Dated, Washington, DC., March 24, 1989.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89-7463 Filed 3-24-89; 3:50 pm]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 27, April 3, 10, and 17, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 27

Tuesday, March 28

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for South Texas, Unit 2 (Public Meeting)

Wednesday, March 29

10:00 a.m.
Briefing on Staff Proposal on Continuity of Government Program (Closed—Ex. 1)

2:00 p.m.
Briefing on Status of West Valley Project (Public Meeting)

Thursday, March 30

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Vogtle, Unit 2 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rulemaking on the Licensing Support System for the High-Level Waste Licensing Proceeding

Week of April 3 (Tentative)

Wednesday, April 5

2:00 p.m.
Briefing on Certification of Radiographers (Public Meeting)

Thursday, April 6

10:00 a.m.
Briefing on Status of Activities with the Center for Nuclear Waste Regulatory Analysis (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 10 (Tentative)

Thursday, April 13

9:30 a.m.
Briefing on Status of Implementation of Severe Accident Master Integration Plan (Public Meeting)

2:00 p.m.
Briefing on Implementation of Safety Goal Policy Statement (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 17 (Tentative)

Monday, April 17

2:00 p.m.
Discussion/Possible Vote on Peach Bottom Restart (Public Meeting)

Thursday, April 20

2:00 p.m.
Briefing on Status of TMI–2 Cleanup Activities (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89–7443 Filed 3–24–89; 2:39 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 11606 March 21, 1989].

STATUS: Closed meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, March 16, 1989.

CHANGES IN THE MEETING: Additional item.

The following item was considered at a closed meeting on Tuesday, March 21, 1989, at 2:30 p.m.:

Report of investigation.

Commissioner Schapiro, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alden Adkins at (202) 272–2200.

Jonathan G. Katz,

Secretary.

March 22, 1989.

[FR Doc. 89–7407 Field 3–24–89; 12:38 pm]

BILLING CODE 8010-01-M

Federal Register

Tuesday
March 28, 1989

Part II

Department of Commerce

International Trade Administration

19 CFR Part 353
Antidumping Duties; Final Rule

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 353

[Docket No. 60604-9015]

Antidumping Duties

AGENCY: International Trade Administration (Import Administration), Department of Commerce.

ACTION: Final rule.

SUMMARY: The International Trade Administration hereby revises its regulations on antidumping duty proceedings to implement the provisions in Title VI of the Trade and Tariff Act of 1984 concerning antidumping duties and to modify in other respects provisions in the version of Part 353 that has been in effect since 1980. The modifications are intended to improve administration of the antidumping duty provisions of the Tariff Act of 1930.

EFFECTIVE DATE: The effective date of this Part 353 is (Insert date 30 days after date of publication in the **Federal Register**.), except that the effective date of section 353.22 (a) and (c) of this Part 353 is (Insert date that is the first day of the first month beginning 60 days after the date of publication in the **Federal Register**.).

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. (202) 377-8915.

SUPPLEMENTARY INFORMATION:

Classification:

Executive Order 12291. The International Trade Administration ("ITA") has determined that this final revision of the current antidumping duty regulations in 19 Code of Federal Regulations ("CFR") Part 353 is not a major rule as defined in section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981) because it will not: (1) have a major monetary effect on the economy; (2) result in a major increase in costs or prices; or (3) have a significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

Executive Order 12612. These regulations do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612 (52 FR 41685, October 30, 1987).

Paperwork Reduction Act. The information collection requirement contained in 19 CFR Part 353 has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been assigned OMB control number 0625-0105. ITA estimates an average of 40 burden hours to submit a petition. Any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden may be sent to the Department at the above address or to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20530. Attention: Paperwork Reduction Project 0625-0105.

Regulatory Flexibility Act. The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small business entities because, to the extent it changes existing practices, the rule simply improves the administration of the antidumping duty provisions of the Tariff Act of 1930, as amended. As a result, a Regulatory Flexibility Analysis was not prepared.

Background: The current antidumping duty regulations in Subparts A, B, C, and D of 19 CFR Part 353 (45 FR 8182, February 6, 1980, as amended by 48 FR 56744, December 23, 1983; 49 FR 22466, May 30, 1984; 50 FR 5746, February 12, 1985; 50 FR 32556, August 13, 1985; 51 FR 25195, July 11, 1986; and 52 FR 30660, August 17, 1987) are based on Subtitles B, C, and D of Title I of the Trade Agreements Act of 1979 ("Trade Agreements Act"), which amended Title VII of the Tariff Act of 1930 (19 U.S.C. Subtitle IV, Parts II, III, and IV) ("Act"). Title VI of the Trade and Tariff Act of 1984 (Pub. L. No. 98-573, October 30, 1984) ("1984 Act") amended those provisions of the Act, effective on the dates specified in section 1886(b) of the Tax Reform Act of 1986 (Pub. L. No. 99-514, October 22, 1986).

Some of the changes to the current antidumping duty regulations are necessary to implement the amendments made by the 1984 Act. Other changes: (1) incorporate existing administrative interpretations and practices, not currently stated in the regulations, that will continue under the amended statute; (2) improve administrative efficiency in antidumping duty proceedings; or (3) simplify the language of existing regulations. The Department currently is drafting a proposed rule and request for comments to implement the amendments made by the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"). This final rule does not reflect changes required by the 1988 Act, except that we have referred to certain changes made by the 1988 Act in response to comments on sections 353.2(k), 353.2(o), 353.2(t), 353.12(a), 353.12(b)(8), 353.15, 353.16(b), 353.20(a), 353.34, 353.34(d), and 353.52. The final rule printed here (Part 353) replaces the entire text of Part 353 that has been in effect since February 6, 1980 (45 FR 8182).

The Department has considered carefully all of the comments received in response to the proposed rule and request for comments on 19 CFR part 353 that was published on August 13, 1986 (51 FR 29046). These comments, and the Department's responses to them, are summarized below.

Index

Note: We have added as Annex I a consolidated listing of time limits under these regulations.

Sec. 353.2

Comment: One party suggests that the Department include a definition of "administrative review" in this section. This party notes that the Department currently uses the term "proceeding" to refer to a single administrative review. This use, however, conflicts with the proposed definition of proceeding in § 353.2(q), which does not consider a proceeding ended when an order is issued. A definition of "administrative review" would prevent conflicting uses of the term "proceeding," and would clarify that proprietary information obtained in one administrative review may not be used in a subsequent review.

Department's Position: The meaning of "administrative review" is detailed in section 751 of the Act and § 353.22 of these regulations. The use of proprietary information is controlled by the administrative protective order ("APO") itself and by § 353.34(b), paragraph (3)(ii) of which prohibits the use of such information by the party to the proceeding except for "the segment of the proceeding in which it was submitted." To the extent that in practice the Department has not consistently used the term "proceeding" to conform with the definition in these regulations, we are taking steps to remedy this situation.

Sec. 353.2(f)

Note: We have moved to paragraph (f) of this section the definition of weighted-average dumping margin, which was included in the regulation promulgated on August 17, 1987 regarding *de minimis* dumping margins (included as § 353.6 of this final rule). We also have made certain technical changes to the definition of dumping margin and of

weighted-average dumping margin; these revisions do not change agency practice.

We note that in cases involving processing arrangements (*e.g.*, tolling arrangements), the method of calculating the dumping margin and the weighted-average dumping margin may differ from that set forth in the regulation. *See, e.g., Small Diameter Welded Carbon Steel Pipes and Tubes from the Philippines*, 51 FR 33099 (1986); *Brass Sheet and Strip from Canada*, 51 FR 44319 (1986).

Sec. 353.2(j)

Comment: One party requests that the Department affirm its practice of presuming that a petitioner has filed an action on behalf of an industry unless and until significant opposition from other domestic producers has been presented. This party also is troubled by the reference to "*the* like product" (emphasis added) in the first sentence of the proposed regulation. The party argues that use of the word "the," combined with the Department's stated intention to consult with the International Trade Commission ("Commission") on the decision concerning the like product, is overly restrictive, likely to be contentious, and goes beyond the legislative intent of the standing requirement—"to prevent companies or individuals with *no* interest from commencing an investigation." This party suggests modifying the definition of "industry" to be the producers of "*a*" like product. Furthermore, this party believes that the Department's proposal would permit circumvention of the decision in *Roses Inc. v. United States*, 706 F.2d 1563 (Fed. Cir. 1983), which does not permit the Department to receive views from importers or foreign producers prior to a determination to initiate.

Another party argues that the regulation improperly deletes part of the statutory definition of industry and authorizes the exclusion of importers from the industry. The legislative history of the 1984 Act indicates that section 771(4)(B) was intended to allow the Commission to exclude importers in injury determinations, not to allow the Department to exclude importers when determining standing to file a petition.

Department's Position: As we stated in *Certain Textile Mill Products and Apparel from Malaysia*, 50 FR 9852, 9853 (1985), the holding in *Gilmore Steel Corp. v. United States*, 7 CIT 219 (1984), "does not amount to a requirement that a petitioner somehow prove, when a petition is filed, that at least 51 percent of an industry has expressed itself in support of a petition." The proposed regulation does not disturb existing practice in this regard.

The phrase "the like product" appears in the existing regulation and its use here will not result in a change in agency practice. The use of "the," as opposed to "a," in referring to like product and the Department's intention to consult with the Commission are not intended to be overly restrictive or to go beyond Congressional intent with respect to the standing requirement. Pre-initiation consultations with the Commission at the staff level permit the Department to draw on that agency's expertise and its knowledge of the injury requirements for initiation of a proceeding. In addition, the regulation does not circumvent the teaching in *Roses* on pre-initiation contact with potential interested parties that might be adversely affected by an investigation and order. *Roses* does not limit the Department's pre-initiation communications with the Commission.

Although the legislative history does not explicitly address standing requirements in discussing the definition of "industry," the meaning of "industry" is integral not only to the Commission's determinations of injury but also to the Department's decision on standing under section 732(b)(1) of the Act. The proposed regulatory definition highlights those parts of the definition in section 771(4) of the Act that are relevant to standing.

The part of the definition that refers to producers of a "major proportion" of the total domestic production is not pertinent to standing because applying it could result in a petition that has the support of just over one quarter of the domestic industry, as the following analysis shows. Section 732(b)(1) requires that a petition be filed "on behalf of" an industry. Both the Court of International Trade, in *Gilmore Steel Corp.* v. *United States*, 7 CIT 219 (1984), and the Department, in *Certain Textile Mill Products and Apparel from Malaysia*, 50 FR 9852 (1985), interpret the "on behalf of" language to mean that standing can be defeated if a majority of the concerned industry opposes the petition. If "industry" is defined as a simple majority ("a major proportion") of total domestic production, and "on behalf of" is also a mere majority, then a petitioner filing "on behalf of an industry" would have standing as long as a majority of the majority of the industry did not oppose the petition. If a petition may be filed "on behalf of" producers of a "major proportion" of total domestic production, arguably opposition by even a substantial majority of U.S. producers would not suffice to show lack of standing. This result was not intended by the requirement to file on behalf of an industry. Because this conclusion contradicts and confuses the intent of the requirement to file on behalf of an industry, the "major proportion" of the industry element of the definition is not pertinent for standing purposes.

As to our proposed inclusion of the related party provision of section 771(4)(B) of the Act, the Court in *Gilmore* indicated that it believes the Department may exclude importers from the industry for standing purposes if appropriate. 7 CIT at 226–27 (*dicta*). The Department has used this provision on a number of occasions. *See, e.g., Frozen Concentrated Orange Juice from Brazil*, 52 FR 8324 (1987); *Fabricated Auto Glass from Mexico*, 50 FR 1906 (1985). The Department finds the proposed regulatory definition to be the appropriate one for purposes of identifying those producers with a stake in the outcome. *Gilmore Steel Corp.* v. *United States*, 7 CIT at 224. For these reasons, the comment is not adopted.

Sec. 353.2(k)

Note: To be consistent with changes made to the countervailing duty regulations, we have revised paragraphs (k)(3), (k)(4), and (k)(5) to refer to sellers of the like product produced in the United States.

We also note that we are drafting a regulation to implement section 1326(c) of the 1988 Act, which expands the definition of interested parties to include, in investigations involving processed agricultural products, a coalition or trade association representative of (a) processors, (b) processors and producers, or (c) processors and growers.

Sec. 353.2(l)

Comment: One party suggests the regulation be clarified to indicate that an investigation ends with a notice of suspension of investigation, except when the investigation has been continued under § 353.18(i).

Another party suggests that the proposed definition of investigation could be construed to require the Department to begin an entirely new investigation in the event of a resumption or continuation of the investigation following its suspension. This party suggests that the definition of investigation be amended as follows: "an 'investigation' begins, *resumes or continues* on the date * * * and ends, *or is suspended*, on the date * * *"

Department's Position: On further reflection, we have deleted reference to notice of suspension of investigation as "ending" an investigation.

We note that this regulation does not address the issue of what data or review period is relevant for a continued or resumed investigation. The statute does not address this issue, and in our view, it must be decided on a case-by-case basis.

Sec. 353.2(m)

Note: As stated in the preamble to the proposed rule, paragraph (m) defines "the merchandise." The definition avoids continual repetition throughout the regulations of the phrase "the class or kind of merchandise imported or sold, or likely to be sold, for importation into the United States, that is the subject of the proceeding."

Sec. 353.2(o)

Comment: All but one party commenting on this section objects to limiting "parties to the proceeding" to only those interested parties that actively participate in a particular decision by the Secretary through the submission of factual information or written argument. Many parties suggest that the definition of "party to the proceeding" continue to be defined as "an interested party that has filed an entry of appearance within 10 days of the publication of a preliminary determination." Some parties argue that the proposed definition is an attempt by the Department to define the standing of persons to seek judicial review of agency decisions, and that such an attempt is an usurpation of the power of Congress. One party also argues that the proposed definition undercuts the purpose of the revisions made in 1979 and 1984 to the trade laws, which made relief from unfair foreign trade practices easier and less costly for domestic industries to obtain. Others argue that the provision is not in accordance with Congress' intention of streamlining and reducing the cost of antidumping duty proceedings, and will result in needless duplication of effort by interested parties through protective filings.

One party states that it does not necessarily disagree with the proposed definition, but questions the Department's authority to change the rules of standing in any federal court.

Department's Position: The Department must define the term "party to the proceeding." Section 733(b)(2) of the Tariff Act provides for disclosure of information to "any interested party, then a party to the proceedings * * *" and section 777(c)(1)(A) of the Act, as amended by the 1988 Act, limits disclosure of business proprietary information to "all interested parties who are parties to the proceeding * * *." Furthermore, the term "party to the investigation," a term that the Department interprets as being synonymous with "party to the proceeding," appears a number of times in the statute. *See, e.g.*, section 774(a)(1), dealing with requests for hearings.

As to the arguments that the Department is attempting to limit a party's right to appeal to the court, we believe the comments prove too much. It is the province of Congress to regulate trade, but that does not argue that the Department has no authority to interpret statutory enactments on trade matters through its regulations. Section 516A(d) of the Act limits standing before the Court to "[a]ny interested party who was a party to the proceeding under section 303 of this Act or title VII of this Act * * *." Those proceedings are administrative processes carried out before the Department and subject to its rules. We believe the Court will benefit from the agency's expertise as to the minimum participation in the administrative process that will make possible the party's exhaustion of its administrative remedies, so that the time of the Court and the parties will not needlessly be spent on matters that could have been addressed and resolved by the agency in the first instance. The Court may disagree in the circumstances of a particular case that adherence to the regulatory requirements was consistent with Congressional intent, but that does not argue for ignoring our obligation to ensure, to the extent possible, the orderly, efficient, and equitable implementation of the law.

Finally, the Department does not believe that the definition places an unreasonable burden on interested parties. To the extent that parties wish to make clear their right to litigate issues raised by other parties, they may incorporate by reference the other parties' comments in whole or in part. If the parties' positions differ, then the Department believes that the second party has an obligation to raise its argument with the administering authority before litigating the issue.

Sec. 353.2(s)

Note: We have added a reference to U.S. price in the definition of "reseller" and made other technical changes to clarify the language in this paragraph.

Sec. 353.2(t)

Comment: One party states that the definition of "likely sale" should not be limited to an "irrevocable offer to sell," and suggests modifying the regulation either by dropping the requirement that offers be irrevocable or by creating a rebuttable presumption that all offers are irrevocable. This party also proposes modifying the definition of "likely sale" to include oral offers that are not confirmed in writing. In addition, this party objects to the Department's practice (stated in the preamble to the proposed rule) of considering likely sales only in the event that there are no consummated sales in the relevant foreign markets. It contends that the Department's practice could result in a finding of no dumping, when in fact the presence of offers to sell in the market at less than fair value ("LTFV") may cause the domestic industry injury by forcing it to cut its prices accordingly, regardless of whether actual sales have been made.

Department's Position: The Department has defined the term "likely sale" in order to cover the situations where actionable unfair trade practices can be reasonably expected to exist. The issue to be addressed is the likelihood that a sale will be made. In our view, that can occur only when an offer is irrevocable for some time period sufficient to indicate a likelihood of sale. Revocable offers encompass such a wide spectrum of activities as to provide no measure of the likelihood of sales. We have decided to retain the requirement that offers be irrevocable, without adding a rebuttable presumption, because we believe the provision is administrable and reasonable as drafted.

Regarding the practice on consideration of likely sales, the Department continues to believe that sales generally are a more appropriate measure of market activity than are offers. The manner in which the Department defines the period of the investigation will most often deal with the problem identified by the commenter. In the unusual situation where that is not the case, the Department may consider both sales and offers.

Although all of the comments focused on the likely sale issue, we note that section 1327 of the 1988 Act lists the factors to be considered in deciding whether a lease is equivalent to a sale. These factors are the terms of the lease, normal commercial practice within the industry, the circumstances of the specific transaction, the integration of the product into the operation of the lessee or importer, the likelihood of continuation or renewal of the lease over a significant period of time, and other relevant factors, including the possibility of avoidance of antidumping or countervailing duties.

Sec. 353.3

Comment: Two parties request that respondents and petitioners not be required to resubmit evidence or documents that are already in the Department's possession. To reduce the burden, the resubmission should be waived if the submitter can identify the location of the requested data in the Department's files. These documents could be made part of the court record

without physically inserting them into the record.

Department's Position: The burden that would be created, and the potential disruption to an orderly proceeding that would result, given the enormous volume of records, does not permit the Department to provide this service. *See also* § 353.34(b)(3)(ii).

We note that in paragraph (a) we have clarified that documents returned to a submitter under §§ 353.31(b)(2) and 353.32(g) will not be included in the official record.

Sec. 353.3(b)

Note: To be consistent with changes made to the countervailing duty regulations, we have altered the second sentence of § 353.3(b) to read as follows: "The record will consist of all material described in paragraph (a) of this section that the Secretary decides is public information within the meaning of § 353.4(a), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, plus public versions of all determinations, notices, and transcripts." The Department believes this will clarify any ambiguity between § 353.3(b) and § 353.4(a), as proposed.

Sec. 353.4

Comment: One party suggests adding to the list of public information, with the burden on the submitter to establish the contrary, items such as price lists distributed to a group of customers and price lists of components and raw materials if such lists generally are publicly available.

Another party contends that the Department's proposed standards for proprietary treatment of information are inadequate. This party argues that the use of a list to define proprietary information is flawed in that it is inflexible and overly narrow, and should be abandoned. For example, under the regulation, factual information in a form that cannot be associated with or used to identify a particular firm nonetheless may be proprietary for that firm. An example would be marketing strategies. This party suggests that paragraph (a)(3) and the exceptions in paragraphs (b)(3) and (b)(6) should be deleted. This party also suggests that the regulations should exclude from public disclosure or release under an APO any proprietary documents requested as part of the response to a questionnaire.

Another party suggests that the destination of sales and designation of type of customers should be considered proprietary information.

Department's Position: Price lists may be public information of a type described in paragraphs (a)(1) or (a)(2) of this section, or proprietary information described in paragraph (b)(5) of this section. We cannot presume that limited distribution of a price list to a specific group of customers constitutes public availability. For example, sellers may circulate different price lists to different groups of customers and expect prospective customers to protect the information as proprietary.

The Department may deviate from the list of normally public information if the submitter presents a convincing argument of harm. Rather than modify § 353.4(a)(3), we will entertain such arguments on a case-by-case basis. Similarly, we will entertain on a case-by-case basis arguments against the parenthetical exceptions listed in § 353.4(b). As we noted in the proposed rulemaking, the list of exceptions reflects our experience with information submitted in proceedings. It attempts to eliminate unnecessary disagreement over documents that generally fall into one category or another.

We note that, to be consistent with changes made to the countervailing duty regulations, we have amended § 353.4(a)(4) to read "publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations." This clarifies that official documents containing proprietary, classified, or otherwise privileged information are not considered to be public information. We also have revised the parenthetical phrase in paragraph (b)(6) so that it now reads "designation of type of customer, distributor, or supplier."

Sec. 353.6

Note: These rules include the regulation promulgated on August 17, 1987 (52 FR 30660) regarding *de minimis* dumping margins. The provision has been renumbered from § 353.24 to 353.6.

We have moved the definitions of "dumping margin" and "weighted-average dumping margin" to the general definition section. *See* § 353.2(f). In accordance with § 353.42(a), we have deleted the reference to "fair value" in the definition of "dumping margin." In addition, we have made technical changes to clarify the language of this section.

Sec. 353.11

Comment: One party suggests that this section should include a reference to the language of Article 5(1) of the Antidumping Code, which states that self-initiation is warranted only "in special circumstances."

Department's Position: As provided in section 732(a) of the Act, the standards for self-initiation are stated in section 731 of the Act. The Department has consistently treated self-initiation as an unusual action.

Sec. 353.11(c)

Note: Paragraph 353.11(c) has been added to implement the persistent dumping monitoring provisions of section 732(a)(2) of the Act, as added by the 1984 Act.

Sec. 353.12(a)

Comment: One party suggests that this section include a certification by the petitioners and anyone involved in preparing the petition regarding the truthfulness and completeness of the petition in order to avoid petitions filed for purposes of chilling legitimate import competition.

Department's Position: The antidumping duty law requires that the allegations in a petition be supported by information reasonably available to the petitioner and that such information accompany the petition. As explained in the legislative history of section 702(b)(1) of the Act, the Department is expected to reject petitions "which are clearly frivolous, not reasonably supported by the facts alleged or which omit important facts which are reasonably available to the petitioner." H. Rep. No. 317, 96th Cong., lst Sess. 51 (1979). Congress intended this same standard to apply to antidumping petitions. *Id.* at 60. We agree that a certification requirement is an appropriate means of deterring the kind of problems described in this legislative history. However, we prefer to apply the certification requirement to all submissions of factual information, not just to those contained in petitions. Accordingly, we are adding to § 353.31 a new paragraph (i), which requires that all submissions of factual information (as defined in § 353.2(g)) be accompanied by an appropriate certification of a responsible official of the submitter and the submitter's legal counsel or other representative, if any. This certification requirement also is incorporated in section 1331 of the 1988 Act. We also are modifying § 353.12(a) of the proposed rule to cross-reference § 353.31(i).

Sec. 353.12(b)

Comment: One party states that the regulation should clarify that the administering authority will determine whether information is "reasonably available" in light of the circumstances of each petitioner. This party suggests clarifying "reasonably available" by revising the language to read "The petition shall contain the following, to the extent reasonably available to the

petitioner under its individual circumstances:".

Department's Position: In deciding whether to initiate an investigation, the Department's practice is to take into account the ability of the petitioner to obtain information in support of the petition. The type and quantity of relevant information that is reasonably available to a large corporation in a well-defined industry may not be available to a small company in an emerging or less well-defined industry. The Department's practice of considering the size and nature of the business and industry in deciding what information is "reasonably available" is not changed in this section. Moreover, this rule contains a new paragraph (h) in § 353.12 that specifically provides for technical assistance to small businesses. The Department has consistently provided such assistance on request.

Sec. 353.12(b)(2)

Comment: Two parties express concern that the petition requirements do not include a clause that requires petitioners to state that they are filing on behalf of the major proportion of domestic producers. For example, one party suggested that this section include a requirement that petitioners state whether they represent a majority of the domestic industry in terms of (1) the volume and value of domestic production of the merchandise in question and (2) the number of firms manufacturing the merchandise in the United States.

Department's Position: For purposes of the petition, the Department will continue to rely on the petitioner's representation of industry support. Neither the statute nor the legislative history requires the petitioner to establish affirmatively that it has the support of a particular percentage of the members of an industry. *See* Department's response to comments on § 353.2(j).

We note that, to be consistent with changes made in the countervailing duty regulations, we have modified the parenthetical phrase in paragraph (b)(2) to clarify that two percent of the industry may be measured either in terms of sales or production levels. In addition, we have modified this provision to clarify that, in deciding whether a person in the industry accounts for two percent or more of the industry, the petitioner may rely only on publicly available information. The Department includes the two percent cut-off to reduce the potential burden on the petitioner in industries that include a large number of small firms. In satisfying the requirements of paragraph (b)(2), the Department does not expect petitioners to obtain business proprietary information from other persons in the industry or otherwise to engage in activity that arguably might call into play the U.S. antitrust laws. We believe there are many methods of gathering the information that would not present a problem.

Sec. 353.12(b)(4)

Comment: One party recommends deleting the word "requested" because it gives the impression that the Department may expand or contract the scope of investigation. The party argues that the Department does not have the authority to modify the scope set forth in the petition.

Another party states that the Department cannot modify the scope beyond the description in the petition unless it follows the self-initiation procedure.

Another party states that the Department's authority to modify the scope of the petition is limited to instances in which the petitioner does not allege the pertinent facts or does not provide the requisite information. This party adds that the Department may self-initiate an investigation of products not specified in the petition if there is information in the petition allowing it to do so. Otherwise, the scope of the investigation should be controlled by the description of the merchandise found in the petition.

Department's Position: The Court of International Trade has acknowledged that the Department has authority to clarify the description of the class or kind of merchandise contained in the petition. *Mitsubishi Electric Corp.* v. *United States*, Slip Op. 88–152, 12 CIT____(October 31, 1988); *Kokusai Electric Co. Ltd.* v. *United States*, Slip Op. 86–29, 10 CIT____(March 14, 1986). The Court also has recognized that the Department has the authority to define the scope of an investigation. *Diversified Products Corp.* v. *United States*, 6 CIT 155, 159 (1983) (citing *Royal Business Machines* v. *United States*, 1 CIT 80, 87 n.18 (1980), *aff'd*, 669 F.2d 691 (Fed. Cir. 1982)). This authority is important for the purpose of ensuring that the Department's orders are administrable, clear, enforceable, and adequate to protect the U.S. industry from the unfair trade practices covered by the statute. When defining the class or kind of merchandise, the Department may, for example, rely on information not available to the petitioner and conclude that the petitioner's statement of class or kind is inadequate to prevent easy circumvention of the order.

We note that we have modified this paragraph to delete the reference to the Tariff Schedules of the United States. The reference to "U.S. tariff classification" in the final rule covers the Harmonized Tariff System, effective in the United States on January 1, 1989.

Sec. 353.12(b)(6)

Comment: One party objects to the requirement that petitioners provide the proportion of total exports to the United States from each person alleged to have sold merchandise at less than fair value. They argue that the information is often difficult or impossible for the petitioner to obtain, and that the requirement is contrary to Congressional intent to reduce the cost of filing a petition. They suggest that this requirement be deleted.

Department's Position: The Department uses information on exports to the United States in the preparation of questionnaires and the review of questionnaire responses. Therefore, to the extent that this information is reasonably available to the petitioner, it should be reported in the petition. To the extent that it would be unduly burdensome, difficult, or impossible for a petitioner to obtain this information, the petition would be acceptable without it. As noted in the Department's position on paragraph (b)(2) of this section, the petitioner may rely on publicly available information.

Sec. 353.12(b)(7)

Comment: One party states that because the preferred methodology for calculating foreign market value is to use home market prices, the Department should expressly require that the petition contain information on home market prices when "reasonably available to the petitioner." This party suggests adding the following language to this section: "(If unable to furnish information on foreign sales or costs *after reasonable effort* * * *)".

Department's Position: The commenter is correct as to the preferred methodology for calculating foreign market value. We note that the information to be submitted is the factual information that is relevant to U.S. price and foreign market value "in accordance with Subpart D." That subpart evidences the preference for home market prices, third country prices, or constructed value, in that order. The Department will evaluate the adequacy of a petition in light of the preferences stated in Subpart D.

Sec. 353.12(b)(8)

Note: We are drafting a proposed rule and request for comments to implement the 1988

Act amendments regarding dumping by nonmarket economy countries.

Sec. 353.12(d)

Comment: One party argues that the Department should not dismiss a petition because of information for which proprietary treatment is improperly claimed if that information is not essential to support the petition (as would happen under the proposed requlation). This party recommends that, instead of completely dismissing the petition, this section should be changed to state that the Department will determine within 10 days of submission of the petition whether the information is entitled to proprietary treatment, and if the Department denies proprietary treatment, the petitioner will be allowed seven days to cure the defect.

Department's Position: Because the petitioner can easily resubmit the petition in proper form, we believe that it is in the petitioner's interest to do so. Otherwise, if the information which does not comply with § 353.32 is essential, the Department would decide under § 353.13 that the petition does not properly allege the basis on which an antidumping duty may be imposed. Nevertheless, we agree that the choice is the petitioner's and have revised paragraph (d) accordingly.

Sec. 353.12(g)

Comment: One party argues that the Department should notify not only the country in which the merchandise is produced but also any country that the petition alleges is an intermediate country for the importation of the merchandise and is likely to be used to calculate foreign market value.

Department's Position: At the time a petition is filed, only the home market country (or countries) is known for certain, which is why § 353.12(g) requires only that a representative of that country be served. The Department, however, will make a petition available to a representative of an intermediate country if one is identified either in the petition or during the course of the investigation.

Sec. 353.12(i)

Comment: One party argues that this section is unnecessarily broad in prohibiting, prior to initiation, oral or written communication from interested parties regarding a petition. This party states that the paragraph on pre-initiation communications with the Department is more restrictive than the decision of the Court of Appeals in *United States v. Roses, Inc.*, 706 F.2d 1563 (Fed. Cir. 1983). The commenter contends that the Department can consider communications regarding procedural defects in the petition (such as the standing of the petitioner), provided that the communications are on the record and with adequate notice to petitioners. This party also believes the Department should permit interested parties to bring to the Department's attention matters in the public domain.

Department's Position: Paragraph (i) is consistent with the *Roses* decision. Paragraph (i) limits the restriction on communication to interested parties defined in paragraphs (k)(1) or (k)(2) of § 353.2, which means that the Department will accept communications from domestic interested parties defined in paragraphs (k)(3) through (k)(6) of § 353.2. The Court in *Roses* held that under no circumstances was the Department to engage in an advocacy proceeding based on information from potential respondents at the pre-initiation stage of the proceeding. *Id.* at 1567. We believe that this holding precludes the Department from making fine distinctions between law and fact, procedure and substance, and from determining whether information is in the public domain, especially because the Department would have to accept and review correspondence in order to make such distinctions. Such a review of correspondence would lead to needless and time-consuming disputes as to whether the Department had abided by the ruling in *Roses* in a particular case.

We note that if a U.S. producer of the like product (§ 353.2(k)(3)) or any other domestic party communicates with the Department as an agent of a potential respondent, the prohibition in paragraph (i) would apply to that communication.

Sec. 353.13

Comment: One party suggests that the notice of initiation should clearly state the scope of the investigation. They add that this coverage cannot be extended later to merchandise not included in the notice of initiation, because to do so would deny the parties adequate notice.

Department's Position: The Court of International Trade has recognized that the Department has the authority to define the scope of an investigation. *Diversified Products Corp. v. United States*, 6 CIT 155, 159 (1983) (citing *Royal Business Machines v. United States*, 1 CIT 60, 87 n.18 (1980), *aff d*, 669 F.2d 691 (Fed. Cir. 1982)). The Department consults closely with the petitioner, the Commission, and others to ensure that the notice of initiation describes the scope of the investigation as accurately as possible. In certain circumstances, however, the scope of the investigation set forth in the notice of initiation must be expanded or contracted to take account of facts discovered after initiation. For example, the scope of an investigation sometimes must be expanded to prevent circumvention. *See, e.g., Mitsubishi Electric Corp. v. United States*, Slip Op. 88-152, 12 CIT ___ (October 31, 1988). In addition, the scope must be contracted when it is determined that a petitioner has not filed on behalf of an industry that produces a particular like product previously included in the class or kind of merchandise subject to investigation. *See, e.g., Oil Country Tubular Goods from Israel*, 52 FR 1649, (1987); *Certain Textile Mill Products and Apparel from Sri Lanka*, 50 FR 9826 (1985). Moreover, the scope of an investigation and any antidumping order that results is subject to clarification of its intended coverage. *Gold Star Co., Ltd. v. United States*, Slip Op. 88-102, 12 CIT ___ (July 29, 1988); *Kokusai Electric Co., Ltd. v. United States*, Slip Op. 86-29, 10 CIT ___ (March 14, 1986). In the event it becomes necessary for the Department to modify or clarify the scope of an investigation, it is the Department's practice to inform all parties to the proceeding. If the Department did not modify or clarify the scope when warranted, the interests of all parties could be seriously jeopardized. *See also* the Department's response to comments on § 353.12(b)(4).

Sec. 353.14

Comment: Several parties comment that the 30-day time limit on submission of requests for exclusion is too short. Some companies may not learn about the investigation in 30 days or, even if they do, may not have time to prepare the request described in this section. One party argues that elimination of the possibility of requesting an exclusion after the 30-day period will deny interested parties the right to have the circumstances of their transactions analyzed. These parties suggest the time limit be extended to the date when the questionnaire response is due.

Two parties contend that the requirement that certification of the request be obtained within the 30-day time limit is totally unrealistic, and that this certification is unnecessary and could serve to deter meritorious requests for exclusion.

One party requests clarification as to when a firm may be excluded under an antidumping order, *i.e.*, will a company be excluded automatically if the Department determines that it has no dumping margin during the investigatory period or must it formally apply for exclusion. Two parties suggest that the Department automatically exclude from

a final determination all companies investigated and found to be receiving zero (*de minimis*) dumping margins.

Two parties suggest that notices of initiation should list the companies to whom questionnaires will be sent and clearly state that any foreign producer or reseller not listed which wishes to be excluded should submit a request within the specified time limit. These parties urge that those companies that do request exclusion and submit a questionnaire response within the time limits must be investigated. Any company submitting a questionnaire response and not investigated should be given a zero dumping duty deposit rate if an antidumping duty order is issued.

Department's Position: The deadline for submission of requests for exclusion is 50 days from the date the petition is filed, because initiation normally occurs on the 20th day after the petition is filed. In most cases, 50 days should be a reasonable period of time for preparation of the request.

The Department cannot extend the deadline for filing requests for exclusion beyond the 30-day period set forth in the proposed rule, because it must decide by that date, or shortly thereafter, which companies it will investigate and to which it will send questionnaires. If the certifications were not submitted until the deadline for submitting questionnaire responses, the Department would not have sufficient time to issue questionnaires, analyze responses, and prepare for verification.

The certifications in this section are required in order to ensure that the requests are carefully considered by all parties that have relevant information. These certification requirements are analogous to those required under § 353.25(b) for revocations. The certifications are required in order to justify the Department's decision to conduct an investigation specifically of the company submitting the request for exclusion, an investigation it might not otherwise conduct. Neither questionnaire responses nor verification serve the same purpose as certifications.

If the Department includes a producer or reseller in its investigation and determines that the producer or reseller had no dumping margin during the period of investigation, the Department would automatically exclude that producer or reseller from the antidumping duty order, even if the producer or reseller did not request exclusion under the procedures described in this section. The purpose of this section merely is to provide an opportunity for producers and resellers that the Department might not otherwise include in its investigation to request that the Department specifically include and investigate them. If the Department investigates the company on other grounds, no purpose would be served by an exclusion request.

The Department cannot specify in the notice of initiation which companies it will investigate because the 20-day pre-initiation period is an insufficient amount of time to decide which companies will be investigated. Indeed, the Department often cannot identify all producers or resellers at the time of initiation. We agree, however, with the suggestion that initiation notices should specify the date for filing exclusion requests, and will modify future initiation notices accordingly.

When the Department receives requests for exclusion that comply with the requirements of this section, the Department normally will investigate the requests in accordance with the investigatory procedures described in other sections of this part. For example, the Department will ask each party requesting exclusion to answer a questionnaire, submit to verification, and abide by the procedures on information and argument in Subpart C of this part.

As explained in the preamble to the proposed rule, the phrase "to the extent practicable" would permit the Department to refuse to investigate one or more of the requests when it concludes that it could not do so within the statutory time limits on investigations. Such refusal might occur, for example, in a case in which an extraordinarily large number of requests for exclusion are submitted. If the Department refuses to investigate a request for exclusion, the requester may be excluded from the antidumping duty order by requesting a revocation under § 353.25(b). Neither the GATT nor U.S. law requires the Department to investigate every request for exclusion or every company that produces or exports the class or kind of merchandise under investigation. For the same reasons, we cannot assign a zero rate to companies that submit a voluntary response but are not investigated. If a company is found during an administrative review to have no dumping margin, any cash deposit will be refunded with interest.

Sec. 353.15

Comment: Two parties suggest that the basis for a preliminary determination should remain as "best information available," rather than the proposed change to "available information." One of these parties suggests that when respondents cooperate in the investigation, the best information available is the respondent's reply to the questionnaire when verification occurs after the preliminary determination.

In addition, one party recommends that when a petitioner requests a postponement of the preliminary determination, the Department should conduct verification prior to the preliminary determination. Another party suggests that the proposed regulation should require verification before a preliminary determination in all but exceptional circumstances. This party argues that the methodologies used in a final determination often are not focused on until after verification; if verification occurs after the preliminary determination, parties will not be able to comment on the methodologies used in the final determination, which will continue to foster more court appeals.

One party suggests that the Department be required to issue and publish a corrected preliminary determination as soon as it discovers clerical error.

Department's Position: Section 776 (b) and (c) of the Act and § 353.37 of these regulations specify the limited conditions in which the Department may use "best information available" in lieu of information submitted by respondents. As explained in the preamble to the proposed rule, paragraph (a) of this section refers to "available information" in order to indicate that the Department may base its preliminary determination on any information available to it at the time. "Available information" includes, but is not necessarily limited to, the respondent's submissions. For example, even prior to verification, the Department may know that respondent's submissions are incomplete or demonstrably incorrect. In that event, the Department may use apparently reliable information from other sources.

Whenever there are adequate time and resources for verification prior to a preliminary determination, the Department will conduct the verification prior to the date of the preliminary determination in order to make its preliminary determination more accurate. In practice, the Department usually conducts verification after the preliminary determination, even when the petitioner requests an extension of the date for the preliminary determination. Normally the petitioner requests an extension for the purpose of permitting the Department to obtain additional information from the respondent. Preparation of the supplemental questionnaires and submission and review of responses

consumes 25 to 45 days of the extension period. Verification is conducted only after the Department has provided each respondent with an adequate opportunity to submit the information requested by the Department. The on-site verification, including associated preparation and report-writing, normally requires 30 to 40 days. Because the period of the extension under paragraph (c) of this section is not more than 50 days, there is in most cases insufficient time for verification prior to the date of the preliminary determination.

Facts available to the Department at an early stage of the investigation are limited in comparison with those available later in the investigation. Preliminary determinations are simply interim decisions intended to focus issues and provide the basis for comment by the parties to the proceeding. They are not subject to judicial review. One important effect of a final determination is to correct inaccuracies in the preliminary determination. Therefore, an additional procedure for correcting errors in a preliminary determination would be an unwarranted waste of the Department's scarce resources. We have established a practice of correction of clerical errors in final determinations and final results, which also is provided for in section 1333 of the 1988 Act. *See* 53 FR 41617 (October 24, 1988); 53 FR 5813 (February 26, 1988).

Sec. 353.15(a)

Comment: One party suggests that paragraph (a)(2)(i) should be modified to indicate that preliminary determinations will include administrative and judicial precedents on which legal conclusions are founded.

Department's Position: The suggestion that the Secretary's determination recite legal precedent would impose a burden not required by the statute. To the extent necessary to explain the determination, the Department does discuss legal precedents in its preliminary determinations. In view of the fact that the preliminary determination is not subject to judicial review and is subject to revision in the final determination, any additional discussion of administrative and judicial precedents is unnecessary.

We note that because section 733(b) of the Act provides that the Department must have a reasonable basis to believe "or suspect" that merchandise is being sold, or is likely to be sold, at less than fair value, we have added the words "or suspect" to paragraph (a) of the regulation.

Sec. 353.15(b)

Comment: One party suggests that paragraph (b) should provide, as an additional reason for postponement, the consideration of requests for exclusion or "the calculation of individual margins for one or more producers or exporters."

Another party suggests that requests for postponements in extraordinarily complicated cases should be available to petitioners and respondents on an equal basis.

Department's Position: The Department's authority to extend the time limit for issuing a preliminary determination is "narrowly circumscribed" by the statutory criteria set forth in paragraph (b)(2). *See* S. Rep. No. 249, 96th Cong., 1st Sess. 66 (1979). Section 733(c)(1)(B) of the Act does not permit consideration of additional criteria for allowing an extension of time.

Sec. 353.15(g)

Comment: Two parties suggest that the disclosure conference should provide a "complete," rather than a "further," explanation of the preliminary determination. These parties urge the Department to disclose all calculations and computer programs used in making the determination.

Department's Position: We have clarified that the purpose of disclosure is only to provide an explanation of the calculation methodology used in a determination.

Sec. 353.16(a)

Comment: One party contends that the Department does not have statutory authority to self-initiate an investigation of critical circumstances, and that the Department should not substitute its perception of what is in the petitioner's interest for that of the petitioner.

Department's Position: Although section 733(e) does not expressly authorize the Department to find critical circumstances in self-initiated investigations, the Department in such cases is considered the petitioner and, as such, has authority to allege and to investigate critical circumstances. Under a similar interpretation of the statute, the Department has determined that in a self-initiated investigation the administering authority is the "petitioner" and may, in appropriate circumstances, withdraw its petition and terminate the investigation. *See, e.g., Certain Steel Products from Belgium, Brazil, France, Romania, South Africa, and Spain*, 47 FR 5754 (1982). An interpretation of the law that would exclude critical circumstances from the purview of self-initiated investigations would be inconsistent with the Congressional desire for vigorous enforcement of the unfair trade laws. *See, e.g.*, H.R. Rep. No. 317, 96th Cong., 1st Sess. 51 (1979).

Sec. 353.16(b)

Comment: One party notes that under proposed § 353.16(b), the Department cannot make a preliminary finding of critical circumstances and suspend liquidation until it has issued its preliminary determination. This party contends that such a delay in making a critical circumstances determination is contrary to the statutory purpose underlying the critical circumstances provisions of the antidumping law, *i.e.*, the deterrence of import surges through the Department's prompt determination of whether critical circumstances exist. The party notes, however, that under the GATT Antidumping Code, provisional measures, including the suspension of liquidation, cannot be implemented until an affirmative preliminary determination of dumping has been made. This party suggests, therefore, that the Department revise this section to provide that, if an allegation of critical circumstances is submitted with the petition, or within 60 days of the filing of the petition, and is deemed to warrant investigation, the Department will make a preliminary determination on an expedited basis, will delay verification until after the preliminary determination, and will provide no extensions to respondents for purposes of submitting information to consider in making a preliminary determination.

Department's Position: We have revised paragraphs (b)(2)(i), (c), and (g) to permit the Department to issue a preliminary critical circumstances finding before the date of the preliminary determination under § 353.15 in appropriate cases. (We note that this requirement also is provided in section 1324 of the 1988 Act.) If a preliminary critical circumstances finding is made before the date of the preliminary determination, suspension of liquidation will take effect only at the time of, and in the event of, an affirmative preliminary determination. In order to make an affirmative preliminary finding of critical circumstances, the Department must find: (1) that there is a history of dumping in the United States or elsewhere of the merchandise, or that the importer knew or should have known that the producer or reseller was selling the merchandise at LTFV; and (2) as explained in the Department's position on comments on paragraphs (f) and (g), that imports have increased

significantly during a relatively short period. A "relatively short period" is defined in paragraph (g) as normally at least the three-month period beginning either on the date the proceeding begins or, when appropriate, a period of not less than three months from the date prior to the initiation of the proceeding on which importers or exporting producers or resellers had reason to believe that a proceeding was likely. Because the preliminary determination in an antidumping investigation generally is not issued until the 160th day of the investigation, the Department examines at least a three-month period when determining whether critical circumstances exist (as opposed to approximately a three-month period in a countervailing duty investigation).

For example, in the recent antidumping investigation of *Butadiene Acrylonitrile Copolymer Synthetic Rubber from Japan*, 53 FR 15436 (1988), we examined a five-month period in determining the existence of critical circumstances, because of the longer time period between initiation of an antidumping investigation and the preliminary determination, as compared to the time period in countervailing duty investigations.

Sec. 353.16(c)

Note: We have modified paragraph (c) to provide that the suspension of liquidation that results from a finding under this section will be made only at the time of, or after, an affirmative preliminary determination under § 353.15. *See* Department's response to comments on § 353.16(b). In addition, we have revised this paragraph to clarify that suspension of liquidation would apply only to entries covered by the affirmative critical circumstances finding. We also have made technical changes to paragraph (c) to clarify the language of this paragraph.

Sec. 353.16(d)

Comment: Two parties contend that neither the Department nor the Customs Service has authority to order the retroactive collection of a cash deposit or posting of a bond, and that the Department's authority in the event of a preliminary affirmative critical circumstances decision is limited to ordering the retroactive suspension of liquidation. These parties suggest, therefore, that we delete the reference in paragraph (d) to cash deposit and bond, and clarify that an affirmative finding of critical circumstances does not result in retroactive collection of deposits or posting of bonds.

Department's Position: The authority to impose retroactively a bond or cash deposit requirement is stated by implication in section 735 (c)(3)(B) and (c)(4) of the Act. If Congress did not intend retroactive bonding or cash deposits, these provisions of the Act would be superfluous because there would be nothing to release or refund.

Sec. 353.16(e)

Comment: One party suggests that the Department should be subject to the same time limits for making findings in self-initiated investigations (paragraph (e)) as in investigations based on petitions (paragraphs (b) and (d)), because the same standard for determining critical circumstances applies to all investigations.

Department's Position: Paragraph (e) provides that the time limits relating to the submission of critical circumstances allegations by the petitioner do not apply in self-initiated investigations. This paragraph gives the Department maximum flexibility to make critical circumstances findings early in self-initiated investigations.

Sec. 353.16(f)

Comment: Several parties advocate elimination of the reference in paragraph (f) to a 15 percent increase in imports over imports during an "immediately preceding" period. They contend that a 15 percent increase in imports is not necessarily indicative of circumventing behavior that would warrant application of the retroactivity provisions of the law. They note that such an increase could reflect normal commercial responses to changed market conditions, to normal business growth, or to compliance with contracts entered into months earlier. Some of these parties believe that application of the 15 percent standard, even though it is not an absolute standard, may lead to arbitrary results and may discourage importations. On the other hand, one of these parties emphasizes that in some cases (even those in which imports have not accounted for a preponderance of U.S. apparent consumption) the 15 percent standard may be too high.

Several parties object to the statement in the preamble of the proposed rule that in cases where imports account for a "preponderance" of U.S. apparent consumption, an increase in imports of less than 15 percent may be massive. One party argues that market share is irrelevant to the issue of whether imports are "massive," and believes it is inappropriate to penalize, by using a lower threshold for invoking the critical circumstances provision, imports that have achieved a large share of the market without some evidence that their share is the result of dumping. Another party argues that there is a discrepancy between the explanation of § 353.16(f) and the language of the regulation itself with respect to the increased import amounts. Specifically, this party seeks clarification as to the provision in the proposed regulation that states the Secretary will not consider imports massive unless they have increased by "at least 15 percent" and the statement in the preamble to the proposed rule that "the Secretary might consider the imports massive, even if the increase is less than 15 percent * * *."

Some of the parties that object to the 15 percent standard suggest dropping it in favor of a completely *ad hoc* analysis based on consideration of historical and seasonal import patterns and other factors relevant to the decision whether the increase in imports is an attempt to circumvent the law. One party suggests that if the Department retains the 15 percent standard, the Department should provide that any increase of less than 15 percent (even if imports accounted for a preponderance of U.S. apparent consumption) will not be considered massive. Another party suggests adding to paragraph (f) a statement that any interested party may submit evidence to rebut the presumption created by the 15 percent general rule. That party also would delete the reference to "immediately preceding period" and would insert reference to a longer historical period, preferably three years. Other parties suggest raising the 15 percent standard to 25 or 50 percent, or adding a requirement that the increase also must have accounted for five percent of total consumption.

Department's Position: Neither the Act nor the legislative history defines "massive imports." The Department, however, has concluded for the following reasons that, in order to be "massive," imports must increase significantly in relation to prior import levels or U.S. apparent consumption: (1) section 733(e)(1)(B) of the Act requires "massive imports * * * over a *relatively short period*," a test that appears to require a surge in imports over "normal" levels; (2) the purpose of the critical circumstances provision is to prevent circumvention of the law, a purpose that presupposes an increase in import activity associated with the possibility of assessment of antidumping duties; and (3) the requirement is consistent with the Department's established practice in defining the term "massive imports." The degree of increase required logically would depend to some extent on the size of the import volume in relation to total U.S. apparent consumption. Moreover, the Department would consider an argument in a particular case that it is

unreasonable to infer that the increase in imports is attributable to the filing of a petition or the expectation of the filing of a petition.

As noted in the preamble to the proposed rule, "[t]he criteria described in the proposed rule are intended to clarify the bases for the Secretary's critical circumstances findings without adversely affecting the Secretary's administrative discretion." 51 FR 29049 (1986). Any interested party may submit information to establish that an increase of less than 15 percent is massive or that an increase of more than 15 percent is not massive under the circumstances. For example, a party may argue that a 15 percent increase is not massive in the case of a new product where the market for the product is expanding rapidly. Any interested party may also submit information showing that the increase is a seasonal import trend unrelated to the filing of the petition. The 15 percent benchmark is not intended to limit the Department's discretion or responsibility to consider in each case the factors relevant to a decision regarding whether imports are "massive." Paragraph (f) uses the 15 percent benchmark as a general rule—it is merely a rough guide that gives some element of predictability to the process.

Sec. 353.16(g)

Comment: Two parties believe that the portion of this paragraph that permits the Department to extend the length of the "relatively short period," if the Department finds that importers or exporters "had reason to believe" that a "proceeding was likely," is not consistent with the Congressional purpose to deter import surges during the period between initiation of an investigation and a preliminary determination. One of these parties also believes the provision is anticompetitive. Several parties believe that the provision is subjective and unadministrable.

Although one party favors deletion of this provision, another party advocates revising paragraph (g) to include a list of objective criteria for the Department to refer to when deciding whether the importers or exporters had "reason to believe" that a "proceeding was likely."

Department's Position: Neither the statute nor the legislative history defines the phrase "relatively short period." The definition in paragraph (g) is consistent with the Congressional purpose of deterring import surges prior to suspension of liquidation that can be attributed to an effort to circumvent the effect of the law. The House Report states that the purpose is to "deter exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by the Authority." H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979). We believe that Congress intended that there be a benchmark period unaffected by the possibility of the imposition of antidumping duties. If the importers, or exporting producers or resellers, had knowledge that an investigation would be initiated, that period must be prior to initiation. In order to accomplish this purpose by issuing an affirmative critical circumstances finding at the earliest possible moment during the investigation, the Department must have the discretion to compare the level of imports during the surge period with the level of imports during the benchmark period.

In applying this provision, the Department will carefully evaluate all available information in order to eliminate the possibility of chilling legitimate trade and competition from abroad. For example, the Department would examine historical and seasonal trends to determine whether the increase in imports during the "relatively short period" is normal and appropriate.

At this time, the Department has had insufficient experience with this provision to establish a definitive list of criteria for deciding whether importers or exporting producers or resellers had "reason to believe" that a "proceeding was likely." When appropriate, we will develop such a list.

We note that we have revised this paragraph to permit the Department, when appropriate, to issue a critical circumstances finding prior to the date of the Department's preliminary determination under § 353.15. *See* Department's response to comments on § 353.16(b).

Sec. 353.17(a)

Comment: One party is concerned that the proposed rule does not ensure an adequate basis for the Department to evaluate the public interest under this paragraph. This party recommends revising paragraph (a) to require petitioners, on withdrawal of a petition, to certify whether they have knowledge of, or reason to believe that there is, any agreement by the foreign government or the industry of the country subject to the investigation to restrain export prices or quantities to the United States, or whether any such restraints have been, or are expected to be, implemented as an inducement to withdrawal of the petition. If the certification is affirmative, before terminating the investigation, the Department should follow the procedures for the public interest determination that are set forth in paragraphs (b)(1) and (b)(2) of this section.

Department's Position: The certification requirement proposed by the commenter is unnecessary. The obligation to consider the public interest gives the Department sufficient authority to obtain from interested parties all relevant information concerning withdrawal of petitions. The requirement that the Department consider whether a termination agreement serves the public interest derives from the 1979 legislative history of section 734(a) of the Act, which states, "The committee intends that an investigation be terminated under section 734(a) only if the authority or the ITC, as the case may be, determines that termination will serve the public interest." S. Rep. No. 249, 96th Cong., 1st Sess. 70–71 (1979). This requirement was articulated in § 353.41(a) of the current regulations and is carried over into this paragraph. If withdrawal is in fact based on a quantitative restraint agreement, the Department applies the provisions in paragraph (b) of § 353.17. Those provisions implement the 1984 amendment to section 734(a) of the Act, which provides more detailed public interest criteria for terminations based on quantitative restraint agreements.

Sec. 353.17(b)

Comment: One party suggests clarifying in paragraph (b)(2) that the Department will consult with other U.S. Government agencies before making the public interest determination.

Department's Position: Paragraph (b)(2) restates the statutory requirement set forth in section 734(a)(2)(C) of the Act. As a matter of practice, the Department consults with other agencies, when appropriate, on issues affecting the public interest determination under this paragraph. *See also* § 353.38(a).

Sec. 353.18(c)

Note: We have made technical changes to paragraph (c) to clarify the language of this paragraph.

Sec. 353.18(d)

Comment: One party believes it is important to enhance the ability of the domestic industry to influence the Department's decision whether "extraordinary circumstances," as defined in this paragraph, exist. An affirmative decision is based in part on

a finding that "suspension of the investigation will be more beneficial to the industry than continuation of the investigation." The party recommends requiring the foreign respondent and the government to submit any proposed suspension agreement at the time they submit the questionnaire response. The domestic parties then would have 14 days to comment and indicate their willingness to accept the agreement. If a majority of the domestic producers (in terms of volume of sales) or importers do not indicate acceptance, the suspension agreement should not be pursued.

Department's Position: The legislative history of section 734(c)(2) of the Act states that "the language of the statute is general so as to provide the Authority with flexibility in administering the provision. However, the provision is not intended to be so general as to be meaningless." H.R. Rep. No. 317, 96th Cong., 1st Sess. 65 (1979).

The Department recognizes the importance of obtaining the views of the domestic industry in deciding whether "extraordinary circumstances" exist. We believe, however, that more than a one-time head count of proponents and opponents (even if weighted by volume of sales) is required for the Department to make a reasonable decision on this issue. The Department's preliminary conclusion about whether suspension would be beneficial to the domestic industry should focus more on the concept of suspension in general than on the specific language of an initial draft agreement. The comments and views of all interested parties regarding specific draft proposals, and even suspension itself, may change significantly as the investigation progresses.

Moreover, to the extent practicable, all interested parties should have the opportunity to evaluate the possibility of a suspension of investigation in light of the Department's preliminary determination under § 353.15, an opportunity that would not exist under the requirements described by the commenter. Under § 353.18(g), the Department consults with the petitioner and affords the petitioner a right to comment on specific draft language. The Department concludes an agreement only if it determines that the agreement is in the public interest, including the interest of the domestic industry.

Sec. 353.18(e)

Comment: One party comments that, in order to ensure that effective monitoring of an agreement is practicable, this paragraph should be revised. Specifically, this party objects that the second sentence of paragraph (e) relieves the Department of the obligation to collect pricing information necessary for the effective monitoring of suspension agreements, and urges that it be deleted. Rather, the Department should require foreign respondents to submit on a quarterly basis the price at which they sell the merchandise in the U.S. and home markets, indicating any change from the period originally investigated. This information should be accompanied by a listing of claimed adjustments and the extent to which the adjustments differ from the period originally investigated.

Department's Position: Although the Department recognizes the importance of effective monitoring, we have not adopted the commenter's suggestion. Paragraph (g)(2)(i) provides that each suspension agreement shall contain a statement of the procedures for monitoring compliance with the agreement. The monitoring provisions of each agreement specify the types of information to be submitted. In practice, the Department requires submission of relevant information on a quarterly basis. The Department may consider it necessary to require all of the information identified by the commenter, but does not believe it is necessary or appropriate to require such information in cases where it is not needed.

The second sentence of paragraph (e) does not relieve the Department of its obligation to monitor effectively each suspension agreement. If appropriate, the Department will obtain price information described in that sentence. The regulation merely states that the Department is not obligated to collect such information on a continuing basis.

Sec. 353.18(f)

Comment: One party suggests that the phrase "elimination of sales at less than fair value" should be deleted from this section, because paragraph (a)(2) only applies to the complete cessation of exports and does not apply to suspension agreements that would eliminate LTFV sales.

Department's Position: We have deleted the reference to the phrase "elimination of sales at less than fair value."

Sec. 353.18(g)(1)

Comment: Two parties suggest that proposed suspension agreements should be permitted within 30 days, rather than 45 days, of a final determination. Thirty days would provide sufficient time to comment on and to consider a proposed suspension agreement, and would allow respondents additional time to seek an agreement.

Another party notes that this paragraph continues to permit the Department to suspend an investigation up to the date of its final determination, even though the purpose of a suspension agreement is to permit rapid resolution of antidumping cases, with a minimum expenditure of resources by all parties involved. The party recommends that paragraph (g)(1) be changed to require that: (1) foreign respondents and governments submit any proposed suspension agreement no later than the date on which they submit their responses to the Department's questionnaire; (2) the domestic interested parties be given a reasonable time thereafter to comment on the proposed agreement; and (3) the Department make a final decision on the proposed suspension agreement not later than the scheduled date for the preliminary determination.

Department's Position: The 45-day time limit in this paragraph establishes the minimum amount of time the Department requires to review a proposed agreement and to provide the 30-day notice to the petitioner required under paragraph (2)(i). This time limit also affords ample time for the Department to prepare the final determination.

The statute and legislative history clearly permit the Department to conclude a suspension agreement any time prior to its final determination. *See, e.g.,* S. Rep. No. 249, 96th Cong., 1st Sess. 68–69 (1979). The purpose of permitting suspension of investigations is, as the commenter notes, to permit "rapid and pragmatic resolutions of antidumping duty cases." *Id.* at 71. *See also* H.R. Rep. No. 317, 96th Cong. 1st Sess. 63–64 (1979). In practice, however, it is difficult to reach a pragmatic resolution of cases, especially complex cases, in significantly less time than that allowed by the statute. The Department proceeds cautiously in signing suspension agreements to ensure that all statutory criteria, including the public interest criteria, are satisfied. Therefore, we have not adopted the suggestion that suspension agreements be concluded no later than the preliminary determination.

Although the third commenter's proposals would ensure an early resolution of the question whether a suspension agreement is attainable, it would not ensure a "rapid and pragmatic resolution of antidumping duty cases." The proposal would impose time limits much shorter than those permitted by statute. As a result, the prospects of reaching an agreement on suspension would be severely reduced by the lack of time to consider and to

negotiate a solution to issues associated with the proposed suspension agreement. The regulation as drafted is more consistent with the statute, legislative history, and the Department's experience.

We note that, to be consistent with changes made to the countervailing duty regulations, we have modified paragraph (g)(1) to clarify that the service requirement only applies to a proposed agreement preliminarily accepted by the Department. Draft proposed suspension agreements submitted to the Department on or before the 45th day for review under paragraph (g)(1) need not be served on other interested parties. We also are amending § 353.31(g) specifically to exempt submissions under paragraph (g)(1)(i) from the general service requirements. The 15-day period between the deadline for submission of an initial draft agreement (paragraph (g)(1)(i)) and service of an agreement preliminarily accepted by the Department to the petitioner and other interested parties (paragraphs (g)(1)(ii) and (g)(2)(i)) is intended to give the Department, not interested parties, an opportunity to review and, if appropriate, suggest modifications to the proposed agreement. The petitioner and other interested parties have ample opportunity to comment beginning on the date specified in paragraph (g)(2)(i).

Sec. 353.18(g)(2)(i)

Comment: One party proposes that this section be modified to indicate that when the Department is aware, or has reason to believe, that another U.S. Government agency may be interested in commenting on a proposed suspension agreement, that agency will be notified at the same time notice is given to parties to the proceeding.

Department's Position: The Department makes every effort to ensure that other U.S. Government agencies will have an opportunity to comment on proposed suspension agreements.

Sec. 353.18(g)(2) and (g)(3)

Comment: One party states that the consultation requirement in paragraph (g)(2)(ii) should provide explicitly that, on request by the petitioner, the Department will meet and discuss with the petitioner the proposed suspension agreement. This party believes that, although the consultation requirement is stated in the current regulations, the Department has interpreted the requirement to be satisfied by allowing the petitioner to submit written comments on the agreement.

Regarding paragraph (g)(3), one party suggests changing the deadline for submitting written argument and factual information from five days to at least two weeks prior to the final determination, in order to provide adequate time for consideration of the submissions.

Department's Position: The regulation as drafted addresses the commenter's concerns. Paragraph (g)(2)(ii) provides for consultation and paragraph (g)(3) provides for submission of written argument and factual information concerning the proposed suspension agreement. The regulation draws a clear distinction between the two types of communication. As a matter of practice, the Department affords the petitioner in each case the opportunity for "complete disclosure and discussion." S. Rep. No. 249, 96th Cong., lst Sess. 71 (1979).

We agree that five days allows the Department too little time in which to consider written argument and factual information. Accordingly, we have changed paragraph (g)(3) to establish the deadline for submissions as 10 days prior to the final determination. To limit the deadline to two weeks, as suggested, would unnecessarily restrict the Department's access to relevant information and argument. The Department would sign a suspension agreement prior to the scheduled date for the final determination only after the Department has given all parties their opportunity to consult and comment on the proposed agreement. This paragraph necessarily establishes only the maximum conceivable time limit on submissions.

Sec. 353.18 (i) and (j)

Comment: One party suggests that paragraph (i)(2) include a statement of the effect of a negative final determination by the Department or the Commission.

Regarding paragraph (j), one party contends that there is no statutory authority for prohibiting entry of merchandise, as provided in paragraph (j)(2). This party believes that imports in excess of the limits in a quantity restriction agreement are merely a violation of the agreement, and should be treated as such under § 353.19.

Department's Position: The effect of a negative final determination by the Department or the Commission is stated in § 353.17(c). We are adding to this paragraph, however, a sentence to clarify the effect of a negative final determination on the suspension agreement, in accordance with section 734(f)(3)(A) of the Act.

The Department may order Customs to limit or exclude entry of merchandise under paragraph (j)(2) and may also determine under § 353.19 that the agreement has been violated. Paragraph (j)(2) is necessary for the Department to ensure that exports in excess of the quantity allowed by paragraph (f) or by an agreement under paragraph (a) do not enter the United States for consumption. This authority is implicit in the Act because Congress could not have intended for these agreements to be unenforceable.

Sec. 353.19(a)

Comment: Two parties object to this paragraph because it provides that, "without right of comment," the Department may determine that the signatory exporters have violated an agreement and take enforcement action. They believe that fairness and due process require right of comment before the contractual agreement is abrogated. One party argues that it is highly unlikely that a delay sufficient to allow an affected party an opportunity to explain its actions will have any measurable effect on the U.S. economy or the health of any industry.

Department's Position: As stated in the preamble to the proposed rule, "The Secretary would use the 'fast track' approach in paragraph (a) when the Secretary decides that the record shows clear evidence of violation by any signatory exporter and that notice and comment are unnecessary." 51 FR 29050 (August 13, 1986). There is no unfairness or violation of due process when the Department's determination is based on facts in the record of the case that establish that the exporters have failed to comply with the terms of the agreement by their own act or omission. This regulation is consistent with the statute and legislative history.

We note that, to be consistent with changes made in the countervailing duty regulations, we are revising paragraph (a)(4) by deleting the phrase "if appropriate" and inserting in its place "if the Secretary determines that the violation was intentional." This change clarifies that the Department will refer the violation to the U.S. Customs Service when the Department considers that the agreement was intentionally violated.

Sec. 353.19(b)

Note: We have modified paragraph (b)(1) to clarify that this paragraph applies when the Secretary does not have sufficient information to take action under paragraph (a) of this section.

To be consistent with changes made to the countervailing duty regulations, we have added the phrase "and after consideration of comments received," before the phrase "the Secretary will" in paragraph (b)(2). This will

avoid confusion and better reflect the intent of this paragraph (its title is "Determination After Notice and Comment").

In addition, paragraph (b)(2)(ii) was intended to conform to section 734(i)(1)(A)(ii) of the Act, which provides for suspension of liquidation of all unliquidated entries of the merchandise made on or after the date the agreement no longer meets statutory requirements, even if that merchandise was entered before the date of the Department's notice under paragraph (b)(1). We have amended paragraph (b)(2)(ii) to reflect that intention more clearly. We also have corrected the references to section 734(d)(1) of the Act in paragraphs (b)(2)(ii)(B) and (b)(2)(ii)(C); the correct citation is to section 734(d) of the Act.

Sec. 353.19(d)

Comment: Two parties believe the proposed definition of "violation" is inconsistent with section 734(i) and the legislative history of the Act to the extent that it defines a violation in terms of "significant" noncompliance. These parties believe that any violation of an agreement must be treated as a violation, not just those which the Department considers significant. In contrast, one party expresses agreement with the proposed definition of "violation," because it clarifies that insignificant acts or omissions will not be considered violations.

Department's Position: The purpose of the definition of "violation" is not to permit the Department to ignore noncompliance or equate "significant noncompliance" with "intentional violations," but to distinguish noncompliance that warrants termination of the agreement from noncompliance that is *de minimis*. This is similar to the distinction in contract law between "material" and "immaterial" breach. The word "significant" is too vague to accomplish this purpose. Therefore, we are modifying the definition to state that "violation means noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory exporter, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential." Even if the Department finds that the act or omission was clearly inadvertent or inconsequential and decides not to declare the agreement violated, the Department would consider whether it is appropriate to seek revision of the agreement under paragraph (b)(2)(ii)(B) or (b)(2)(ii)(C) in order to eliminate the possibility of repetition of such acts or omissions.

Sec. 353.20(a)

Comment: One party states that the regulations should provide that the Department will make a final determination not later than 75 days after "the date of" its preliminary determination (as under the current regulation) rather than "the date of publication of" its preliminary determination (as proposed). The party notes that the preliminary determination may be signed three to five days before it is published in the **Federal Register**, which means that under the proposed rule the Department may extend the statutory time limit by the same number of days.

Another party suggests that paragraph (a)(2)(i) should be modified to require inclusion of administrative and judicial precedents on which the legal conclusions are based. In addition, this party urges that paragraph (a) be modified to clarify that subsequent determinations cannot expand the scope of the investigation established in the notice of initiation.

One party suggests that the regulations require the Department to hold disclosure conferences with the parties, if requested, after the final determination but before the antidumping duty order is published. At such conferences, the Department should provide a full explanation of the final determination, including disclosure of all calculations and computer materials used in that determination. This party also suggests that the regulations provide for the correction of any errors in the calculation of a dumping margin no later than 20 days after publication of an order. This would avoid unnecessary litigation as a result of the requirement that parties file a summons with the U.S. Court of International Trade 30 days after publication of an order to preserve their rights to seek court orders mandating corrections.

Department's Position: We have revised paragraph (a) to state that "[n]ot later than 75 days after the date of the Secretary's preliminary determination, the Secretary will make a final determination * * *."

Regarding paragraph (a)(2)(i), it is the Department's practice to explain in detail the legal conclusions for its final determinations, including, as appropriate, a statement of relevant legal precedent. This practice fully complies with section 735(d) of the Act. Regarding the comment on expansion of the scope of the investigation, see the Department's response to comments on § 353.13.

We have added a new paragraph (e) that would require the Department to hold a disclosure conference, if requested, after a final determination. This paragraph reflects the Department's current practice. We note that the purpose of any disclosure conference is only to provide an explanation of the calculation methodology used in a determination. *See* the Department's response to comments on § 353.15(g). Section 1333 of the 1988 Act requires correction of ministerial errors following a final determination. *See* the Department's interim procedures at 53 FR 41617 (October 24, 1988); 53 FR 5813 (February 26, 1988).

Sec. 353.20(b)

Note: In order to conform with the statute, we have revised paragraph (b) to provide that the Secretary will postpone the final determination to not later than 135 days after the date of *publication of* the preliminary determination.

In addition, we have added to paragraph (b) the requirement that the Secretary notify all parties to the proceeding and publish notice of any postponement. This is consistent with current practice.

Sec. 353.20(c)

Comment: All parties commenting on this paragraph argue that it is unfair to penalize foreign producers who have unsuccessfully sought exclusion. Two parties note that it often is unclear even to an informed observer whether a particular sale is at less than fair value, and thus it is manifestly unfair to penalize foreign producers for believing that their practices for determining fair value are the same as the Department's practices. These parties also argue that this section is unnecessary because the regulations already require publication of the dumping margins for each respondent, thus there is no reason to make special mention of companies that unsuccessfully sought exclusion because there is no difference in the legal result. They suggest eliminating this proposed section.

Department's Position: There is no "penalty" associated with stating a company's dumping margin. The paragraph is not needed, however, because the requirement to publish the margins for all producers and resellers found to have been selling at less than fair value is already provided by § 353.20(a)(2)(ii). We, therefore, have deleted the paragraph and renumbered the succeeding paragraphs accordingly.

Sec. 353.21

Comment: One party contends that the scope of an antidumping order must be limited to the product coverage set forth in the notice of initiation.

Department's Position: See the Department's response to comments on § 353.13.

Sec. 353.21(c)

Comment: One party argues that the clause "no weighted-average dumping margin" should be replaced by a *de minimis* standard, which would make the regulation consistent with the Department's current practice.

This party also contends that, in order to be excluded from an order, a firm must have either (a) applied for and qualified for an exclusion under § 353.14, or (b) been a producer or seller investigated by the Secretary and found to have no weighted-average dumping margin during the investigative period. This party notes that the use of the term "and" in the proposed regulation can be read to require that both conditions be present.

Department's Position: The phrase "no weighted-average dumping margin" means any zero margin. A *de minimis* margin is considered a zero margin. Any party for which there was no weighted-average dumping margin (including *de minimis*) would be excluded from the Department's order. The definition of *de minimis* was addressed in the rulemaking which culminated in publication of a final rule on *de minimis* dumping margins and countervailable subsidies at 52 FR 30660 (August 17, 1987). That rule is included in these regulations as § 353.6.

Paragraph (c), as proposed, only addressed exclusions based on requests submitted under § 353.14. We have modified this paragraph to clarify that any producer or reseller that did not request exclusion under § 353.14 and for which the Department nonetheless calculated a zero margin will be excluded from the order. *See* Department's response to comments on § 353.14.

Sec. 353.22(a)

Comment: Three parties argue that the proposed regulation will result in interested parties having to request a new administrative review before the final determination has been made in an ongoing review. One party argues that, as proposed, the regulation will reimpose on the Department the burden of conducting reviews that no party desires. This party suggests that this section be revised to provide that the Department will make a final determination within 12 months of the anniversary date of publication of the order or suspension agreement, instead of from the month in which the review was requested. One party suggests that this section be revised to allow requests for a subsequent review to take place only after the previous review has been completed. Another party suggests either shortening the time period for the administrative review or extending the deadline for the request of subsequent reviews.

Two parties recommend that the regulations require the Department to continue its present practice of publishing each month in the **Federal Register** a list of orders that have anniversaries occurring during the month. One party urges that the notices should include the rates of duty that will be automatically assessed if no request for review is received, and that the notices be mailed to all interested parties to the preceding investigation or review.

One party urges the Department to include a provision that would allow foreign producers that are new entrants into the U.S. market after the investigation is completed to have the opportunity to request a review at any time more than six months after the deadline for exclusion requests in the last segment of the proceeding. If it is determined that a new entrant made no sales at less than foreign market value, the order should be revoked *ab initio* with regard to the products of that party. In addition, if the Department does not act on a timely request for exclusion during an investigation, any firm that made such a request should be entitled to an expedited review and, if appropriate, revocation or an individual estimated duty rate.

Department's Position: Regarding the timetable for requesting and conducting reviews, we find that proposed § 353.22 does not comply with the statutory direction that a review be conducted "at least once during each 12-month period beginning on the anniversary of the date of publication of the order * * *." We have, therefore, amended paragraph (c)(7) to require that the review be completed not later than 365 days after the *anniversary* month (replacing "Secretary's initiation of"). Consequently, reviews will be completed by the end of the anniversary month. In order to ensure that the Department can meet the new deadlines for completing reviews during the period of transition to the new final rule, we have provided that the effective date of paragraphs 353.22 (a) and (c) will be the first day of the first month beginning 60 days after publication of these rules. Prior to that date, the interim final rule published on August 13, 1985 (50 FR 32556) will apply. *See also* the Department's response to comments on paragraph (c)(7).

We recognize the importance to the party submitting the request for review of knowing the final results of the immediately preceding review, if any. Therefore, we are modifying paragraph (a) to permit the party that submits a request to withdraw the request under certain conditions. If a relevant review has not been completed before the end of the anniversary month during which the new request is submitted, the party that submitted the new request may withdraw it not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend the time limit if it is reasonable to do so. Notice of the termination or partial termination of an administrative review, based on withdrawal of the request, will be published in the **Federal Register**. (Notice of partial termination normally will be published together with the preliminary results of administrative review for other firms being reviewed, if any).

As a matter of practice, the Department does publish in the **Federal Register** at the beginning of each month a courtesy listing of reviews that can be requested during the month. It is the responsibility, however, of interested parties to follow developments in a proceeding even in the absence of published notice at the beginning of the anniversary month. It is unnecessary for the Department to list various estimated antidumping duty rates in the published notice, especially because our experience has been that many parties discuss their options with the Department prior to filing a request for review.

We find unacceptable the suggestion that new entrants into the U.S. market after publication of an antidumping duty order be provided an opportunity for expedited review and, if our first examination of those exporters indicates that there were no sales at less than foreign market value, for the order to be revoked with regard to their products. Antidumping duty orders apply to all imports from a covered country, except those from firms specifically excluded from the antidumping duty order. Exclusions are based on the examination of a period prior to initiation of the investigation, when the respondent firm presumably acted without regard to the potential imposition of duties under the U.S. antidumping duty law. Under these circumstances, the Department can predict with some reliability the firm's future actions. If we were to follow the proposal in the comment, it would be simple for a firm, knowing of the antidumping duty order, to enter the market, ship for one year or less without selling at less than foreign market value, be "excluded," and then begin to sell at

less than foreign market value. We believe the revocation procedures of § 353.25 provide the additional measure of security necessary before revocation.

Sec. 353.22(c)

Comment: Regarding the procedures set forth in paragraph (c), one party contends that the Department should be required to provide individual notice of initiation of a review to all parties to the original investigation or most recent review. If the Department initiates a review of an individual producer or reseller under paragraph (a) by publication of a notice under paragraph (c)(1), the Department should give other producers and resellers 30 days from the date of publication of the notice to inform the Department that they also want a review.

Another party argues that it is unconstitutional to send questionnaires to and verify only a sample of respondents. They argue that paragraph (c)(2) should be revised to provide that questionnaires will be sent to and verification will be conducted for every respondent that timely requests either.

One party believes the 365-day time limit in paragraph (c)(7) for issuing the final results of administrative review should be shortened to six months, with the possibility of extension to nine months for reviews under paragraph (a)(1) that involve a large number of respondents. This party states that the Department should expedite reviews in order to reduce uncertainties caused by long periods of suspension of liquidation.

Finally, one party argues that the proposed regulations provide no formal mechanism for participation by interested parties. It suggests that the regulation be amended to allow interested parties to comment on the questionnaires before they are distributed, on the verification procedures, and before any hearing is held, on the Department's verification report.

Department's Position: We do not agree that all parties to the segment of a proceeding immediately preceding the initiated review must receive actual notice of the initiation under § 353.22(c)(1). As a matter of practice, however, we have attempted, and will continue to attempt, to provide actual notice to the parties. As to the suggestion that, following initiation of an individual producer or reseller review under paragraph (a), the Department provide a second period for requesting reviews, the party submitting the comment provided no reason, and we can see no reason, to do so. All interested parties have an opportunity to request a review during the anniversary month. A decision to request a review is completely independent of any other party's request for review of an individual producer or reseller.

With regard to the argument concerning the unconstitutionality of the provision that allows the Department to send questionnaires to and verify only a sample of respondents, this authority is established in § 777A of the Act. The Conference Report of the 1984 Act specifically described the provision as expanding "the instances in which the administering authority may use sampling and averaging techniques * * * in carrying out annual reviews of outstanding AD or CUD [sic] orders under section 751 * * *." H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 186 (1984).

Regarding the suggestion that the Department shorten the time limit in paragraph (c)(7) to six or nine months, the Department requires no less than 365 days in many cases to complete an administrative review. Any shorter time limit is impracticable.

Participation by interested parties is provided by Subpart C. As a matter of practice, the Department makes every attempt to consult with parties to the proceeding.

We note that, to be consistent with changes made in the countervailing duty regulations, we have extended the deadline in paragraph (c) for publication of notices of initiation of administrative reviews from 10 days to 15 days after the anniversary month. This change has been made to reflect the amount of time that is actually needed to publish an initiation notice. This revision does not change the Department's deadline for completing reviews.

We also note that in paragraph (c) of this section, we have clarified that the Department will hold a disclosure conference, if requested, promptly after issuing the final results in an administrative review. In addition, we have clarified that the purpose of disclosure, whether after the preliminary results or after the final results, is only to provide an explanation of the calculation methodology used in reaching the results.

Sec. 353.22(e)

Comment: All parties commenting on this provision urge that this paragraph be amended to require assessment at the most recently determined rate. These parties argue that in situations in which administrative reviews have been completed after the final determination, the cash deposit rate for the entries may not reflect the most recently determined antidumping duty rate. In addition, they note that when the duty rate established in a final determination is lower than the preliminary rate, automatic assessment should be made on the basis of the final rate. One party recommends an amendment to this section, proposing that when the Customs Service assesses antidumping duties in that situation, the section should specify an exception "with respect to merchandise entered between the preliminary affirmative determination by the Secretary and the final affirmative determination by the ITC of material injury, in which case such entries shall be assessed antidumping duties at the lower of the preliminary or the final rate as is appropriate."

Two parties argue that this proposed regulation is contrary to the GATT. According to these parties, the Antidumping Code unambiguously provides that the rate set in the final antidumping duty order for all purposes replaces rates determined at an earlier stage of an antidumping investigation. Thus, the collection of duties at the rate established in a preliminary determination is contrary to the Antidumping Code, especially in those cases where the final rate is lower than the preliminary one.

Department's Position: Because the cash deposit (or bond) rate is the basis for each interested party's decision whether to exercise its right to request a review, it would make no sense to change the rate after the time for request has expired. Interested parties that believe the assessment level should be higher or lower than the estimated antidumping duties deposited at the time of entry can request an administrative review. In addition, the use of the cash deposit rate required at the time of entry is in accordance with the purpose of the entire review-upon-request mechanism, *i.e.*, to reduce unnecessary administrative burdens. If these recommendations were adopted, the Customs Service would be required to make adjustments for under- or overcollections as well as collecting, or paying, interest. In any event, the failure of an interested party to file a timely request for review constitutes a determination under section 751 of the dumping margin for the entries made during the review period.

We disagree with the argument that paragraph (e) is inconsistent with the Antidumping Code. A final determination in an investigation only establishes an estimated weighted-average dumping margin. The amount of the dumping margin does not become "fixed" within the meaning of Article 11 of the Antidumping Code, and thus

antidumping duties are not assessed, until the Department has completed an administrative review. At that time, duties would be assessed at the rate established in the final results of administrative review. If an administrative review results in the "fixing" of a lower rate than had been deposited, the difference would be refunded in accordance both with U.S. law and the GATT Antidumping Code. If no review of particular entries is requested, however, the cash deposit rate becomes the "fixed" rate, and the entries will be liquidated at that rate. As noted above, interested parties that believe the assessment level should be higher or lower than the estimated duties deposited at the time of entry can request an administrative review. *See* the Department's response to comments on § 353.23.

We emphasize that when no interested party requests an administrative review, the Department will instruct Customs to liquidate the entries for that review period at the rate deposited at the time of entry. This automatic assessment will occur regardless of whether litigation regarding a prior administrative review or the LTFV investigation is pending. *See NTN Bearing Corp. of America* v. *United States*, Slip Op. 88–161, 12 CIT _____ (November 23, 1988) (citing *Fundicao Tupy S.A.* v. *United States*, Slip Op. 87–93, 11 CIT _____ (August 3, 1987)).

Sec. 353.22(f)

Note: To be consistent with changes made to the countervailing duty regulations, we have modified paragraph (f)(1)(vii) (proposed paragraph (f)(1)(vi)) by deleting the phrase "If appropriate." This change would make it necessary for the Department to provide a further explanation of its determination, if there is additional information about the determination that can be disclosed, to any party to the proceeding that requests disclosure. As modified, this paragraph conforms to paragraph (c)(6) of this section and to § 353.15(g).

We have added a new paragraph (f)(1)(iii), which provides that the Department will conduct verification if appropriate. In addition, we have added a new paragraph (f)(1)(xi) to clarify that the Department will hold a disclosure conference, if requested, promptly after issuing the final results in a changed circumstances administrative review. We also have added a new paragraph (f)(2), which provides that "Changed circumstances reviews may be requested at any time, including periods other than anniversary months." This change clarifies that a party's right to request a changed circumstances review or to bring relevant information to the Department's attention is not limited to anniversary months.

Sec. 353.22(g)

Note: We have clarified in paragraph (g)(4)(iv) of this section that any disclosure conference under this section will be limited to providing an explanation of the calculation methodology used for the Secretary's analysis. In addition, we have added a new paragraph (g)(4)(vii) to clarify that the Department will hold a disclosure conference, if requested, promptly after issuing the final results in an expedited review.

Sec. 353.23

Comment: One party claims that this section is inconsistent with section 737(a) of the Act and the Department's practice. Section 737(a) states that the "cap" on assessment of duties on entries made during the period between the Department's preliminary determination under section 733(d)(2) and the Commission's final determination under section 735(b) is the cash deposit rate set by the Department in its preliminary determination under section 733(d)(2) of the Act. Section 737(a) does not authorize the Department to establish a new cap at the time it issues its final determination under section 735(a) of the Act, as this section of the regulation would do. According to the commenter, in *Fireplace Mesh Panels from Taiwan*, 48 FR 31279 (1983), the Department concluded that the estimated rate announced at a preliminary affirmative LTFV determination established a maximum rate on the duties that could be collected on entries prior to the Commission's final injury determination.

Department's Position: Section 353.23 is consistent with section 737(a) of the Act and the Department's practice. Section 737(a) of the Act provides that the "cap" on the assessment of duties on an entry made prior to the date of the Commission's final affirmative determination is the amount of the cash deposit or bond required as security for that entry. For an entry made between the Department's preliminary and final determinations, the cash deposit or bond is set by the Department's preliminary determination. For an entry made after the final determination, the cash deposit or bond is set by the Department's final determination. Nothing in section 737 precludes the Department from changing the amount required as security (the bond or deposit rate) when it issues its final affirmative determination. In fact, if the rate in the final determination is higher than the rate in the preliminary determination, it is necessary to order the larger security, in order to assure that the duty can be collected at the appropriate time. With one aberration, the Department has consistently followed the practice reflected in § 353.23. *See, e.g., Forged Undercarriage Components from Italy*, 48 FR 52111, 52116 (1983). *Fireplace Mesh Panels*, a 1983 decision, is inconsistent with this rule and will not be followed.

Sec. 353.25(a) and (b)

Comment: Four parties object to the three-year time period for revocation or termination based on the absence of sales at less than foreign market value. These parties suggest keeping the current two-year period because they believe the Department's current practice has worked well. Two parties note that the proposed change will unnecessarily increase the burden on the Department for conducting section 751 reviews. One party suggests that if the proposed three-year time period is adopted, the Department should permit the request for a review to be submitted on the second anniversary of the order because the revocation will not take effect for another year. Another party urges the Department not to apply retroactively the new time-period to cases in which revocation proceedings have been initiated under the existing regulations. Another party suggests that the regulation clarify that, for purposes of revocation, a finding of *de minimis* dumping margins is equivalent to a finding of no sales at less than foreign market value.

Three parties urge the Department to modify the proposed regulation to provide for revocations based on the absence of shipments. One party argues that the absence of such a provision will result in new shippers being indefinitely "locked-out" of the U.S. market.

One party requests the Department to delete the requirement in paragraphs (a)(1)(ii) and (a)(2)(ii) that the Department determine that a foreign producer is "not likely" to sell merchandise at less than foreign market value. The party argues that the Department has included no guidelines as to how this provision would be implemented and as to how the Department would determine whether future sales below foreign market value were "likely" or not. Regarding the reinstatement provision in paragraph (a)(2)(iii), this party argues that a revocation based on the absence of LTFV sales should be final. The party adds, however, that if any "probationary" period is necessary, it should be limited to a one-year period following the period of no margins.

Department's Position: The adoption of a three-year period for revocation or termination based on the absence of dumping does not substantially modify the period of time that must be

examined under the current regulations. Even though the current regulations require a two-year period without dumping, the practice adopted in antidumping proceedings requires the examination of, at a minimum, about two years and nine months. That is because the Department examines the period between the end of the two-year period and the date of the tentative revocation or termination (the "gap period"). The adoption in § 353.25(c)(3) of the day after the end of the three-year period as the effective revocation date eliminates the need for an examination of the gap period.

Regarding the suggestion that requests for revocation be entertained at the second anniversary of the order, this is simply impossible. The rule requires no dumped sales for a three-year period. A request, therefore, cannot be considered until there is a three-year period for the Department to examine, which cannot occur until after the end of the second anniversary month.

In cases in which the Department has issued tentative revocations prior to the effective date of these regulations, it will complete the revocation procedure under the existing regulations. In all other cases, the new regulations will apply.

With regard to the suggestion that the regulation clarify the effect of a finding of *de minimis* dumping margins, a *de minimis* margin obviously is equivalent to a zero margin and thus no clarification is necessary. For an explanation of the consequences of a finding of *de minimis* dumping margins, see the Department's response to comments on § 353.21(c).

In a departure from the Department's past practice, this rule does not provide for revocations based on a period of no shipments. It has been the Department's experience that the absence of shipments is no indication of the absence of price discrimination, which is the basis for revocation under this paragraph. In determining, however, whether an order should be revoked based on changed circumstances under paragraph (d), the Department may consider among other things periods of no shipments.

The statute gives the Secretary broad discretion in deciding when to revoke an order. The Secretary has determined that a pre-condition to revocation under this paragraph is that the Secretary be satisfied that there is no likelihood of future sales at less than foreign market value. Finally, with regard to the reinstatement provision in paragraph (a)(2)(iii), the commenter has not indicated that any burden is imposed on a respondent that has entered into a reinstatement agreement and as to which an order has been revoked. By comparison, without this provision, petitioners would face the unnecessary time and expense associated with a new proceeding if dumping activity resumes. We note that we have deleted the reference to "fair value" in paragraph (a)(2)(iii) because the correct term after an order is in place is "foreign market value."

Sec. 353.25(d)(4)

Comment: Regarding the "sunset" provision in paragraph (d)(4), two parties argue that the language unnecessarily limits application of the provision to cases in which "no interested party requested an administrative review" during the preceding four years. They note that this should not apply to cases in which producers or resellers that have eliminated or lowered a dumping margin have requested a review. The fact that an importer, producer, or reseller may have requested an administrative review during the four-year period in order to lower deposit rates should not be held against them. The issue is whether a domestic interested party is interested enough to pursue the review. Therefore, these parties suggest precluding a revocation only in those cases in which a review was requested on behalf of the domestic industry.

In addition, two parties oppose the proposal that the mere objection by any interested party should be sufficient to prevent revocation of an order. One party suggests that a revocation be suspended only if an interested party shows that revocation may lead to injury or threat of injury. The other party suggests that the objecting party be required to show good cause why the revocation should not be issued.

Two parties note that the time limits provided are unnecessarily long. One party suggests that the procedure described in this subsection be initiated 90 days before the third anniversary month, and concluded by publication of the revocation if no objection is received by the last day of that month.

Finally, one party argues that the provision requiring the Department to provide written notice to each party on the service list and to "any other person which the Secretary has reason to believe produces or sells the like product in the United States" is absurd and should be eliminated. It contends that the Department is inviting an administrative nightmare, and that publication in the **Federal Register** is sufficient. It notes that although the Department professes to want to reduce its litigation caseload, it is inviting companies which may never have been parties to sue the Department over whether it should have known they would be interested in the subject.

Department's Position: Congress has recognized that the Department may revoke an order or terminate a suspended investigation in the absence of domestic party interest in continuing the order or suspended investigation. *See* H.R. Rep. No. 1156, 98th Cong., 2d Sess. 181 (1984). The so-called "sunset" provision is merely a means for ascertaining if interest in continuation of the order exists. Thus, we limit application of this provision to proceedings in which no party has requested a review during the preceding four years. Importers, producers, or resellers that believe no domestic interested party is interested in continuation of the order may request revocation under paragraph (d)(1) of this section.

The "sunset" provision of paragraph (d)(4) is not intended to substitute for other provisions of the Act or regulations that govern particular situations warranting revocation. For example, a changed circumstances request to the Commission under section 751(b) of the Act is the proper vehicle for review of whether injury continues to exist. The changed circumstances provision in paragraph (d)(1) (and other provisions) is a more appropriate basis for revocation of an order in contested cases. If parties believe that five years is too long to wait for a revocation in accordance with the provisions of paragraph (d)(4), they may request revocation under the other provisions of § 353.25.

As stated earlier, because the "sunset" provision is a means for ascertaining whether there is interest in continuation of an order, it is appropriate that the Department take reasonable steps, including giving actual notice of the intent to revoke or terminate, to determine whether such interest exists. We believe the courts will take account of the Department's limited knowledge of the existence of U.S. producers or sellers other than those found on the service list which may be interested in a proposed revocation or termination.

We note that because a notice of initiation and consideration of revocation or termination provided for in paragraph (d)(3)(i) need not be based on a request, we have added a new paragraph (d)(3)(ii) requiring actual notice if the consideration is not based on a request.

Sec. 353.25(e)

Comment: One party suggests that the proposed regulation be modified to clarify application of the phrase "negative final result" to suspension agreements due to confusion that may be caused by the related Commission regulation. Because section 751(b) of the Act and the Commission regulation provides that it shall determine whether an agreement continues to eliminate completely the injurious effect of imports, a "negative final result" would require an order to be restored, not revoked. The party, therefore, suggests that the Department's regulation be modified to prevent any future confusion.

Department's Position: We agree that clarification is needed as to a finding by the Commission concerning a suspension agreement, which would result in termination of a suspended investigation, and have modified the final rule accordingly.

Sec. 353.31(a)

Comment: Five parties believe that the deadlines for submission of factual information are unreasonably short and inflexible. Most of these parties object to the proposed deadlines because they would preclude submission of factual information during verification, even though such information could be verified, or after verification, even though such information may rebut, clarify, or correct earlier submissions.

One party suggests that for both investigations and administrative reviews, the Department establish a deadline of 10 days subsequent to verification or 30 days prior to a final determination or final results of review for submission of factual information. One party favors retention of the more discretionary guidelines in § 353.46 of the current regulations, which permit the Department to issue specific instructions regarding specific submissions and extend the deadline for submission when warranted. Two parties urge retention of the flexibility afforded by the current regulation to extend established deadlines, whatever deadlines are included in the new regulations. One party urges the Department to retain the discretion to accept late submissions "when justice requires," and suggests revision of the proposed regulation to permit consideration of factual information submitted after the deadline in such instances. One party suggests that the regulations be revised to permit the Department to accept at any time information that corrects or clarifies earlier submissions, as under current practice.

One party focuses specifically on the effect of the deadlines on the ability of petitioners to participate fully in proceedings. It emphasizes that the deadlines in paragraph (a) are appropriate for respondents but would make it impossible for petitioners to organize and to focus their investigative efforts on particular issues raised in respondents' submissions, because respondents' submissions are often made just prior to the deadline established in this paragraph. This party suggests that the time limits in paragraph (a) should apply only to respondents, and that the Department permit petitioners to submit factual information not less than 30 days after all proprietary information submitted by respondents and the non-public version of the Department's verification report have been released to petitioners under administrative protective order. Alternatively, this party believes the Department should establish specific deadlines in each case, as under current practice.

Department's Position: The purpose of this section is to provide all interested parties a reasonable opportunity to submit factual information for the Department to consider in the final determination or final results of review. The "flexible" approach to deadlines for submission of factual information, which means that the Department establishes time limits separately for each investigation or review, has led to seemingly endless confusion and time-consuming debate about what is a reasonable time limit.

The comments have not persuaded us that the time limits for submission of factual information by respondents (interested parties as defined in paragraph (k)(1) or (k)(2) of § 353.2) are unfair or unreasonable. If the Department deems additional factual information to be critical to the investigation or review, the Department will request the information under § 353.31(b)(1). Such information might include information that to some extent clarifies or corrects earlier timely submissions and that could be, for example, requested orally at verification.

We do agree, however, that the proposed rule does not provide domestic interested parties (interested parties as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2) an adequate opportunity to rebut, clarify, or correct earlier submissions of factual information by respondents. Accordingly, we have modified paragraph (a) of this section to provide a period of 10 days from the date such factual information is available to domestic interested parties for the submission of factual information that clarifies, rebuts, or corrects earlier submissions by respondents. The information is "available" to a domestic interested party when it is either served on it or, if the information is business proprietary information that is not served directly on the domestic interested party, released to it under APO.

We note that the deadlines for submission of questionnaire responses, including deficiency responses, and submissions of new allegations by petitioners are controlled by paragraphs (b) and (c).

We also note that we have clarified that factual information submitted after the applicable deadline will be returned to the submitter with written notice stating the reason for return of the information.

Sec. 353.31(b)

Comment: Three parties believe that the proposed limitation in paragraph (b)(2) on consideration or retention in the record of unsolicited questionnaire responses should be deleted. One party argues that the antidumping law provides no authority for the Department to reject voluntary submissions. Another party comments that the Department's failure to include submissions, solicited or not, in the record is contrary to the Department's administrative responsibilities and could deprive a party of its right to judicial review.

Three parties argue that this paragraph unnecessarily restricts the officials who have the authority to approve requests for extension of time. One party suggests that the appropriate officials should be authorized to delegate authority to other Department employees to approve requests for extensions. Another party recommends that this provision be amended to provide a "safety valve" for unforeseen contingencies when a written request has become impossible or the appropriate officials are unavailable.

One party argues that the proposal in paragraph (b)(4) to shorten the time for submission of questionnaire responses is unjustified. It notes that it is virtually impossible to gather the required information and translate it in the time period allowed. In addition, it contends that the Department often does not review responses until several weeks after they are submitted, and that it therefore is inappropriate to require

respondents to meet unrealistic deadlines. If the Department is going to insist on perfect responses by not allowing opportunities for revisions of unintentional errors, it must allow sufficient time for the preparation of such responses.

Department's Position: As explained in the preamble to the proposed rule, the short statutory time limits and the complexity of antidumping duty proceedings, including verification requirements, usually make it impossible for the Department to consider unsolicited questionnaire responses. *See* 51 FR 29052 (August 13, 1986). The Department normally includes in its investigation foreign producers and resellers accounting for most of the exports of the merchandise. In addition, a party may request exclusion from an investigation under § 353.14 or revocation under § 353.25(b), as appropriate. In unusual circumstances, paragraph (b)(2) permits the Department to consider unsolicited questionnaire responses. We note that we have added a sentence to paragraph (b)(2) to clarify that untimely or unsolicited questionnaire responses rejected by the Department will be returned to the submitter with written notice specifying the reasons why the Department rejected the information.

Requests for extension must be approved in writing, as provided in paragraph (b)(3), in order to avoid confusion and ensure fair and equitable treatment for all parties. If the designated official is not available to act on a request, the official will have designated someone else to act in the official's absence. The first sentence of paragraph (b)(3) emphasizes the fact that an extension of time for submitting a questionnaire response is difficult to obtain. The Department will judge each request on its own merits and grant requests when the requester can establish a legitimate need for additional time.

The party that believes the Department is shortening the time limit for submission of questionnaire responses is incorrect. Previously, the Department generally required questionnaire responses in administrative reviews to be submitted 30 days after receipt of the questionnaire, with an easily granted 15-day extension. The new regulatory deadline in this paragraph provides for a net gain of at least 15 days.

Sec. 353.31(c)

Comment: One party comments that the deadline in paragraph (c)(2) for submission of an allegation that a petitioner lacks standing is entirely too late in an investigation. They argue that the proposed deadline would make it difficult for the petitioner to offer factual or legal arguments by way of rebuttal in time for the Department to give them due consideration before making a preliminary determination. Alternatively, the proposed filing deadline could mean that no decision would be made until after the preliminary determination; if the Department's preliminary determination were affirmative, however, dismissal of the investigation would violate section 732(a) of the Act. This party recommends revising the proposed regulation by limiting such an allegation to "not later than 45 days after the filing of the petition." Petitioners should then have 10 days after receipt of the allegation to respond.

Another party argues that there should be no time limits placed on allegations that a petitioner lacks standing. They contend that because standing is a prerequisite for imposition of antidumping duties, as a matter of law, a party should be able to raise it at any time during the course of a proceeding.

Department's Position: The time limit on allegations of petitioner's lack of standing is intended to ensure that the allegation is submitted sufficiently early in the proceeding to permit adequate investigation of the allegation. As stated in the preamble to the proposed rule, "[s]tanding is important; however, it is also complex and the Department needs time to gather and evaluate the facts." 51 FR 29052 (August 13, 1986). The Department believes the time limit is reasonable based on its experience in dealing with such allegations. *See, e.g., Certain Atlantic Groundfish from Canada,* 51 FR 10041, 10043 (1986).

We note that we have revised paragraph (c)(1)(ii) to provide an exception to the deadline for filing allegations of sales below the cost of production when the Department determines that a "relevant response" is untimely or incomplete. The added language mirrors the language already included in paragraph (c)(1)(i).

Submitters should note that the adequacy of new allegations will be judged by the same standard (taking into account the information reasonably available at the time) as would have applied if the allegations had been contained in the petition.

Sec. 353.31(e)

Comment: One party states that the Department should not reject a submission that substantially conforms to the requirements stated in paragraphs (e) (1) and (2), and that the regulation should provide an automatic right for a party to resubmit a document in acceptable form when the initial submission was unsatisfactory solely because it failed to comply with the requirements set forth in these paragraphs. Regarding paragraph (e)(3), this party would add a statement that, absent clear evidence to the contrary, the Department will accept a submitter's representation that it would be unable to submit a computer tape without unreasonable additional burden in time and expense.

Department's Position: Although paragraph (e)(1) gives the Department the authority in specific situations to alter the requirements in paragraph (e), the Department believes it is important that submissions conform to the stated requirements. The Department must be able to process documents quickly so that deadlines can be met. Proprietary information must be identifiable quickly and, if subject to administrative protective order, should be so marked. From the standpoint of an individual submitter of information, these filing requirements and deadlines may seem trivial. From the standpoint of the Department, however, they are very important to the efficient and timely administration of the program. If each of the hundreds of submitters of information were free to depart from the filing requirements, the cumulative burden on the Department would be enormous, and would defeat the very purpose for having filing requirements and deadlines. Therefore, the Department cannot accept "substantial compliance" as a norm. By spelling out in detail each filing requirement, the Department has made it easy for interested parties to understand how to file documents timely and in the proper form. The Department does not anticipate a need to create exceptions to the straightforward filing requirements.

Regarding the exception to the filing requirement in paragraph (e)(3), the Department will consider the "burden in time and expense" without necessarily requiring that both be demonstrated in each case. In evaluating such claims, the Department will draw on its knowledge of the submitter and on its own expertise in computer operations. Although the Department is likely to accept the submitter's description of the additional burden it would incur, the Department will decide whether such burden is unreasonable. The Department will require computer tapes to be submitted in an investigation or administrative review only if the Department believes that computer tapes are necessary and appropriate in

the particular segment of the proceeding in question.

We note that we have modified paragraph (e)(3) to clarify that the Secretary may require submissions on computer tape as long as that requirement is not an "unreasonable additional burden."

We also note that, to be consistent with changes made to the countervailing duty regulations, and to improve the speed and efficiency of document handling, the Department is revising paragraph (e): (1) to increase from five to seven the number of copies of a document required in an administrative review; (2) to specify that documents shall be single-sided; (3) to require a statement that the document may or may not be released under administrative protective order; and (4) to require that each computer tape be accompanied by a printout of the tape.

Sec. 353.31(f)–(i)

Comment: In order to avoid unnecessary expense, one party would have the Department require the submitter to provide an English translation for any submitted document, or designated portion thereof, within five days of a request from the Department. Another party suggests that we modify the regulation to provide that documents should be accompanied by English translations and failure to provide such translation may result in rejection of the document. This approach would eliminate the burden on the Department to waive in writing the translation requirement.

Department's Position: We believe paragraph (f) as drafted properly balances the needs of the Department for an English translation of a document against the desire of the submitter to meet deadlines and avoid unnecessary administrative burdens.

We note that we have modified paragraph (g) to make exceptions to the service requirement for petitions, proposed suspension agreements, and factual information submitted under § 353.32(a) that is not required to be served on an interested party. *See* the Department's response to comments on § 353.18(g)(1).

We note that we have added as paragraph (i) to the final rule a certification requirement for submissions of factual information. *See* the Department's response to comments on § 353.12(a). We believe that the certification requirement will help to ensure the completeness and accuracy of factual submissions.

Sec. 353.32(a)

Comment: One party comments that the requirement in paragraph (a)(2) for an explanation why each piece of factual information is entitled to proprietary treatment is unnecessary and would be extremely expensive in light of the fact that antidumping questionnaire responses often are over 100 pages in length. Another party suggests that documents such as contracts and internal financial statements that are submitted in support of questionnaire responses should be excluded from release under an APO, irrespective of whether the submitter has identified such documents.

Department's Position: For information that falls within § 353.4(b), the Department will require only that the submitter specify how the information fits within § 353.4(b).

The standard for deciding whether to release particular information, including the information noted by the commenter, under administrative protective order, is provided in § 353.34(a). *See* 51 FR 29053 (August 13, 1986).

We note that we have modified paragraph (a)(2) of this section to clarify that submitters must mark "Proprietary Treatment Requested" only on pages that contain proprietary information.

Sec. 353.32(b)

Comment: Six parties suggest modifications that would make the summarization requirements in paragraph (b) less burdensome to the submitter. Four parties argue that when information is released under an APO, a submitter should not be required to "range" figures in a submission or to provide a detailed public summary. Three of these parties add that the statute does not require public summaries of confidential data to include ranges of the numbers submitted. Two parties suggested that the Department delete the reference to ranging within 10 percent of the actual figure because the ranging may not sufficiently mask the proprietary information (especially when the actual figure is small). One party suggests that only individual representative transactions be summarized within the 10 percent range. Another party suggests a range within 20 percent of the actual figure. With regard to voluminous data, one party suggests that the submitter be permitted to summarize a representative sample. Two of the six parties would modify the regulation to require a detailed nonproprietary summary only when domestic interested parties have established a particular need for such a detailed summary; otherwise, a brief public summary should be sufficient. If the Department retains the proposed rule without modifying it, one party urges the Department to allow the submitter a period of 10 days after submission of the proprietary information in which to file the nonproprietary summary.

Department's Position: As amended by the 1984 Act, section 777(b)(1) of the Act requires either a "non-proprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence" or a statement explaining why such a summary is not feasible. As we explained in the preamble to the proposed rule, the "brief" nonproprietary summary permitted by the current rule is not consistent with the Act as amended. 51 FR 29053 (August 13, 1986).

To some extent, what is "sufficient detail" and what is "feasible" depend on the facts of each case, including the identity of the parties, the number of items of information, and whether or not the submitter has computer capability. The general requirement that numeric data be grouped within 10 percent of the actual figure is intended to alert parties to an approach that our experience shows has been adequate in many situations to meet the statutory purpose. The regulation recognizes what the conflicting comments make clear—that *ad hoc* decisions as to particular data may be necessary. Some of the suggestions are excellent ways to deal with particular submissions, and the Department will take account of these approaches in specific cases.

The fact that the data submitted are voluminous does not by itself excuse the submitter from the burden of providing a public summary that would afford parties not entitled to receive the proprietary data an opportunity for "a reasonable understanding of the substance of the information submitted in confidence." We note that we have clarified that if a portion of a submission is voluminous, the numeric data summarized must be *representative* of that portion.

To extend the deadline for submission of the nonproprietary summary of information would delay the availability of such information to parties that may rely on having access to it. The Department has found that the requirement can be met without allowing additional time for submission of the nonproprietary summary.

Sec. 353.32(c)

Comment: One party states that, rather than require submitters to

anticipate arguments supporting a request for disclosure, the Department should allow submitters 48 hours to rebut arguments in favor of disclosure after the Department receives such arguments. The Department should modify the last sentence of paragraph (c) accordingly.

Department's Position: It is unnecessary to provide in the regulation an additional opportunity for argument in opposition to release of submitted information under protective order. Our experience has been that the submitter almost always is aware of the arguments at the time the information is submitted. Therefore, the submitter is capable of presenting any arguments against disclosure at that time. Moreover, this requirement is essential to avoid unnecessary delay in release of such information that in the past has resulted from repetitive submissions supporting and opposing release. Only in the most extraordinary situation would the Department make an exception to this rule and provide the submitter an additional opportunity for comment. As drafted, the last sentence of this paragraph adequately covers such an exception.

Sec. 353.32(d)

Comment: Two parties contend that 48 hours is too short a period in which to require resubmission of information that the Department has determined does not conform to the requirements of this section. Suggested time limits are one week or five business days. Another party suggests that the Department should not immediately return the nonconforming submission, but rather should allow the submitter five days to supply the additional information needed for compliance.

Department's Position: Because the requirements of this section are clearly stated and known to the submitter in advance of submission, the submitter should have no difficulty meeting the short deadline for resubmission. Nonconforming portions of a public summary should be quickly and easily correctible by the local representative of the submitter. We have changed the regulation, however, so that the time period runs from when the submitter receives the Department's explanation for return of the submission. When the submitter picks up the returned information and explanation at the Department, the time of receipt is the time of pick-up. In order to clarify that the 48-hour period does not include weekends and federal holidays, we are changing the stated deadline to "two business days." We also have modified the proposal to clarify that nonconforming information will not be considered.

Sec. 353.32(f)

Comment: One party suggests that the Department should: (1) modify paragraph (f)(2) to provide that before proprietary data are disclosed to an outside consultant to the Department, the consultant's credentials shall be made available to the submitter so that possible conflicts of interest can be identified; and (2) modify paragraph (f)(4) to specify that disclosure to the Customs Service is limited to investigations regarding fraud relating directly to the antidumping duty investigation, as required by section 777(b)(1) of the Act. Another party suggests that employees of the Justice Department who are involved in a judicial review of a proceeding should be included in the list of persons to whom the Secretary may disclose proprietary information. The list also should include disclosure to any person when otherwise required by law.

Department's Position: With regard to the comment on paragraph (f)(2), the Department's contract with any outside consultant requires full disclosure of information that will identify potential conflicts of interest. We will continue our current practice of conferring with interested parties to supplement this information.

In response to the comment on paragraph (f)(4), we have modified the language of this paragraph to clarify that the scope of this provision is limited to matters relating to antidumping duty proceedings.

The Department of Justice does not need to be included in the list of parties that may receive business proprietary data because it receives such data as agent of the Department of Commerce. As to disclosure to other parties, we are not aware of any other party that would have authority to receive proprietary data, although the Department would be responsive, of course, to court order in this respect.

We note that, to be consistent with changes made to the countervailing duty regulations, we have modified paragraph (f) to permit release of proprietary information, under Part 354 of this title (19 CFR Part 354), to a party charged with violating an APO or counsel for such a charged party.

Sec. 353.34

Comment: One party would expedite release of proprietary information by requiring the Department to rule on a "blanket" application within a short time after it is filed (*e.g.*, 10 days after receipt of the request, with the possibility of an extension to 15 days in unusual circumstances). This party suggests that the proposed regulation also be amended to provide that the party submitting proprietary information subject to the protective order directly serve on the protective order recipient proprietary information that the submitter agrees should be released. If the submitter does not agree that the information should be released, it should be required to explain its reasons for opposing release at the time it submits the information.

This same party argues that the regulation should provide that verification exhibits and computer tapes may be released under a protective order. Failure to release this information prevents identification of substantive issues in cases until subsequent judicial review, and serves only to increase the costs of analyzing respondents' data and checking for possible computational errors or the impact alternative decisions would have on the investigation results.

Another party contends that the implicit provision in the proposed regulation for the routine granting of blanket requests for release of confidential information under administrative protective order is inconsistent with statutory requirements. Under the statute, requests for release of information, whether prospective or otherwise, must describe with particularity the reasons for the request and the information requested. The commenter believes that the Department needs to focus on its administration of the APO provisions, and contends that the Department often is unaware of the post-investigation disposition of APO material in many investigations.

Department's Position: The Department makes every effort to expedite its decisions on release of information. Normally the decision is made within 14 days of receipt of the application. However, in proceedings involving, for example, a large volume of different types of information or complex issues relevant to the balancing test described in paragraph (a), the Department may need some additional time. We have modified paragraph (b) to indicate that the normal time period for the Department's decision is not more than 14 days. This is reflected in section 1332 of the 1988 Act.

Regarding service of proprietary information subject to protective order, we are modifying paragraph (a) to indicate that the Department may require direct service of the proprietary information on the recipient of the

protective order. The first sentence of paragraph (a) now reads in part "the Secretary may disclose, or require to be disclosed* * *." The Department normally would require direct service when the submitter has agreed in advance, under § 353.32(c), to release submitted information under protective order. If the submitter does not agree to release of information under APO, § 353.32(c) requires that it state "which portions of the proprietary information should not be released under administrative protective order and all arguments supporting that conclusion for each portion."

Almost all verification exhibits are exempt from disclosure under APO because they are not necessary to an understanding of either the calculations or the reasons a particular methodology is chosen. In these instances, they serve only to assist the analyst in preparing the verification report. In rare situations, a document accepted at verification may be needed to calculate foreign market value or U.S. price; in such an instance, the document would be releasable under APO.

As with any other proprietary data, the issue of whether the Department will release, or require to be released, under administrative protective order computer tapes submitted by respondents must be determined on a case-by-case basis. Such a determination will be based on whether the need for access to the proprietary data contained on computer tape outweighs any interest in withholding data. *See* § 353.34(a); *see also Yale Materials Handling Corp.* v. *United States*, Slip Op. 87–121, 11 CIT___(November 3, 1987); *Timken Co.* v. *United States*, Slip Op. 87–45, 11 CIT___(April 6, 1987). If the Department concludes that the need for access to the proprietary data on computer tape outweighs any interest in withholding the data, the Department will require the party to release its redacted computer tapes directly to opposing counsel, at the opposing party's expense, under the terms of an APO specifically written to provide a heightened degree of protection. The Department believes this is a reasonable approach. We note, however, that the Department will not in any way assume the great burden and expense of creating or modifying tapes for a party. In other words, the Department will not redact a party's computer tapes nor will we create computer tapes of our SAS program logs or SAS data sets.

As the Department explained in the preamble to the proposed regulations, "[p]aragraph (b) implements section 619(4) of the 1984 Act, which authorizes standing requests for disclosure of information for the duration of each segment of a proceeding that culminates in a judicially reviewable decision * * * . The regulation recognizes that the standard in section 777(c) for particularity of description of requested information must be read in light of the 1984 Act's provision for requesting information before the Department receives it, or even before the information exists." 51 FR 29053 (August 13, 1986). Approval of release of information in advance of its submission does not impede the Department's ability to balance the competing interests of submitter and requester. The types of information submitted in antidumping proceedings are well-known to all parties in advance of submission. *See, e.g.*, § 353.4. Contrary to the commenter's assertion, the Department carefully balances the competing interests in each case prior to granting the release of information under a blanket administrative protective order. Moreover, before the administrative protective order lapses at the completion of a segment of a proceeding, the Department requires that the proprietary information either be subject to the terms of an existing judicial protective order or that the representative destroy or return the proprietary information and certify that it has fully complied with the terms of the order. This practice is reflected in paragraph (d) of this section. *See* 51 FR 29054 (August 13, 1986).

Sec. 353.34(b)

Comment: One party sees no valid reason for the short time limits specified in paragraph (b)(1). For example, although a party may at first choose not to participate actively in a proceeding, the party may decide later in the proceeding to participate actively and, therefore, to request access to information under protective order. The Department should consider requests for release of information even if submitted later than the time limits specified in paragraph (b)(1).

Another party argues that in-house counsel should not be granted access to proprietary information. It urges that paragraph (b)(1)(ii) of this section should be amended so that an interested party's "representatives" will not include its employees. Disclosure of proprietary information to in-house counsel or other employees of the interested party would defeat the purpose of an APO, and would be contrary to Congressional intent to preserve the distinction between in-house counsel and outside counsel. Another party argues that confidential information should be released under administrative protective order only to attorneys. It notes that other individuals are not subject to the same sanctions as are attorneys should an APO be violated.

Regarding paragraph (b)(2), one party suggests that we delete the standard form requirement, because it ignores the possibility that special circumstances may justify deviation from the standard form.

Regarding paragraph (b)(4), one party suggests that the proposed rule be modified to ensure that "the taint of a person who violates a protective order" does not affect that person's firm, partner, associates, employees, and employer after that person is no longer employed or associated with them, and likewise does not affect the new firm or employer of that person. This party also believes that additional protection is needed to ensure that consultants do not inadvertently disclose confidential information to a competing company. Another party disagrees with the requirement (stated in the preamble to the proposed rule) that the party's attorney (and the law firm) take responsibility for violation of a protective order by consultants assisting the attorney. This party believes that the sanctions listed would apply with the same effect to consultants, and that the person committing the violation should be held responsible for his actions. There should be no distinction between consultants who work with attorneys and those who do not.

Department's Position: Time limits for requesting disclosure of information under administrative protective order are necessary to eliminate the possibility that the Department will receive a request too late to process it in time to ensure timely disclosure of information. The time limits also are intended to eliminate the administrative burden of processing multiple requests from the same person and to encourage the filing of requests that cover information not yet submitted in the segment of the proceeding at issue. *See* H.R. Rep. No. 725, 98th Cong., 2d Sess. 44–45 (1984). Because the application may be submitted in advance of submission of the information, there is no reason for a party that may want to participate in an investigation or an administrative review to delay submitting the requests. On the other hand, submission of the application for disclosure does not obligate a party to participate actively in the investigation or administrative review. We do agree, however, that the time limits in the proposed rule may be shorter than

necessary for the intended purpose. Accordingly, we are modifying paragraph (b) to provide that requests for disclosure be submitted not later than either 30 days after the date the notice of initiation is published in the **Federal Register** (rather than 10 days as provided in the proposed rule) or, if later, 10 days after the date the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 353.38, are due. The time limits are reasonable and consistent with the purpose of the Act.

In conducting the balancing test described in paragraph (a), the Department gives special consideration to the situation of in-house counsel and the possibility of inadvertent disclosure. For example, we do not permit disclosure to any in-house counsel who is also an officer of the company that is a party to the proceeding. The Department's policy for evaluating competing interests in requests for disclosure to in-house counsel, consultants, and other non-attorney representatives has developed in the context of specific proceedings. Given the fact that we still have relatively little experience with respect to disclosure to such persons, we do not believe that this is an appropriate subject for rulemaking at this time.

The Department releases proprietary information under protective order to consultants and non-attorney representatives when it concludes that there is sufficient evidence of a particular need for the individual's expertise in analyzing the information on behalf of a party to the proceeding, and only when the Department is satisfied that the information will be protected from unauthorized disclosure. Consistent with the legislative history of section 777 of the Act, the Department "generally" releases information under administrative protective order "only to attorneys who are subject to disbarment from practice before the agency in the event of a violation of the order." S. Rep. No. 249, 96th Cong., 1st Sess. 101 (1979). When the Department releases information under APO to consultants and other non-attorney representatives, these individuals are subject to the same sanctions as are attorneys for any violation of the order. *See* the Department's final rule entitled "Procedures for Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order," 53 FR 47916 (November 28, 1988).

The standard form requirement reduces significantly the administrative burden of reviewing requests for consistency with the law. It also simplifies the process for the requester. The standard form covers "special situations," such as in-house counsel and non-attorney representatives.

We have modified paragraph (b)(4) to reference the sanctions listed in § 354.3 of the Department's final rule entitled "Procedures for Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order," 53 FR 47916 (November 28, 1988). The sanctions are necessary and appropriate for ensuring the effectiveness of the Department's protective order. Under the proposed rules, the person who violates a protective order is held responsible, be it an attorney or other professional representative. Holding the employer, partner, and others in the firm or company responsible to the extent of debarring the firm or company from practice before the Department is consistent with the need for strict compliance with the terms of protective orders, although that sanction would be exceedingly rare and would be appropriate only when the firm's actions, practice, or policies have contributed to the violation. Section 354.3 gives the decisionmaker a broad range of sanctions to deal with all possible types and degree of violations.

We note that, to be consistent with changes made to the countervailing duty regulations, we have revised paragraph (b)(3)(ii) to refer to "the segment of the proceeding in which [the information] was submitted," instead of "the segment of the proceeding then in progress," to allow for the possibility that segments may occur simultaneously.

Sec. 353.34(c)

Comment: Two parties state that the 24-hour time limit for deciding whether or not to withdraw proprietary information is unreasonably short because it does not provide an adequate opportunity for communication between the submitting party and its counsel. Three working days is suggested as a reasonable alternative.

Department's Position: Because the submitter of proprietary information can and should anticipate that disclosure under protective order is possible, the submitter also should anticipate having to decide whether or not to withdraw the information submitted. Nonetheless, we have modified the time limit to two business days in order to ensure that all parties have an opportunity to consider withdrawing the information after the Department makes its decision to disclose the information. Three days for this purpose would unnecessarily delay disclosure.

Sec. 353.34(d)

Comment: According to one party, there is no need to impose an arbitrary 15-day time limit on filing a request for a judicial protective order. When judicial action is instituted, all interested parties should be allowed to retain the information obtained under administrative protective order until they no longer have the opportunity to intervene in the judicial proceeding.

The preamble to the proposed rule states that the Department will not release proprietary information after it makes a judicially reviewable determination "because the need to prepare for judicial review is not an adequate reason for additional disclosure." Two parties argue that if the Department refuses to disclose final calculations (whether before or after a final determination), interested parties cannot identify clerical errors in the determination. Disclosure of final calculations under protective order would assist the Department in discovering and correcting these errors.

Department's Position: The proposed rule significantly expands the right of a person to retain protective order information after the end of a judicially reviewable segment of an administrative proceeding. The time limit set forth in this paragraph might be 120 days after the date of publication of an antidumping duty order, because (1) a party to the proceeding has 30 days from that date to file the summons and another 30 days to file the complaint, (2) the Department has 45 days from the latter date to file the administrative record, and (3) the party that has the information subject to administrative protective order has an additional 15 days to file a request for judicial protective order. To permit a party to retain the information until the party no longer has a right to intervene in the judicial proceeding would in effect move the deadline back to an indeterminate date late in the judicial proceeding. Unless the party promptly decides to pursue the matter in court, there is no reason to allow that party to retain the business proprietary information. Continued retention of the documents merely would increase the risk that they might be lost or disclosed inadvertently.

Regarding disclosure of the Department's calculations after issuing its final determination, section 1333 of the 1988 Act requires correction of ministerial errors following a final determination. The Department has provided for such disclosure in the clerical error correction procedures (published at 53 FR 41617 (October 24,

1988) and 53 FR 5813 (February 26, 1988)) and in § 353.20(e) of these regulations. *See* the Department's response to comments on § 353.20(a).

Sec. 353.34(e)

Comment: One party suggests that the regulations should include a strict time limit of 60 days for the issuance of a charging letter in investigations of APO violations. The commenter contends that these investigations now take so long that the Department's commitment to impose sanctions for APO violations is in question.

Department's Position: We have modified this paragraph to provide that alleged violations of protective orders will be handled under the procedures of Part 354 of this title. In Part 354, we have adopted time limits for the investigation of whether there is reasonable cause to believe that an APO violation occurred in a proceeding and for the decision whether to issue a charging letter to the party in question. *See* the Department's final rule entitled "Procedures for Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order, 53 FR 47916 (November 28, 1988).

Sec. 353.35

Comment: One party contends that this section should require the memorandum of an *ex parte* meeting to report all legal arguments and nonfactual representations made at the meeting. This revision should be made in order to comply with Congressional intent that all parties to the proceeding be "fully aware" of representations to the Department at *ex parte* meetings. H.R. Rep. No. 317, 96th Cong., 1st Sess. 77 (1979). This party also suggests that the regulations should require the Department to serve copies of such memoranda on parties to the proceeding within seven days of the *ex parte* meeting. Another party recommends that the regulations specify a deadline when such memoranda must be placed in the reading file, *e.g.*, five work days after the *ex parte* meeting.

Department's Position: This section conforms to the requirements of section 777(a)(3) of the Act, and is consistent with the cited legislative history of that section of the Act. The Department will continue to make every effort to place copies of *ex parte* meeting memoranda in the public file promptly after the meeting in question.

Sec. 353.36(a)

Comment: One party contends that paragraph (a)(1)(v)(B) violates section 776(b) of the Act by requiring verification on request during an administrative review when the Department has conducted no verification "during *either* of the two immediately preceding administrative reviews." This party contends that section 776(b) requires verification (on request) unless the Department has conducted a verification during *both* of the two previous consecutive reviews. Moreover, the House Report accompanying the 1984 Act specifies that verification "would not be required if it has occurred upon timely request in the two immediately previous [administrative] reviews * * *." H.R. Rep. No. 725, 98th Cong., 2d Sess. 43 (1984).

Three parties contend that there is no statutory authority for the sampling procedure described in paragraph (a)(2). They believe the sampling authority in section 777A of the Act is limited to the use of sampling in analysis of sales and price information, and does not cover sampling in selection of respondents for questionnaire responses or verification. These parties argue that it would be unreasonable to apply the results of one company's verification to other companies whose submissions have not been verified. Two of these parties contend that if, for the sake of administrative convenience, the Department refuses to verify a respondent's submission, the data should be treated as the "best information available." Any company that is willing to undergo verification is entitled to have its determination based on its own information. Moreover, because the Department cannot levy an antidumping duty when there are no sales at less than foreign market value, interested parties have an absolute right to verification and to have margins calculated based on the results of the individual verification.

Department's Position: Section 776(b) of the Act requires the Department to conduct a verification, upon request, if no verification was conducted "during the 2 immediately preceding reviews" of the same order. In addition, the statute permits the Department to verify any administrative review for good cause. The legislative history expands on the statutory directive, stating that the Department need not conduct a verification of the third administrative review if it has verified "in the two immediately previous [administrative] reviews" of that order or finding. H.R. Rep. No. 725, 98th Cong., 2d Sess. 43 (1984). This means that the Department only is required to conduct a verification on request in the third review if there were no verification in the first or second review. This interpretation is consistent with the further admonishment in the legislative history that the purpose of the amendment was to eliminate "an unnecessary administrative burden on the Department of Commerce" and "perfunctory verifications." *Id.* The amendments implicitly overruled *Al Tech Specialty Steel Corp. v. United States*, 6 CIT 243 (1983), *aff'd*, 745 F.2d 632 (Fed. Cir. 1984), which held that the Department must conduct a verification of submissions in each administrative review. The legislative history also states that the amendment "generally codifies the current administrative practice of the Department of Commerce," which was to verify information in administrative reviews when the Department believed there was good cause for verification. H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess 177 (1984). Regarding the Department's practice, see *Stainless Steel Wire Rods from France*, 48 FR 2808–09 (1983). In view of the language of section 776(b) and the legislative purpose, paragraph (a)(1)(v)(B) of the proposed rule is a reasonable interpretation of section 776(b) of the Act. Unless the Department "decides that good cause for verification exists" (§ 353.36(a)(1)(iv)), there is no need for verification in more than one out of three consecutive administrative reviews.

Regarding the authority to use sampling in selecting respondents that will receive questionnaires or in conducting verifications in administrative reviews of antidumping duty orders, section 777A of the Act states that the Department may use generally recognized sampling techniques "for the purpose of carrying out [administrative] reviews under section 751." The Conference Report on the 1984 Act specifically describes the provision as expanding "the instances in which the administering authority may use sampling and averaging techniques * * * in carrying out [administrative] reviews of outstanding AD or CUD [sic] orders under section 751 * * *." H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 186 (1984). The only qualification in section 777A is that "a significant volume of sales is involved or a significant number of adjustments to prices is required." Under the circumstances described in § 353.36(a)(2), this qualification is satisfied.

Section 777A(b) specifically provides that the Department has exclusive authority to select "appropriate" samples and averages (whether of respondents or of individual sales or adjustments) that are "representative of the transactions under investigation."

As to the comments that it is unreasonable to apply the results of one company's verification to another, the commenters either misunderstand the concept of sampling or are criticizing the inclusion in the statute of the Department's authority to sample. Nevertheless, we agree completely that sampling of companies for verification is a matter requiring particular care in selecting the sampling methodology in order to prevent distorted results.

We note that we have revised paragraph (a)(2) to clarify that the selection of a sample of companies or sales for verification could occur in an investigation as well as in an administrative review.

Sec. 353.36(c)

Comment: Regarding the timing of verification, one party would modify paragraph (c) to state that, whenever feasible, verification will take place prior to a preliminary determination. This party also urges the Department to provide in the regulation that interested parties will be given a copy of the verification outline 10 days prior to verification. The commenter suggests that parties be given seven days to comment on the outline. This party believes that the agency should attempt to visit the domestic industry prior to verification to collect information about issues that should be addressed during verification.

This party also suggests that we add to the regulation a statement of procedures for issuing verification reports and receiving comments on the reports. The commenter recommends that the regulation require the Department to issue its report within 14 days of verification. In addition, they urge that the regulation provide that the verification report will include all verification exhibits; these exhibits should be released either publicly or under protective order, as appropriate. The Department's blanket policy of refusing to release verification exhibits prevents the active participation of the domestic industry in the investigation or review. The regulation also should provide seven days for comment after receipt of the report.

Department's Position: We have decided not to modify paragraph (c) to provide that "whenever feasible" verification will take place prior to the date of the preliminary determination. Although the Department does in practice conduct verification as early as possible, nothing is gained by placing on the Department an obligation to explain its decision to verify after a preliminary determination rather than before. The Department is as much concerned about the quality of the verification as about its timing. We conduct verification after the date of the preliminary determination when we determine that there is inadequate time or opportunity to conduct a thorough verification before that date.

The Department prepares verification outlines as far in advance of the scheduled dates for verification as possible. Normally all parties to the proceeding have an opportunity to submit comments and suggestions. This practice has worked well and there is no reason to define the practice or time limits in the regulation.

The Department places the highest priority on prompt preparation and release of verification reports. The amount of time, however, that is required to complete a verification report is a function of the complexity and length of verification, the date and place of verification, and other demands on the verifiers' time (such as statutory deadlines in other pending cases). Under these circumstances, regulatory deadlines are inappropriate. Similarly, the content of the verification report is an administrative matter best left to a case-by-case approach. Regarding the comment on release of verification exhibits, see the Department's response to comments on § 353.34.

We note that we have modified paragraph (c) to reflect the Department's practice of verifying the completeness, as well as the accuracy, of information submitted. The Department considers completeness to be one indication of accuracy. *See also* § 353.37(a)(2).

Sec. 353.37

Comment: Three parties suggest that the regulation specify that when the inability to verify is not the fault of the respondent, the best information available will be deemed to be the factual information submitted. Another party argues that in cases when the inability to verify is the respondent's fault, the Department should not simply use the information submitted by petitioners as the "best information," but rather should use what is actually the best and most accurate information available to the Department.

According to two parties, the regulation should provide that, prior to using the best information available, the Department should be required to notify the producer or reseller of the deficiencies in its submissions and allow that party to correct or supplement the incomplete or inaccurate data.

Another party contends that the proposed regulation conflicts with the clear statutory directive that the agency must use the best information available if responses are incomplete, inaccurate, untimely, or cannot be verified. The regulation should be revised to state that the Secretary "shall," not "may," use the best information available in such instances.

Another party suggests that the regulations specify that when information cannot be verified or is not timely submitted, the Department shall note this in the public record so that interested parties will know that "the best information" will be used. The commenter explains that this will give importers advance notice of potential substantial assessments.

Department's Position: Verification is designed to establish the accuracy and completeness of a questionnaire response. If either of those factors cannot be established, regardless of "fault," the Department must, under the statute, adopt the "best information otherwise available," which is the subject of this section. *See Atlantic Sugar, Ltd.* v. *United States,* 744 F.2d 1556 (Fed. Cir. 1984).

When the inability to verify is the respondent's fault, the Department generally uses information that is based on inferences adverse to the respondent when selecting the "best information available." *See Atlantic Sugar Ltd.* v. *United States,* 744 F.2d 1556, 1560 (Fed. Cir. 1984). We note that paragraph (b) is intended to permit, rather than require, use of factual information submitted in support of the petition as best information available. To make this point as clear as possible, we have modified the paragraph to state "may include" rather than "includes."

Prior to resorting to best information available, the Department as a matter of practice often allows a respondent to correct a deficiency in a submission. First, the Department may request a supplemental submission of information after it receives a deficient response to the questionnaire referred to in § 353.31(b). Second, the Department often permits a respondent to correct a deficiency during the verification process, depending on the nature and scope of the deficiency. Under § 353.31(b), the Department has the authority to request an additional submission at any time during the proceeding, but, under § 353.31(a), the respondent's right to submit factual information is subject to certain time limits necessitated by statutory deadlines. Although the statute does not require it, the Department usually does notify respondents of deficiencies in submissions.

In response to the comment, we have revised paragraph (a) of this section to indicate that the Secretary will use the "best information available" in the situations described in that section.

As to the comment regarding notice in the public record that the best information available provision is being applied in a case, this would be literally impossible in cases involving thousands, sometimes hundreds of thousands, of pieces of discrete information. When practicable, the Department does identify, either in the **Federal Register** notice or elsewhere in the record of the proceeding, that the "best information available" was used.

Sec. 353.38

Comment: Several parties state that the time limits for submission of case briefs are unreasonable for one or more of the following reasons: (1) the Department often does not issue its verification reports until after the time limits expire; (2) the Department often does not provide information under protective order until shortly before or even after the time limits expire; and (3) respondents often do not obtain disclosure of the preliminary determination or results of review until two weeks after it is published and, at the same time, may be preparing for verification. Thus, the unreasonable time limits in paragraphs (b) and (c) make it impossible for interested parties to comment on important information in the record of the proceeding. Moreover, it is inappropriate for the Department to exclude from the record any relevant information filed by a party, thus denying the reviewing court the opportunity to decide whether the submission should have been considered in the administrative proceeding.

Suggested changes include the following: (1) allow parties to comment on issues that arise after the proposed deadlines; (2) provide more realistic time periods for the requested briefs; (3) provide that the Secretary can alter the time in which to file a case brief in an administrative review, just as he may do so in an investigation; and (4) permit separate submission of written comments on the verification report. One party believes that the Department should distribute more evenly the time limits for case and rebuttal briefs in order to provide sufficient time to respond to all issues that may be raised in a case brief. They suggest extending the time limit for filing rebuttal briefs to 14 days after the time limit for case briefs. Another party suggests clarifying that the Department does not intend to limit submissions of written comments prior to the date of the preliminary determination and the case brief.

Several parties urge the Department to permit post-hearing briefs. They believe such briefs are necessary to cover new arguments that may be made at a hearing, to clarify statements that may be made at a hearing, and to provide complete answers to questions the Department may raise at a hearing. One party suggests that the Department could limit the length of such briefs to 10 double-spaced pages, as the Commission does, in order to ensure that arguments are concise and selective.

Regarding paragraph (b), one party suggests that, rather than requiring all issues relevant to the final determination or results of review to be "presented in full" in the case brief, the Department only should require all such issues to be identified; to the extent issues were not previously briefed, arguments should be presented in full.

One party believes that allowing other government agencies to file case or rebuttal briefs will dilute the authority of the Secretary of Commerce and will inhibit effective and timely implementation of the antidumping statute. They suggest deletion of the references to other agencies in paragraphs (b) and (c).

Department's Position: The Department believes that the time limits in this section will provide all interested parties a reasonable opportunity to comment on the record of the proceeding. In administrative reviews, the Department's practice is to conduct verifications prior to the scheduled date of the preliminary determination. This practice allows the parties to the proceeding sufficient opportunity for preparation of case and rebuttal briefs after they have obtained access to the verification report and all factual information. In investigations, the regulation will encourage the Department to conduct its verification as early as possible. We have extended the deadlines for submission of case and rebuttal briefs in investigations in order to increase the likelihood that parties will be able to comment on verification reports or other factual information, without curtailing the Department's ability to consider and to address the parties' comments in the final determination. Paragraph (c) (proposed paragraph (b)) already contains adequate authority for the Department to alter the time limits for submission of case briefs in an investigation to cover the situations described in the comments. Paragraph (d) (proposed paragraph (c)) likewise permits the Department, as appropriate, to adjust the time limit for submission of rebuttal briefs. In this manner, the regulation ensures that the Department retains the necessary discretion to establish realistic time limits in any proceeding in which the normal time limits are too short. We also have revised these regulations to clarify that the Department will return untimely or nonconforming submissions to the submitter with written notice stating the reasons for return of the documents. The written notice, which will detail the untimely or nonconforming nature of the submission, will be placed in the record of the proceeding. The reviewing court, therefore, will be able to decide whether the submission should have been considered in the administrative proceeding.

The regulation does not limit submissions of written argument prior to the date of the preliminary determination or after that date and prior to the submission of the case briefs.

Regarding the suggestion that the Department permit post-hearing briefs, we believe the case and rebuttal briefs afford each party to the proceeding ample opportunity to address the issues and to comment on the factual information. Moreover, under paragraph (f)(3) (proposed paragraph (e)(3)) of this section, the presiding officer at the hearing "may question any interested party or witness and may request interested parties to present additional written argument." These procedures, we believe, eliminate the need for post-hearing briefs in every case, particularly in view of the fact that all issues addressed at the hearing first must be addressed in the case or rebuttal brief. We have modified paragraph (f)(3) to clarify that parties may submit additional written argument only at the Department's request.

The requirement in paragraph (c)(2) (proposed paragraph (b)(2)) that the party "separately present in full" all arguments which the party wants the Department to consider in the final determination or final results of review is important given the difficult task the Department often faces at that late date in the investigation or administrative review. The convenience of having all arguments consolidated in a few submissions outweighs the additional effort required of the interested parties. If necessary, the party to the proceeding may attach to the case brief as appendices the relevant portions of earlier submissions rather than re-write an entire argument.

We disagree with the comment that allowing other agencies to file case or rebuttal briefs will dilute the Department's authority and will hinder enforcement of the antidumping statute. In the past, other agencies (such as the Federal Trade Commission) have filed briefs in proceedings before the Department, and we did not in any way experience the problems that the commenter suggests will occur.

We note that, to be consistent with changes made in the countervailing duty regulations, we have added a new paragraph (b), which concerns requests for hearings. We have added this paragraph to allow sufficient time for all parties and the Department to prepare for a hearing. In addition, we have modified paragraph (e) (proposed paragraph (d)) to require the submitter of a case or rebuttal brief to serve a copy of the brief on any U.S. government agency that has submitted a case or rebuttal brief. We also have revised paragraph (f) (proposed paragraph (e)) to provide that hearings ordinarily will be held seven days (instead of 14 days) after the scheduled date for submission of rebuttal briefs in an administrative review.

Subpart D

Note: As we explained in the preamble to the proposed rule, Subpart D simply collects in one subpart all of the provisions that explain the calculation of U.S. price or foreign market value. 51 FR 29055 (August 13, 1986). Except as indicated in the preamble to the proposed rule, the substance of the provisions in Subpart D remains unchanged from the existing regulations. *Id.* Nevertheless, many parties submitted comments on provisions in Subpart D that were not changed by the proposed rule. In this notice, we have summarized, and responded to, only those comments made on proposed changes to provisions now contained in Subpart D. Comments on provisions in Subpart D that were unchanged by the proposed rule are not germane to this rulemaking.

Sec. 353.41(e)

Comment: One party contends that the Department's proposal to remove the phrase "in the United States" from paragraph (e) is contrary to the statute and the Department's practice. Section 772(e) of the Act provides that adjustments are to be made to exporter's sales price ("ESP") for indirect selling expenses "incurred by or for the account of the exporter in the United States * * *" The commenter argues that because section 771(13) of the Act defines exporter as including the exporter's agents and subsidiaries in the United States, the phrase "in the United States" in section 772(e) must be interpreted as modifying "expenses incurred," not as modifying "exporter." Otherwise, the statutory phrase would be superfluous. In addition, the commenter notes that proposed § 353.56(b)(2) would set the ESP offset cap as the amount of indirect selling expenses "incurred in the United States." Because the cap is intended to limit the adjustment to foreign market value for indirect selling expenses to the extent of the adjustment to U.S. price made under section 772(e)(2) of the Act, section 772(e)(2) must be read as permitting an adjustment to U.S. price only for expenses "incurred in the United States."

Department's Position: In determining the amount of indirect selling expenses incurred in selling the merchandise in the United States, the Department does not consider relevant the geographic location where expenses were incurred. This practice has been affirmed in the Court's decision in *Silver Reed, America, Inc. v. United States*, Slip Op. 88-37, 12 CIT____ (March 18, 1988).

As the commenter notes, the language in § 353.56(b)(2) should be the same as in this section. That is, an ESP offset would be permitted for indirect expenses incurred in selling the merchandise in the United States, wherever those expenses are incurred. We, therefore, have clarified § 353.56(b)(2) so that it corresponds to § 353.41(e).

Sec. 353.42

Comment: One party suggests that paragraph (b)(1) be amended to state that the Secretary normally will examine not less than 60 percent "of the dollar value and volume" of the merchandise, with the percentages of each being "roughly equivalent." This party explains that the use of alternative measures, *i.e.*, value or volume, may lead to inaccurate results. The Department should seek a representative sample, and thus should examine foreign respondents that constitute an equivalent share of both volume and value of merchandise.

Department's Position: We disagree with the commenter's assumption that an examination of 60 percent of both the volume and value of the merchandise is necessary to constitute a representative measure of selling activity. In many cases, a value and volume measurement produce "roughly equivalent" results. That, however, is not always the case. In some instances, for example, products within the same class or kind have widely divergent prices because quality varies. As proposed, paragraph (b)(1) gives the Department discretion to consider either value or volume, or both, or to concentrate, as we have in some recent cases, on those producers or resellers that account for 60 percent of the volume or value (or both) of the merchandise.

Sec. 353.43

Comment: One party comments that the proposed regulation should clarify the circumstances under which the Department will consider offers for sales in determining foreign market value. They suggest that a sentence be added to paragraph (a) stating that the Secretary may consider offers for sale, even when actual sales have been made, if reference to those offers is relevant to establish the adequacy and accuracy of the actual sales reported. They explain that when sales of the subject merchandise in the home market have been made at low volumes, the Department should consider prices reflected in offers for sale to determine if prices reported for actual transactions are an accurate measure of foreign market value.

Department's Position: The situation described by the commenter is one in which the Secretary has the discretion under the regulations as proposed to depart from the "normal" rule of considering offers only in the absence of sales.

Sec. 353.48

Note: Because verifications are not required in all administrative reviews, we have revised paragraph (b) accordingly.

Sec. 353.52

Note: We are drafting a proposed rule and request for comments to implement the 1988 Act amendments regarding dumping by nonmarket economy countries.

Sec. 353.55

Comment: One party recommends that the Department include in the proposed regulation the paragraph contained in § 353.14(c) of the current regulation concerning the consideration of price lists when making adjustments for differences in quantities. This party notes that the Department's preamble to the proposed rule states that the paragraph was deleted "because in substance it is identical to § 353.3(b) of the proposed rule." Section 353.3(b) concerns the public record, however, and does not deal with the issue of the consideration of price lists when making adjustments for differences in quantities.

Department's Position: The reference to § 353.3(b) was a typographical error. The correct reference is § 353.55(b). However, for the sake of clarity, we have included the language contained in

§ 353.14(c) of the existing regulations as paragraph (d) of this section.

Sec. 353.56(b)(2)

Comment: One party argues that paragraph (b)(2) conflicts with section 353.41(e) in the treatment of indirect selling expenses incurred outside the United States. If the Department does not adopt their suggested change to § 353.41(e), which would insert "in the United States" in paragraph (e), they suggest that § 353.56(b)(2) be revised to clarify that the ESP offset cap is the amount of the adjustment allowed under section 772(e)(2) of the Act, not just the amount of indirect selling expenses incurred in the United States.

Department's Position: This paragraph has been revised to clarify that the ESP offset cap is the expense incurred "in selling the merchandise," which is the amount of the adjustment that would be made under § 353.41(e). That is, an adjustment would be made for the expenses of selling the merchandise, whether incurred in the United States or elsewhere. Note the definition of "the merchandise" in § 353.2(m). The phrase "expenses incurred in selling" is intended to convey the same meaning as "selling expenses" in the current regulation. To be consistent, we also have revised the proposed rule to clarify that the indirect selling expenses, whether incurred in the United States or elsewhere, may be offset by indirect selling expenses incurred on sales of such or similar merchandise, regardless of where incurred.

Sec. 353.59(a)

Comment: One party argues that the Department should have included in the proposed regulation the last sentence of the existing regulation providing that adjustments will not be disregarded if it will significantly affect the calculation results. The party believes that the deleted sentence clarifies that adjustments that would normally be viewed as insignificant should not be disregarded if doing so would result in dumping margins in cases where no margin would otherwise have been found, or vice versa. Because the Department indicated in the preamble to the proposed rule that the sentence was deleted only because it was redundant, the party urges that it be incorporated in the final rule in the interest of clarity.

Department's Position: We continue to believe the referenced sentence is redundant. The regulation is not intended to change the Department's practice.

Sec. 353.60(a)

Comment: One party argues that proposed § 353.60 incorrectly provides for the conversion of currencies on the date of sale in the United States. This is contrary to Congressional intent and to the longstanding administrative practice of determining exchange rates in exporter's sales price calculations as of the date of exportation of the investigated merchandise. The commenter explains that the change results from the reference in proposed § 353.60 to proposed §§ 353.46, 353.49, and 353.50. The changes in those sections are explained as having been made to implement section 615(1) of the 1984 Act. Although section 615 of the 1984 Act did change the comparison date to the date of sale in exporter's sales price transactions, and proposed §§ 353.46, 353.49, and 353.50 do implement those sales date changes, section 615(1) did not specify a new rule for the currency conversions. Moreover, the statutory provision governing currency conversions, 31 U.S.C. 5151, indicates that whenever currencies are converted for assessment and collection of duties, the general rule is that conversion is to be made at values prevailing during the quarter in which exportation of the merchandise occurs. There is no authority to convert currencies on the date of sale in the United States.

Department's Position: Prior to enactment of the 1984 Act, foreign market value was determined at the time of exportation of the merchandise. Section 615 of the Trade and Tariff Act of 1984 amended section 773(a)(1) of the Act to provide that foreign market value is to be determined as of the date the merchandise is first sold in the United States to an unrelated purchaser. Accordingly, in comparing foreign market value with exporter's sales price, the foreign market value is to be determined as of the time the goods are sold in the United States to an unrelated purchaser rather than at the time of exportation of the goods to the United States.

If the Department in exporter's sales price transactions followed section 615, but converted currencies, as the comment suggests, on the date of exportation to the United States, anomalous results would follow. First, the agency would have to determine foreign market value as of the date the importer resold the merchandise to the first unrelated purchaser. Then, it would have to convert the currency based on exchange rates in effect at the time of exportation, possibly months or even calendar quarters before the transactions that form the basis of the foreign market value. The law was changed in 1984, however, just so exporter's sales price transactions would be matched to home market or third country sales on the date of sale to an unrelated purchaser in the United States. Therefore, to convert the currency on a date that has no relation to the date of sale would lead to illogical results and otherwise render the 1984 amendment nugatory. *Washington Red Raspberry Comm'n v. United States*, Nos. 88–1076, 88–1107, Slip Op. at 14–16 (Fed. Cir., October 13, 1988).

The party's reliance on 31 U.S.C. 5151 is also misplaced. Section 5151 governs currency conversion; it does not define foreign market value or specify the date as of which foreign market value is to be determined. To give effect to the commenter's interpretation of 19 U.S.C. 1677b(a)(1) and 31 U.S.C. 5151 would lead to an absurd result. When two laws cannot be read consistently, the subsequent statute prevails. Therefore, to the degree these two statutes may conflict, the newer antidumping law provision prevails over the currency conversion statute.

List of Subjects in 19 CFR Part 353

Business and industry, Foreign trade, Imports, Trade practices.

Date: February 23, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

For the reasons set forth in the preamble, 19 CFR Part 353 is revised to read as follows:

PART 353—ANTIDUMPING DUTIES

Subpart A—Scope and Definitions

Sec.

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353.2 Definitions.
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353.11 Self-initiation.
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Subpart C—Information and Argument

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353.41 Calculation of United States price.
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353.50 Calculation of foreign market value based on constructed value.
353.51 Calculation of foreign market value if sales are made at less than cost of production.
353.52 Calculation of foreign market value of merchandise from state-controlled-economy countries.
353.53 Calculation of foreign market value based on sales by a multinational corporation.
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353.55 Differences in quantities.
353.56 Differences in circumstances of sale.
353.57 Differences in physical characteristics.
353.58 Level of trade.
353.59 Disregarding insignificant adjustments; use of averaging and sampling.
353.60 Conversion of currency.

ANNEX I—Time limits for submissions specified in this part.

Authority: The authority for Part 353 is 5 U.S.C. 301; Title VII of the Tariff Act of 1930 (19 U.S.C. Subtitle IV, Parts II, III, and IV), as amended by Title I of the Trade Agreements Act of 1979, Pub. L. No. 96–39, 93 Stat. 150, 162, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. No. 98–573, 98 Stat. 2948, 2989, 3024 (19 U.S.C. 1339; 1673–1673g; 1675; 1677; and 1677a–1677h); and Title XVIII, Subtitle B, Chapter 3, of the Tax Reform Act of 1986, Pub. L. No. 99–514, 100 Stat. 2085, 2919 (October 22, 1986).

Subpart A—Scope and Definitions

§ 353.1 Scope.

This part sets forth procedures and rules applicable to proceedings under Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1673–1677h) (the "Act"), relating to the imposition of antidumping duties. This part incorporates the regulatory changes made pursuant to Title VI of the Trade and Tariff Act of 1984 (Pub. L. No. 98–573; October 30, 1984) and Title XVIII, Subtitle B, Chapter 3, of the Tax Reform Act of 1986 (Pub. L. No. 99–514, October 22, 1986).

§ 353.2 Definitions.

(a) *Act.* "Act" means the Tariff Act of 1930, as amended.

(b) *Commission.* "Commission" means the United States International Trade Commission.

(c) *Country.* "Country" means a foreign country or a political subdivision, dependent territory, or possession of a foreign country.

(d) *Customs Service.* "Customs Service" means the United States Customs Service of the United States Department of the Treasury.

(e) *Department.* "Department" means the United States Department of Commerce.

(f) *Dumping margin and weighted-average dumping margin.*

(1) "Dumping margin" means the amount by which the foreign market value exceeds the United States price of the merchandise.

(2) The "weighted-average dumping margin" is the result of dividing the aggregated dumping margins by the aggregated United States prices.

(g) *Factual information.* "Factual information" means:

(1) Initial and supplemental questionnaire responses;

(2) Data or statements of fact in support of allegations;

(3) Other data or statements of facts; and

(4) Documentary evidence.

(h) *Home market country.* The "home market country" is the country in which the merchandise is produced.

(i) *Importer.* "Importer" means the person by whom, or for whose account, the merchandise is imported.

(j) *Industry.* "Industry" means the producers in the United States collectively of the like product, except those producers in the United States that the Secretary excludes under section 771(4)(B) of the Act on the grounds that they are also importers (or are related to importers, producers, or exporters) of the merchandise. Under section 771(4)(C) of the Act, an "industry" may mean producers in the United States, as defined above in this paragraph, in a particular market in the United States if such producers sell all or almost all of their production of the like product in that market and if the demand for the like product in that market is not supplied to any substantial degree by producers of the like product located elsewhere in the United States.

(k) *Interested party.* "Interested party" means:

(1) A producer, exporter, or United States importer of the merchandise, or a trade or business association a majority of the members of which are importers of the merchandise;

(2) The government of the home market country;

(3) A producer in the United States of the like product or seller (other than a retailer) in the United States of the like product produced in the United States;

(4) A certified or recognized union or group of workers which is representative of the industry or of sellers (other than retailers) in the United States of the like product produced in the United States;

(5) A trade or business association a majority of the members of which are producers in the United States of the like product or sellers (other than retailers) in the United States of the like product produced in the United States; or

(6) An association a majority of the members of which are interested parties, as defined in paragraph (k)(3), (k)(4), or (k)(5) of this section.

(l) *Investigation.* An "investigation" begins on the date of publication of notice of initiation of investigation and ends on the date of publication of the earliest of (1) notice of termination of investigation, (2) notice of rescission of investigation, (3) notice of a negative determination that has the effect of terminating the proceeding, or (4) an order.

(m) *The merchandise.* "The merchandise" means the class or kind of merchandise imported or sold, or likely to be sold, for importation into the United States, that is the subject of the proceeding.

(n) *Order.* An "order" is an order issued by the Secretary under § 353.21 or a finding under the Antidumping Act, 1921.

(o) *Party to the proceeding.* "Party to the proceeding" means any interested party, within the meaning of paragraph (k) of this section, which actively participates, through written

submissions of factual information or written argument, in a particular decision by the Secretary subject to judicial review. Participation in a prior reviewable decision will not confer on any interested party "party to the proceeding" status in a subsequent decision by the Secretary subject to judicial review.

(p) *Person.* "Person" includes any "interested party" as well as any other individual, enterprise, or entity, as appropriate.

(q) *Proceeding.* A "proceeding" begins on the date of the filing of a petition or publication of a notice of initiation under § 353.11, and ends on the date of publication of the earliest notice of (1) dismissal of petition, (2) rescission of initiation, (3) termination of investigation, (4) a negative determination that has the effect of terminating the proceeding, (5) revocation of an order, or (6) termination of a suspended investigation.

(r) *Producer; production.* "Producer" means a manufacturer or producer. "Production" means manufacture or production.

(s) *Reseller.* "Reseller" means any person (other than the producer) whose sales the Secretary uses to calculate foreign market value or U.S. price, including the foreign reseller or exporter.

(t) *Sale; likely sale.* A "sale" includes a contract to sell and a lease that is equivalent to a sale. A "likely sale" means a person's irrevocable offer to sell.

(u) *Secretary.* "Secretary" means the Secretary of Commerce or a designee. The Secretary has delegated to the Assistant Secretary for Import Administration the authority to make final determinations under §§ 353.18(i) and 353.20 and final results of review under § 353.22(c). The Deputy Assistant Secretaries for Import Administration, Investigations, and Compliance have other delegated authority relating to antidumping duties.

§ 353.3 Record of proceedings.

(a) *Official record.* The Secretary will maintain in the Import Administration Central Records Unit, at the location stated in § 353.31(d), an official record of each proceeding. The Secretary will include in the record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of the proceeding which pertains to the proceeding. The record will include government memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, determinations, notices published in the **Federal Register**, and transcripts of hearings. The record will not include any factual information, written argument, or other material which is not timely filed or which the Secretary returns to the submitter under § 353.31(b)(2), 353.32(d), 353.32(g), or 353.34(c). The record will contain material that is public, proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each judicially reviewable segment of the proceeding.

(b) *Public record.* The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material described in paragraph (a) of this section that the Secretary decides is public information within the meaning of § 353.4(a), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, plus public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (*see* § 353.31(d)). The Secretary will charge an appropriate fee for providing copies of documents.

(c) *Protection of records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

§ 353.4 Public, proprietary, privileged, and classified information.

(a) *Public information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated proprietary by the person submitting it;

(3) Factual information which, although designated proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person;

(4) Publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations; and

(5) Written argument relating to the proceeding that is not designated proprietary.

(b) *Proprietary information.* The Secretary normally will consider the following factual information to be proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not (i) components of prices, such as transportation, if based on published schedules, (ii) dates of sale, (iii) product descriptions except as described in paragraph (b)(1), or (iv) order numbers);

(6) The names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or supplier, unless the destination or designation would reveal the name);

(7) The exact amount of the dumping margin on individual sales;

(8) The names of particular persons from whom proprietary information was obtained; and

(9) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(c) *Privileged information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the Secretary decides that the information should not be released to the public or to parties to the proceeding.

(d) *Classified information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (43 FR 28949) or successor executive order, if applicable.

§ 353.5 Trade and Tariff Act of 1984—effective date.

In accordance with section 626 of the Trade and Tariff Act of 1984 (Pub. L. No. 98–573) (for purposes of this subpart, referred to as "the 1984 Act"), the amendments to the Act made by Title VI of the 1984 Act are effective as follows:

(a) Except as provided in paragraphs (b), (c), and (d) of this section, all amendments made by Title VI of the 1984 Act which affect authorities administered by the Secretary are effective on October 30, 1984.

(b) Amendments made by sections 602, 609, 611, 612, and 620 of the 1984 Act which affect authorities administered by the Secretary take effect immediately with respect to all investigations and administrative reviews begun on or after October 30, 1984.

(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, apply with respect to civil actions pending on, or filed on or after, October 30, 1984.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984, if the Secretary determines that implementation in accordance with paragraph (a) or (b) of this section would prevent the Department from complying with other requirements of law.

§ 353.6 De minimis weighted-average dumping margins.

(a) *Disregarding de minimis weighted-average dumping margins.* Except as provided in paragraph (b), the Secretary will disregard any weighted-average dumping margin that is less than 0.5% *ad valorem*, or the equivalent specific rate.

(b) *Assessment of de minimis margins.* For purposes of assessment of an antidumping duty, the Secretary will not disregard any *de minimis* dumping margin.

Subpart B—Antidumping Duty Procedures

§ 353.11 Self-initiation.

(a) *In general.* (1) If the Secretary determines from available information, including information obtained during a period of monitoring under paragraph (c) of this section, that an investigation is warranted with respect to the merchandise, the Secretary will initiate an investigation and publish in the **Federal Register** notice of "Initiation of Antidumping Duty Investigation."

(2) The notice will include:

(i) A description of the merchandise, after consultation as appropriate with the Commission;

(ii) The name of the home market country and, if the merchandise is imported from a country other than the home market country, the name of the intermediate country (§ 353.47) or country through which the merchandise is transshipped (§ 353.46(c)); and

(iii) A summary of the available information that would, if accurate, support the imposition of antidumping duties.

(b) *Information provided to the Commission.* The Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(c) *Persistent dumping monitoring.* (1) The Secretary may monitor, for a period not to exceed one year, imports from an additional supplier country of the same class or kind of merchandise as the merchandise which is subject to two or more orders under this part if the Secretary concludes from available information, including information in a request for monitoring under this paragraph, that:

(i) There is reason to believe or suspect an extraordinary pattern of persistent injurious dumping exists with regard to shipments from one or more additional supplier countries; and

(ii) This extraordinary pattern is causing a serious commercial problem for the industry.

(2) For the purposes of this section, "additional supplier country" means a country regarding which no order is in effect and no investigation is pending under this part as to the class or kind of merchandise referred to in paragraph (c)(1) of this section.

(3) To the extent practicable, the Secretary will expedite any investigation initiated under paragraph (a) of this section as a result of monitoring under paragraph (c)(1) of this section.

§ 353.12 Petition requirements.

(a) *In general.* Any interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, may file on behalf of an industry a petition under this section requesting the imposition of antidumping duties equal to the alleged amount of the dumping margin, if that person has reason to believe that:

(1) The merchandise is being, or is likely to be, sold at less than fair value; and

(2) That industry is materially injured, is threatened with material injury, or its establishment is materially retarded by the merchandise.

Factual information in the petition shall be certified, as provided in § 353.31(i).

(b) *Contents of petition.* The petition shall contain the following, to the extent reasonably available to the petitioner:

(1) The name and address of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the industry, in terms of sales or production levels, during the most recent 12-month period);

(3) A statement indicating whether the petitioner has filed for import relief under sections 337 or 702 of the Act (19 U.S.C. 1337, 1671a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) with respect to the merchandise;

(4) A detailed description of the merchandise that defines the requested scope of the investigation, including technical characteristics and uses of the merchandise, and its current U.S. tariff classification number.

(5) The name of the home market country and, if the merchandise is imported from a country other than the home market country, the name of the intermediate country (§ 353.47) or the country through which the merchandise is transshipped (§ 353.46(c));

(6) The names and addresses of each person the petitioner believes sells the merchandise at less than fair value and the proportion of total exports to the United States which each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(7) All factual information (particularly documentary evidence) relevant to the calculation of the United States price of the merchandise and the foreign market value of such or similar merchandise, in accordance with Subpart D of this part (if unable to furnish information on foreign sales or costs, provide information on production costs in the United States, adjusted to reflect production costs in the home market country of the merchandise);

(8) If the merchandise is from a country that the Secretary has found to be a state-controlled-economy country, factual information relevant to the calculation of foreign market value, as provided in Subpart D of this part, using a method described in § 353.52.

(9) The volume and value of the merchandise during the most recent two-year period and any other recent period that the petitioner believes to be more representative or, if the merchandise was not imported during the two-year period, information as to the likelihood of its sale for importation;

(10) The name and address of each person the petitioner believes imports or, if there were no importations, is likely to import the merchandise;

(11) Factual information regarding material injury, threat of material injury,

or material retardation, as described in 19 CFR 207.11 and 207.26;

(12) If the petitioner alleges "critical circumstances" under § 353.16, factual information regarding:

(i) Material injury which is difficult to repair;

(ii) Massive imports in a relatively short period; and

(iii) Either: (A) A history of dumping; or (B) The importer's knowledge that the producer or reseller was selling the merchandise at less than its foreign market value, as described in § 353.16(a); and

(13) Any other factual information on which the petitioner relies.

(c) *Simultaneous filing with Commission.* The petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(d) *Proprietary status of information.* The Secretary will not consider any factual information for which the petitioner requests proprietary treatment unless the petitioner meets the requirements of § 353.32.

(e) *Amendment of petition.* The Secretary will allow timely amendment of the petition. The petitioner must file an amendment with the Commission and the Secretary on the same day and so certify in submitting the amendment to the Secretary. The timeliness of new allegations is controlled under § 353.31.

(f) *Where to file; time of filing; format and number of copies.* The requirements of § 353.31 (d), (e), and (f) apply to this section.

(g) *Notification of representative of the home market country.* Upon receipt of a petition, the Secretary will deliver a public version of the petition, as described in § 353.31(e)(2), to a representative in Washington, DC, of the government of the home market country.

(h) *Assistance to small businesses; additional information.*

(1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of § 353.13.

(2) For additional information concerning petitions, contact the Deputy Assistant Secretary for Investigations, Import Administration, International Trade Administration, Room B099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; (202) 377–5497.

(i) *Limitation of communication before initiation.* Before the Secretary decides whether to initiate an investigation, the Secretary will not accept from an interested party, as defined in paragraph (k)(1) or (k)(2) of § 353.2, oral or written communication regarding a petition except inquiries concerning the status of the proceeding.

[The information collection requirements in paragraph (b) of this section have been approved by the Office of Management and Budget under control number 0625–0105.]

§ 353.13 Determination of sufficiency of petition.

(a) *Determination of sufficiency.* Not later than 20 days after a petition is filed under § 353.12, the Secretary will determine whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, contains information reasonably available to the petitioner supporting the allegations, and is filed by an interested party as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2.

(b) *Notice of initiation.* If the Secretary determines that the petition is sufficient under paragraph (a), the Secretary will initiate an investigation and publish in the **Federal Register** notice of "Initiation of Antidumping Duty Investigation." The notice will include the information described in § 353.11(a)(2). The Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(c) *Insufficiency of petition.* If the Secretary determines that a petition is insufficient under paragraph (a) of this section, the Secretary will dismiss the petition in whole or in part and, if appropriate, terminate the proceeding. The Secretary will notify the petitioner in writing of the reasons for dismissal, notify the Commission of the dismissal and publish in the **Federal Register** notice of "Dismissal of Antidumping Duty Petition," summarizing the reasons for dismissal.

§ 353.14 Request for exclusion from antidumping duty order.

(a) Any producer or reseller that desires exclusion from an antidumping duty order must submit to the Secretary, not later than 30 days after the date of publication of the notice of initiation under § 353.11 or 353.13, an irrevocable written request for exclusion.

(b) The person must submit with the request: (1) The person's certification that:

(i) There is no dumping margin on the merchandise sold or likely to be sold, as defined in § 353.2(t), by the person during the minimum period described in § 353.42(b)(1); and

(ii) The person will not in the future sell the merchandise at less than foreign market value; and

(2) If the person is not the producer of the merchandise, the certification under paragraph (b)(1) of this section of the suppliers and producers of the merchandise.

(c) The Secretary will investigate requests for exclusion to the extent practicable in each investigation.

§ 353.15 Preliminary determination.

(a) *In general.* (1) Not later than 160 days after the date of filing of a petition or the date of publication of notice of initiation under § 353.11, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that the merchandise is being sold at less than fair value. The Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The estimated weighted-average dumping margin, if any, for each person investigated and an appropriate rate for persons not investigated; and

(iii) A preliminary finding on critical circumstances, if appropriate, under § 353.16(b)(2)(i).

(3) If affirmative, the Secretary's determination will also:

(i) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Secretary's preliminary determination; and

(ii) Impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit or bond equal to the estimated weighted-average dumping margin.

(4) The Secretary will publish in the **Federal Register** notice of "Affirmative (Negative) Preliminary Antidumping Duty Determination," including the estimated weighted-average dumping margin, if any, and an invitation for argument consistent with § 353.38.

(5) The Secretary will notify all parties to the proceeding and the Commission.

(b) *Postponement in extraordinarily complicated investigation.* If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 210 days after the proceeding begins. The Secretary will base the decision on express findings that:

(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of (i) the large number or complex nature of the transactions or adjustments under Subpart D of this part, (ii) novel issues raised, or (iii) the large number of producers and resellers; and

(3) Additional time is needed to make the preliminary determination.

(c) *Postponement at the request of the petitioner.* If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 210 days after the date of filing of the petition, unless the Secretary finds compelling reasons to deny the request.

(d) *Notice of postponement.* If the Secretary decides to postpone the preliminary determination under paragraph (b) or (c) of this section, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date for the Secretary's preliminary determination and will publish in the **Federal Register** notice of "Postponement of Preliminary Antidumping Duty Determination," stating the reasons for the postponement.

(e) *Expedited preliminary determination.* Not later than 75 days after the initiation of an investigation under § 353.13, the Secretary will review the record of the first 60 days of the investigation. If the available information is sufficient for the Secretary to make a preliminary determination, the Secretary will disclose to the petitioner, and any party to the proceeding that has requested disclosure, all available public and proprietary information (subject to the requirements of § 353.34). If, not later than three business days after disclosure, each party to whom disclosure was made furnishes an irrevocable written waiver of verification and agrees to a preliminary determination based on information in the record on the 60th day of the investigation, the Secretary will make an expedited preliminary determination not later than 90 days after initiation of the investigation.

(f) *Commission access to information.* The Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the determination and which the Commission may consider relevant to its injury determination.

(g) *Disclosure.* Promptly after making the preliminary determination, the Secretary will provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in making the determination.

§ 353.16 Critical circumstances findings.

(a) *In general.* If a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, not later than 21 days before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in an investigation under § 353.11, the Secretary will make a finding whether:

(1) (i) There is a history of dumping in the United States or elsewhere of the same class or kind of merchandise as the merchandise subject to the investigation; or

(ii) The importer knew or should have known that the producer or reseller was selling the merchandise at less than its foreign market value: and

(2) There have been massive imports of the merchandise over a relatively short period.

(b) *Preliminary finding.* (1) If the petitioner submits the allegation of critical circumstances not later than 30 days before the scheduled date for the Secretary's final determination under § 353.20, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances as described in paragraph (a) of this section exist.

(2) The Secretary will issue the preliminary finding:

(i) Not later than the Secretary's preliminary determination under § 353.15, if the allegation is submitted not later thar 20 days before the scheduled date for the preliminary determination; or

(ii) Not later than 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date for the Secretary's preliminary determination.

The Secretary will notify the Commission and publish in the **Federal Register** notice of the preliminary finding.

(c) *Suspension of liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, either before or at the time of an affirmative preliminary determination under § 353.15, any suspension of liquidation ordered under § 353.15 will apply to all entries of the merchandise covered by the finding entered, or withdrawn from warehouse, for consumption on or after 90 days before the date of the order of suspension. If the Secretary makes an affirmative preliminary finding of critical circumstances after an affirmative preliminary determination under § 353.15, the Secretary will amend the order suspending liquidation to apply to all entries of the merchandise covered by the finding entered, or withdrawn from warehouse, for consumption on or after 90 days before the date suspension of liquidation was first ordered.

(d) *Final finding.* For any allegation submitted not later than 21 days before the scheduled date for the Secretary's final determination under § 353.20, the Secretary will make a final finding on critical circumstances. If the final finding is affirmative and if the Secretary did not make an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date the Secretary ordered suspension of liquidation either as part of an affirmative preliminary or final determination. If the final finding is negative and if the Secretary made an affirmative preliminary finding of critical circumstances, the Secretary will end the retroactive suspension of liquidation ordered under paragraph (c) of this section, and will instruct the Customs Service to release the cash deposit or bond.

(e) *Findings in self-initiated investigations.* In investigations initiated under § 353.11, the Secretary will make a preliminary and final finding on critical circumstances without regard to the time limits in paragraphs (b) and (d) of this section.

(f) *Massive imports.* (1) In determining for the purpose of paragraph (a) of this section whether imports of the merchandise have been massive, the Secretary normally will examine:

(i) The volume and value of the imports;

(ii) Seasonal trends; and

(iii) The share of domestic consumption accounted for by the imports.

(2) In general, unless the imports during the period identified in paragraph (g) of this section have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(g) *Relatively short period.* For the purpose of paragraph (a) of this section, the Secretary normally will consider the period beginning on the date the proceeding begins and ending at least three months later. However, if the Secretary finds that importers, or exporting producers or resellers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.

§ 353.17 Termination of investigation.

(a) *Withdrawal of petition.* (1) Except as provided in paragraph (b) of this section, the Secretary may terminate an investigation upon withdrawal of the petition by the petitioner, or on the Secretary's own initiative in an investigation initiated under § 353.11, after notifying all parties to the proceeding and after consultation with the Commission. The Secretary may not terminate an investigation unless the Secretary concludes the termination is in the public interest.

(2) If the Secretary terminates an investigation, the Secretary will publish in the **Federal Register** notice of "Termination of Antidumping Duty Investigation" together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination.

(b) *Withdrawal of petition based on acceptance of quantitative restriction agreements.* (1) The Secretary may not terminate under paragraph (a) of this section an investigation by accepting an understanding or other kind of agreement with the government of the home market country to restrict the volume of the merchandise unless the Secretary, taking into account the factors listed in section 734(a)(2)(B) of the Act, is satisfied that termination is in the public interest.

(2) In deciding for the purpose of paragraph (b)(1) of this section whether termination is in the public interest, the Secretary, to the extent practicable, will consult with representatives of potentially affected United States consuming industries and potentially affected persons in the industry, including persons not parties to the proceeding.

(c) *Negative determination.* An investigation terminates, without further comment or action, upon publication in the **Federal Register** of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(d) *End of suspension of liquidation.* If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of termination under paragraph (a) of this section or on the date of publication of a negative determination referred to in paragraph (c) of this section, and will instruct the Customs Service to release any cash deposit or bond.

§ 353.18 Suspension of investigation.

(a) *Agreement to eliminate completely sales at less than foreign market value or to cease exports.* If the Secretary is satisfied that suspension is in the public interest, the Secretary may suspend an investigation at any time before the Secretary's final determination by accepting an agreement with exporters (producers and resellers) that account for substantially all of the merchandise:

(1) To eliminate completely sales at less than foreign market value with respect to the merchandise, effective on the date of suspension of investigation; or

(2) To cease exports of the merchandise not later than 180 days after the date of publication of the notice of suspension of investigation.

(b) *Agreement eliminating injurious effect.* (1) As provided in this paragraph and paragraph (b)(2) of this section, the Secretary may suspend an investigation at any time before the Secretary's final determination if the Secretary:

(i) Is satisfied that the proposed suspension is in the public interest;

(ii) Finds that extraordinary circumstances are present; and

(iii) Finds that the agreement will eliminate completely the injurious effect of the merchandise.

(2) The Secretary may suspend an investigation under paragraph (b)(1) of this section by accepting an agreement with exporters (producers and resellers) that account for substantially all of the merchandise, if the Secretary finds that:

(i) The agreement will prevent the suppression or undercutting by the merchandise of prices of like products produced in the United States; and

(ii) The agreement will ensure that, for each entry of each exporter, the dumping margin will not exceed 15 percent of the weighted-average dumping margin for that exporter stated in the Secretary's preliminary determination (or final determination in investigations continued under § 353.18(i)).

(c) *Definition of "substantially all."* For purposes of paragraphs (a) and (b)(2) of this section, exporters which account for "substantially all" of the merchandise means exporters (producers and resellers), that have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring dumping in the investigation or such other period that the Secretary considers representative.

(d) *Definition of "extraordinary circumstances."* For purposes of paragraph (b) of this section, "extraordinary circumstances" means circumstances in which (1) suspension of the investigation will be more beneficial to the industry than continuation of the investigation, and (2) there are a large number of transactions or adjustments under Subpart D of this part, the issues raised are novel, or the number of producers and resellers is large.

(e) *Monitoring.* The Secretary will not accept an agreement unless effective monitoring of the agreement by the Secretary is practicable. In monitoring an agreement under paragraph (b) of this section, the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the merchandise or of like products produced in the United States.

(f) *Exports not to increase during interim period.* The Secretary will not accept an agreement under paragraph (a)(2) of this section unless the agreement ensures that the quantity of the merchandise exported during the interim period set forth in the agreement does not exceed the quantity of the merchandise exported during a period of comparable duration that the Secretary considers representative.

(g) *Procedure for suspension of investigation.* (1) The exporters (producers and resellers) shall:

(i) Submit to the Secretary a proposed agreement not later than 45 days before the scheduled date for the Secretary's final determination under § 353.20; and

(ii) Serve a copy of an agreement preliminarily accepted by the Secretary on other parties to the proceeding not later than the day following the Secretary's preliminary acceptance.

(2) The Secretary will:

(i) Not later than 30 days before the date the Secretary suspends the investigation, notify all parties to the proceeding of the proposed suspension and provide to the petitioner a copy of

the agreement preliminarily accepted by the Secretary (the agreement shall contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of this section); and

(ii) Consult with the petitioner concerning the proposed suspension.

(3) The Secretary will provide all interested parties and United States government agencies an opportunity to submit, not later than 10 days before the scheduled date for the Secretary's final determination, written argument and factual information concerning the proposed suspension.

(h) *Acceptance of agreement.* (1) If the Secretary accepts an agreement to suspend an investigation, the Secretary will publish in the **Federal Register** notice of "Suspension of Antidumping Duty Investigation," including the text of the agreement. If the Secretary has not already published notice of affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(2) If the Secretary suspends an investigation based on an agreement under paragraph (a) of this section, the Secretary will not order the suspension of liquidation of entries of the merchandise. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension of liquidation ended on the effective date of notice of suspension of investigation and will instruct the Customs Service to release any cash deposit or bond.

(3) If the Secretary suspends an investigation based on an agreement under paragraph (b) of this section, the Secretary will order the suspension of liquidation to continue or to begin, as appropriate. The suspension of liquidation will not end until the Commission completes any requested review, under section 734(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after the date of publication of the notice of suspension of investigation, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond.

(4) If the Commission undertakes a review of an agreement under section 734(h) of the Act and determines that the agreement will not eliminate the injurious effect, the Secretary will resume the investigation on the date of publication of the Commission's determination as if the Secretary's affirmative preliminary determination had been made on that date. If the Commission determines that the agreement will eliminate the injurious effect, the Secretary will continue the suspension of investigation, order the suspension of liquidation ended on the date of publication of the Commission's determination, and instruct the Customs Service to release any cash deposit or bond.

(i) *Continuation of investigation.* (1) Not later than 20 days after the date of publication of the notice of suspension of investigation, an exporter or exporters accounting for a significant proportion of exports of the merchandise or an interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, may request in writing that the Secretary continue the investigation. The party shall simultaneously file a request with the Commission to continue its investigation.

(2) Upon receiving the request, the Secretary and the Commission will continue the investigation.

(i) If the Secretary and the Commission make affirmative final determinations, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. This paragraph does not affect the provisions of paragraph (h) of this section regarding suspension of liquidation.

(ii) If the Secretary or the Commission makes a negative final determination, the agreement shall have no force or effect.

(j) *Merchandise imported in excess of allowed quantity.* (1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of the merchandise in excess of any quantity allowed by paragraph (f) or by an agreement under paragraph (a) of this section.

(2) Imports in excess of the quantity allowed by paragraph (f) or by an agreement under paragraph (a) of this section may be exported or destroyed under Customs service supervision.

§ 353.19 Violation of agreement.

(a) *Immediate determination.* If the Secretary determines that a signatory exporter has violated a suspension agreement, the Secretary, without right of comment, will:

(1) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (i) 90 days before the date of publication of the notice of cancellation of agreement or (ii) the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under § 353.18(i), resume the investigation as if the Secretary made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under paragraph (a)(1) of this section a cash deposit or bond equal to the estimated weighted-average dumping margin determined in the affirmative preliminary determination;

(3) If the investigation was completed under § 353.18(i), issue an antidumping duty order for all entries subject to suspension of liquidation under paragraph (a)(1) of this section and instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit equal to the estimated weighted-average dumping margin determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding, the Commission, and if the Secretary determines that the violation was intentional, the Commissioner of Customs; and

(5) Publish in the **Federal Register** notice of "Antidumping Duty Order (Resumption of Antidumping Duty Investigation); Cancellation of Suspension Agreement."

(b) *Determination after notice and comment.* (1) If the Secretary has reason to believe that a signatory exporter has violated an agreement or that an agreement no longer meets the requirements of section 734(d) of the Act, but does not have sufficient information to take action under paragraph (a) of this section, the Secretary will publish in the **Federal Register** notice of "Invitation for Comment on Antidumping Duty Suspension Agreement."

(2) After publication of the notice inviting comment and after consideration of comments received the Secretary will:

(i) If the Secretary determines that any signatory exporter has violated the agreement, take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section; or

(ii) If the Secretary determines that the agreement no longer meets the requirements of section 734(d) of the Act:

(A) Take appropriate action as described in paragraphs (a)(1) through

(a)(5) of this section, except that, for paragraph (a)(1)(ii) of this section, the date shall be the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which does not meet the requirements of section 734(d) of the Act;

(B) Continue the suspension of investigation by accepting a revised suspension agreement under § 353.18(a) (whether or not the Secretary accepted the original agreement under that paragraph) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 734(d) of the Act, and publish in the **Federal Register** notice of "Revision of Agreement Suspending Antidumping Duty Investigation;" or

(C) Continue the suspension of investigation by accepting a revised suspension agreement under § 353.18(b) (whether or not the Secretary accepted the original agreement under that paragraph) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 734(d) of the Act, and publish in the **Federal Register** notice of "Revision of Agreement Suspending Antidumping Duty Investigation." If the Secretary continues to suspend an investigation based on a revised agreement accepted under § 353.18(b), the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review of the agreement under section 734(h) of the Act. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond. If the Commission undertakes a review under section 734(h) of the Act, the provisions of § 353.18(h)(4) will apply.

(iii) If the Secretary decides neither to consider the order violated nor to revise the agreement, the Secretary will publish in the **Federal Register** notice of the Secretary's decision under paragraph (b)(2) of this section, including a statement of the factual and legal conclusions on which the decision is based.

(c) *Additional signatories.* If the Secretary decides that the agreement no longer meets the requirements of § 353.18(b)(1)(iii) or that the signatory exporters no longer account for substantially all of the merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(d) *Definition of "violation."* For the purpose of this section, "violation" means noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory exporter, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.

§ 353.20 Final determination.

(a) *In general.* (1) Not later than 75 days after the date of the Secretary's preliminary determination, the Secretary will make a final determination whether the merchandise is being sold at less than fair value.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The estimated weighted-average dumping margin, if any, for each person investigated; and

(iii) If appropriate, a final finding on critical circumstances under § 353.16.

(3) If affirmative, the Secretary's determination will also:

(i) Unless previously ordered by the Secretary, order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Secretary's final determination; and

(ii) Instruct the Customs Service to require, for each suspended entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the Secretary's final determination, a cash deposit or bond equal to the estimated weighted-average dumping margin determined under paragraph (a) of this section.

(4) The Secrerary will publish in the **Federal Register** notice of "Affirmative (Negative) Final Antidumping Duty Determination," including the estimated weighted-average dumping margins, if any.

(5) The Secretary will notify all parties to the proceeding and the Commission.

(b) *Postponement of final determination.* (1) If, not later than the scheduled date for the Secretary's final determination, the petitioner in a proceeding in which the Secretary issued a negative preliminary determination, or the producers or resellers of a significant proportion of the merchandise in a proceeding in which the Secretary issued an affirmative preliminary determination, request in writing a postponement and state the reasons for the request, the Secretary will postpone the final determination to not later than 135 days after the date of publication of the preliminary determination, unless the Secretary finds compelling reasons to deny the request.

(2) If the Secretary decides to postpone the final determination under paragraph (b)(1) of this section, the Secretary will notify all parties to the proceeding and will publish in the **Federal Register** notice of "Postponement of Final Antidumping Duty Determination," stating the reason for the postponement.

(c) *Commission access to information.* The Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the final determination and which the Commission may consider relevant to its injury determination.

(d) *Effect of negative final determination.* An investigation terminates, without further comment or action, upon publication in the **Federal Register** of the Secretary's or the Commission's negative final determination. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of negative final determination and will instruct the Customs Service to release any cash deposit or bond.

(e) *Disclosure.* Promptly after making the final determination, the Secretary will provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in making the determination.

§ 353.21 Antidumping duty order.

Not later than seven days after receipt of notice of the Commission's affirmative final determination under section 735 of the Act, the Secretary will publish in the **Federal Register** an "Antidumping Duty Order" that:

(a) Instructs the Customs Service to assess antidumping duties on the merchandise, in accordance with the Secretary's instructions at the completion of each administrative review requested under § 353.22(a) or, if not requested, in accordance with the Secretary's instructions under § 353.22(e);

(b) For each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order, instructs the Customs Service to require a cash deposit of estimated antidumping duties

equal to the amount of the estimated weighted-average dumping margin stated in the Secretary's final determination;

(c) Excludes from the application of the order any producer or reseller for which the Secretary finds that there was no weighted-average dumping margin during the period for which the Department measured dumping in the investigation; and

(d) Orders the suspension of liquidation ended for all entries of the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's final determination, and instructs the Customs Service to release the cash deposit or bond on those entries, if in its final determination, the Commission found a threat of material injury or material retardation of the establishment of an industry, unless the Commission in its final determination also found that, absent the suspension of liquidation ordered under § 353.15(a), it would have found material injury.

§ 353.22 Administrative review of orders and suspension agreements.

(a) *Request for Administrative Review; Withdrawal of Request for Review.* (1) Each year during the anniversary month of the publication of an order (the calendar month in which the anniversary of the date of publication of the order or finding occurs), an interested party, as defined in paragraph (k)(2), (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers.

(2) During the same month, a producer or reseller covered by an order may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only a producer or reseller of the merchandise imported by that importer.

(4) Each year during the anniversary month of the publication of a suspension of investigation (the calendar month in which the anniversary of the date of publication of the suspension of investigation occurs), an interested party, as defined in § 353.2(k), may request in writing that the Secretary conduct an administrative review of all producers or resellers covered by an agreement on which suspension of investigation was based.

(5) The Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. When a request for review is withdrawn, the Secretary will publish in the **Federal Register** notice of "Termination of Antidumping Duty Administrative Review" or, if appropriate, "Partial Termination of Antidumping Duty Administrative Review."

(b) *Period under review.* (1) Except as provided in paragraph (b)(2) of this section, an administrative review under paragraph (a) of this section normally will cover, as appropriate, entries, exports, or sales of the merchandise during the 12 months immediately preceding the most recent anniversary month.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraph (a) of this section will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the month immediately preceding the first anniversary month.

(c) *Procedures.* After receipt of a timely request under paragraph (a) of this section, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Not later than 15 days after the anniversary month, publish in the **Federal Register** notice of "Initiation of Antidumping Duty Administrative Review;"

(2) Normally not later than 30 days after the date of publication of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 353.36;

(4) Issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person reviewed; and

(iii) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the **Federal Register** notice of "Preliminary Results of Antidumping Duty Administrative Review," including the weighted-average dumping margins, if any, and an invitation for argument consistent with § 353.38, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(7) Not later than 365 days after the anniversary month, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person reviewed; and

(iii) For an agreement, the Secretary's conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the **Federal Register** notice of "Final Results of Antidumping Duty Administrative Review," including the weighted-average dumping margins, if any, and notify all parties to the proceeding;

(9) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the final results; and

(10) Promptly after publication of the notice of final results, instruct the Customs Service to assess antidumping duties on the merchandise described in paragraph (b) of this section and to collect a cash deposit of estimated antidumping duties on future entries.

(d) *Possible cancellation or revision of suspension agreement.* If during an administrative review the Secretary determines or has reason to believe that a signatory exporter has violated a suspension agreement or that the agreement no longer meets the requirements of § 353.18, the Secretary will take appropriate action under § 353.19. The Secretary may suspend the time limit in paragraph (c)(7) of this section while taking action under § 353.19(b).

(e) *Automatic assessment of duty.* (1) For orders, if the Secretary does not receive a timely request under paragraph (a)(1), (a)(2), or (a)(3) of this section, the Secretary, without additional notice, will instruct the Customs Service to assess antidumping duties on the merchandise described in paragraph (b) of this section at rates

equal to the cash deposit of, or bond for, estimated antidumping duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposits previously ordered.

(2) If the Secretary receives a timely request under paragraph (a)(1), (a)(2), or (a)(3) of this section, the Secretary in accordance with paragraph (e)(1) of this section will instruct the Customs Service to assess antidumping duties, and to continue to collect the cash deposits, on the merchandise not covered by the request.

(f) *Changed circumstances review.* (1) If the Secretary concludes from available information, including information in a request under this paragraph for an administrative review, that changed circumstances sufficient to warrant a review exist, the Secretary will:

(i) Publish in the **Federal Register** notice of "Initiation of Changed Circumstances Antidumping Duty Administrative Review;"

(ii) If necessary, send to appropriate interested parties, or a sample of interested parties, questionnaires requesting factual information for the review;

(iii) Conduct, if appropriate, a verification under § 353.36;

(iv) Issue preliminary results of review based on the available information that include the factual and legal conclusions on which the preliminary results are based and any action the Secretary proposes based on the preliminary results;

(v) Publish in the **Federal Register** notice of "Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review," including an invitation for argument consistent with § 353.38;

(vi) Notify all parties to the proceeding of the preliminary results;

(vii) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(viii) Not later than 270 days after the date of the Secretary's initiation of the review, issue final results of review that include the factual and legal conclusions on which the final results are based and any action, including action under paragraph (c)(9) of this section and § 353.25(d), that the Secretary will take based on the final results;

(ix) Publish in the **Federal Register** notice of "Final Results of Changed Circumstances Antidumping Duty Administrative Review;"

(x) Notify all parties to the proceeding; and

(xi) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the final results.

(2) Changed circumstances reviews may be requested at any time, including periods other than anniversary months.

(3) The Secretary will not initiate an administrative review under paragraph (f) of this section before the end of the second annual anniversary month (the calendar month in which the anniversary of the date of publication of the order or suspension occurs) after the date of publication of the Secretary's affirmative preliminary determination or suspension of investigation, unless the Secretary finds that good cause exists.

(4) If the Secretary concludes that expedited action is warranted, the Secretary may combine the notices identified in paragraphs (f)(1)(i) and (f)(1)(v) of this section in a notice of "Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review." In that event, the notification required in paragraph (f)(1)(vi) of this section will be given to all interested parties included on the Department's service list described in § 353.31(h).

(g) *Expedited review.* (1) Not later than seven days after publication of an antidumping duty order, a producer or reseller may request in writing that the Secretary conduct an expedited administrative review for that producer's or reseller's shipments of the merchandise entered, or withdrawn from warehouse, for consumption:

(i) On or after the date of publication of the Secretary's affirmative preliminary determination or, if the Secretary's preliminary determination was negative, the Secretary's final determination, and

(ii) Before the date of publication of the Commission's final determination.

(2) The request must be accompanied by information the Secretary deems necessary to calculate the dumping margin, if any.

(3) If, based upon the information submitted with the request, the Secretary concludes that the dumping margin may be determined not later than 90 days after the date of publication of the order, the Secretary may conduct an expedited administrative review of the requesting producer or reseller.

(4) If the Secretary decides to conduct an expedited review, the Secretary will:

(i) Publish in the **Federal Register** notice of "Initiation of Expedited Antidumping Duty Administrative Review," which will include an invitation for argument consistent with § 353.38, and notify all parties to the proceeding;

(ii) Instruct the Customs Service to accept, in lieu of the cash deposit of estimated antidumping duties under § 353.21(b), a bond for each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation and through the date not later than 90 days after the date of publication of the order;

(iii) Conduct a verification under § 353.36;

(iv) Provide to parties to the proceeding which request disclosure an explanation of the calculation methodology used for the Secretary's analysis;

(v) Issue final results of review that include:

(A) The factual and legal conclusions on which the final results are based; and

(B) The weighted-average dumping margin, if any, during the period of review for each person reviewed;

(vi) Publish in the **Federal Register** notice of "Final Results of Expedited Antidumping Duty Administrative Review," including the weighted-average dumping margins, if any, and notify all parties to the proceeding;

(vii) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure an explanation of the calculation methodology used for the Secretary's analysis; and

(viii) Promptly after publication of the notice of final results, instruct the Customs Service to assess antidumping duties on the merchandise described in paragraph (g)(1) of this section and to collect a cash deposit of estimated antidumping duties on future entries.

§ 353.23 Provisional measures deposit cap.

This section applies to the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of affirmative final determination. If the cash deposit or bond required under the Secretary's affirmative preliminary or affirmative final determination is different from the dumping margin the Secretary calculates under § 353.22, the Secretary will instruct the Customs Service to disregard the difference to the extent that the cash deposit or bond is less than the dumping margin, and to assess antidumping duties equal to the dumping margin calculated under § 353.22 if the cash deposit or bond is more than the dumping margin.

§ 353.24 Interest on certain overpayments and underpayments.

(a) *In general.* The Secretary will instruct the Customs Service to pay or collect, as appropriate, interest on the difference between the cash deposit of estimated antidumping duties and the assessed antidumping duties on entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of an antidumping duty order.

(b) *Rate.* The rate or rates of interest payable or collectible under paragraph (a) of this section for any period of time are the rates established under section 6621 of the Internal Revenue Code of 1954.

(c) *Period.* The Secretary will instruct the Customs Service to calculate interest for each entry from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

§ 353.25 Revocation of orders; termination of suspended investigation.

(a) *Revocation or termination based on absence of dumping.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that:

(i) All producers and resellers covered at the time of revocation by the order or the suspension agreement have sold the merchandise at not less than foreign market value for a period of at least three consecutive years; and

(ii) It is not likely that those persons will in the future sell the merchandise at less than foreign market value.

(2) The Secretary may revoke an order in part if the Secretary concludes that:

(i) One or more producers or resellers covered by the order have sold the merchandise at not less than foreign market value for a period of at least three consecutive years;

(ii) It is not likely that those persons will in the future sell the merchandise at less than foreign market value; and

(iii) For producers or resellers that the Secretary previously has determined to have sold the merchandise at less than foreign market value, the producers or resellers agree in writing to their immediate reinstatement in the order, as long as any producer or reseller is subject to the order, if the Secretary concludes under § 353.22(f) that the producer or reseller, subsequent to the revocation, sold the merchandise at less than foreign market value.

(b) *Request for revocation or termination.* During the third and subsequent annual anniversary months of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurs), a producer or reseller may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a) of this section with regard to that person if the person submits with the request:

(1) The person's certification that the person sold the merchandise at not less than foreign market value during the period described in § 353.22(b), and that in the future the person will not sell the merchandise at less than foreign market value; and

(2) If applicable, the agreement described in paragraph (a)(2)(iii) of this section.

(c) *Procedures.* (1) After receipt of a timely request under paragraph (b) of this section, the Secretary will consider the request as including a request for an administrative review and will conduct a review under § 353.22(c).

(2) In addition to the requirements of § 353.22(c), the Secretary will:

(i) Publish with the notice of initiation, under § 353.22(c)(1), notice of "Request for Revocation of Order (in Part)" or, if appropriate, "Request for Termination of Suspended Investigation;"

(ii) Conduct a verification under § 353.36;

(iii) Include in the preliminary results of review, under § 353.22(c)(4), the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary's preliminary decision under paragraph (c)(2)(iii) of this section is affirmative, publish with the notice of preliminary results of review, under § 353.22(c)(5), notice of "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"

(v) Include in the final results of review, under § 353.22(c)(7), the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary's final decision under paragraph (c)(2)(v) of this section is affirmative, publish with the notice of final results of review, under § 353.22(c)(8), notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(3) If the Secretary revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.

(d) *Revocation or termination based on changed circumstances.* (1) The Secretary may revoke an order, revoke an order in part, or terminate a suspended investigation if the Secretary concludes that:

(i) The order or suspended investigation no longer is of interest to interested parties, as defined in paragraphs (k)(3), (k)(4), (k)(5), and (k)(6) of § 353.2; or

(ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information, including an affirmative statement of no interest from the petitioner in the proceeding, that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct an administrative review under § 353.22(f).

(3) In addition to the requirements of § 353.22(f), the Secretary will:

(i) Publish with the notice of initiation, under § 353.22(f)(1)(i), notice of "Consideration of Revocation of Order (in Part)" or, if appropriate, "Consideration of Termination of Suspended Investigation;"

(ii) If the Secretary's conclusion, as described in paragraph (d)(2) of this section, is not based on a request, the Secretary, not later than the date of publication of the notice described in paragraph (d)(3)(i) of this section, will serve written notice of the consideration of revocation or termination on each interested party listed on the Department's service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product;

(iii) Conduct a verification, if appropriate, under § 353.36;

(iv) Include in the preliminary results of review, under § 353.22(f)(1)(iv), the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination based on changed circumstances are met;

(v) If the Secretary's preliminary decision under paragraph (d)(3)(iv) of this section is affirmative, publish with the notice of preliminary results of review, under § 353.22(f)(1)(v), notice of "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"

(vi) Include in the final results of review, under § 353.22(f)(1)(viii), the Secretary's final decision whether the requirements for revocation or termination based on changed circumstances are met; and

(vii) If the Secretary's final decision under paragraph (d)(3)(vi) of this section is affirmative, publish with the notice of final results of review, under § 353.22(f)(1)(ix), notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(4)(i) If for four consecutive annual anniversary months no interested party has requested an administrative review, under § 353.22(a), of an order or suspended investigation, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish in the **Federal Register** notice of "Intent to Revoke Order" or, if appropriate, "Intent to Terminate Suspended Investigation."

(ii) Not later than the date of publication of the notice described in paragraph (d)(4)(i) of this section, the Secretary will serve written notice of the intent to revoke or terminate on each interested party listed on the Department's service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product.

(iii) If by the last day of the fifth annual anniversary month no interested party objects, or requests an administrative review under § 353.22(a), the Secretary at that time will conclude that the requirements of paragraph (d)(1)(i) for revocation or termination are met, revoke the order or terminate the suspended investigation, and publish in the **Federal Register** the notice described in paragraph (d)(3)(vii) of this section.

(5) If the Secretary under paragraph (d) of this section revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the effective date of the notice of revocation, and will instruct the Customs Service to release any cash deposit or bond.

(e) *Revocation or termination based on injury reconsideration.* If the Commission determines in an administrative review under section 751(b) of the Act that an industry in the United States would not be materially injured, or would not be threatened with material injury, or the establishment of an industry in the United States would not be materially retarded, by reason of imports of the merchandise covered by an antidumping duty order or suspension agreement, the Secretary will revoke, in whole or in part, the order or terminate the suspended investigation, and will publish in the **Federal Register** notice of "Revocation of Order (in Part)" or if appropriate, "Termination of Suspended Investigation."

§ 353.26 Reimbursement of antidumping duties.

(a) *In general.* (1) In calculating the United States price, the Secretary will deduct the amount of any antidumping duty which the producer or reseller:

(i) Paid directly on behalf of the importer; or

(ii) Reimbursed to the importer.

(2) The Secretary will not deduct the amount of the antidumping duty paid or reimbursed if the producer or reseller granted to the importer before initiation of the investigation a warranty of nonapplicability of antidumping duties with respect to the merchandise which was:

(i) Sold before the date of publication of the Secretary's order suspending liquidation; and

(ii) Exported before the date of publication of the Secretary's final determination.

Ordinarily, the Secretary will deduct for reimbursement of antidumping duties only once in the calculation of the United States price.

(b) *Certificate.* The importer shall file prior to liquidation a certificate in the following form with the appropriate District Director of Customs:

> I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter, of all or any part of the antidumping duties assessed upon the following importations of _____ (commodity) from _____ (country): (List entry numbers) which have been purchased on or after _____ (date of publication of notice suspending liquidation in the **Federal Register**) or purchased before _____ (same date) but exported on or after _____ (date of final determination of sales at less than fair value).

(c) *Presumption.* The Secretary may presume from an importer's failure to file the certificate required in paragraph (b) that the producer or reseller paid or reimbursed the antidumping duties.

Subpart C—Information and Argument

§ 353.31 Submission of factual information.

(a) *Time limits in general.* (1) Except as provided in paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:

(i) For the Secretary's final determination, seven days before the scheduled date on which the verification is to commence;

(ii) For the Secretary's final results of an administrative review under § 353.22 (c) or (f), the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review; or

(iii) For the Secretary's final results of an expedited review under § 353.22(g), a date specified by the Secretary.

(2) Any interested party, as defined in paragraphs (k)(3), (k)(4), (k)(5), and (k)(6) of § 353.2, may submit factual information to rebut, clarify, or correct factual information submitted by an interested party, as defined in paragraph (k)(1) or (k)(2) of § 353.2, at any time prior to the deadline provided in this section for submission of such factual information or, if later, 10 days after the date such factual information is served on the interested party or, if appropriate, made available under administrative protective order to the interested party.

(3) The Secretary will not consider in the final determination or the final results, or retain in the record of the proceeding, any factual information submitted after the applicable time limit. The Secretary will return such information to the submitter with written notice stating the reasons for return of the information.

(b) *Questionnaire responses and other submissions on request.* (1) Notwithstanding paragraph (a) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(2) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the time limit for response. The Secretary normally will not consider or retain in the record of the proceeding unsolicited questionnaire responses, and in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination. The Secretary will return to the submitter, with written notice stating the reasons for return of the document, any untimely or unsolicited questionnaire responses rejected by the Department.

(3) Ordinarily, the Secretary will not extend the time limit stated in the questionnaire or request for other factual information. Before the time limit expires, the recipient of the Secretary's request may request an extension. The request must be in writing and state the reasons for the request. Only the following employees of the Department may approve an extension: the Assistant Secretary for Import Administration, the

Deputy Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Investigations, the Deputy Assistant Secretary for Compliance, and the office or division director responsible for the proceeding. An extension must be approved in writing.

(4) Subject to the other provisions of paragraph (b) of this section, questionnaire responses in administrative reviews must be submitted not later than 60 days after the date of receipt of the questionnaire.

(c) *Time limits for certain allegations.* (1) The Secretary will not consider any allegation of sales below the cost of production that is submitted by the petitioner or other interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, later than:

(i) In an investigation, 45 days before the scheduled date for the Secretary's preliminary determination, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit;

(ii) In an administrative review under § 353.22 (c) or (f), 120 days after the date of publication of the notice of initiation of the review, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit; or

(iii) In an expedited review under § 353.22(g), 10 days after the date of publication of the notice of initiation of the review.

(2) The Secretary will not consider any allegation in an investigation that the petitioner lacks standing unless the allegation is submitted, together with supporting factual information, not later than 10 days before the scheduled date for the Secretary's preliminary determination.

(3) Any interested party may request in writing not later than the time limits specified in paragraph (c)(1) or (c)(2) of this section, as applicable, an extension of those time limits. If the Assistant Secretary for Import Administration concludes that an extension would facilitate the proper administration of the law, the Assistant Secretary may grant an extension of not longer than 10 days in an investigation or 30 days in an administrative review.

(d) *Where to file; time of filing.* Address and submit documents to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th St., NW., Washington, DC 20230, between the hours of 8:30 a.m. and 5:00 p.m. on business days. For all time limits in this part, the Secretary will consider documents received when stamped by the Central Records Unit with the date and time of receipt. If the time limit expires on a non-business day, the Secretary will accept documents that are filed on the next following business day.

(e) *Format and number of copies—(1) In general.* Unless the Secretary alters the requirements of this section, submitters shall make all submissions in the format specified in paragraph (e) of this section. The Secretary may refuse to accept for the record of the proceeding any submission that does not conform to the requirements of paragraph (e) of this section.

(2) *Documents.* In an investigation, submit 10 copies of any document, except a computer printout, and, if a person has requested that the Secretary treat portions of the document as proprietary information, submit five copies of a public version of the document, including any public summaries required under § 353.32(b) as substitutes for the portions for which the person has requested proprietary treatment. In an administrative review, submit seven copies and three copies respectively. In an investigation or administrative review, submit documents, if prepared for that segment of the proceeding, on letter-size paper, single-sided and double-spaced. Securely bind each copy as a single document with any letter of transmittal as the first page of the document. Mark the first page of each document in the upper right-hand corner with the following information in the following format:

(i) On the first line, except for a petition, the Department case number;

(ii) On the second line, the total number of pages in the document including cover pages, appendices, and any unnumbered pages;

(iii) On the third line, state whether the document is for an investigation or an administrative review and, if the latter, the period of review;

(iv) On the fourth and subsequent lines, state whether any portion of the document contains classified, privileged, or proprietary information and, if so, list the applicable page numbers and state either "Document May Be Released Under APO" or "Document May Not Be Released Under APO" (*see* §§ 353.32(c) and 353.34); and

(v) For public versions of proprietary documents, complete the marking as required in paragraphs (i)–(iv) above for the proprietary document, but conspicuously mark the first page "Public Version."

(3) *Computer tapes and printouts.* The Secretary may require submission of factual information on computer tape unless the Secretary decides that the submitter does not maintain records in computerized form and cannot supply the requested information on computer tape without unreasonable additional burden in time and expense. In an investigation or administrative review, the tape shall be accompanied by three copies of any computer printout and three copies of the public version of the printout.

(f) *Translation to English.* Unless the Secretary waives in writing this requirement for an individual document, any document submitted which is in a foreign language must be accompanied by an English translation.

(g) *Service of copies on other parties.* With the exception of petitions, proposed suspension agreements submitted under § 353.18(g)(1)(i), and factual information submitted under § 353.32(a) that is not required to be served on an interested party, the submitter of a document shall serve a copy, by first class mail or personal service, on any interested party on the Department's service list. The submitter shall attach to each document a certificate of service listing the parties served and, for each, the date and method of service.

(h) *Service list.* The Central Records Unit will maintain and make available a service list for each proceeding. Each interested party which asks to be on the service list shall designate a person to receive service of documents filed in a proceeding.

(i) *Certifications.* Any interested party which submits factual information to the Secretary must submit with the factual information the certification in paragraph (i)(1) and, if the party has legal counsel or another representative, the certification in paragraph (i)(2) of this section:

(1) For the interested party's official responsible for presentation of the factual information:

I, (name and title), currently employed by (interested party), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

(2) For interested party's legal counsel or other representative:

I, (name), of (law or other firm), counsel or representative to (interested party), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (interested party), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

§ 353.32 Request for proprietary treatment of information.

(a) *Submission and content of request.* (1) Any person who submits factual information to the Secretary in connection with a proceeding may request that the Secretary treat that information, or any specified part, as proprietary.

(2) The submitter shall identify proprietary information on each page by placing brackets around the proprietary information and clearly stating at the top of each page containing such information "Proprietary Treatment Requested." The submitter shall provide a full explanation why each piece of factual information subject to the request is entitled to proprietary treatment under § 353.4. The request and explanation shall be a part of or securely bound with the document containing the information.

(b) *Public summary.* All requests for proprietary treatment shall include or be accompanied by:

(1) An adequate public summary of all proprietary information, incorporated in the public version of the document (generally, numeric data are adequately summarized if grouped or presented in terms of indices, or figures within 10 percent of the actual figure, and if an individual portion of the data is voluminous, at least one percent representative of that portion is individually summarized in this manner); or

(2) A statement itemizing those portions of the proprietary information which cannot be summarized adequately and all arguments supporting that conclusion for each portion.

(c) *Agreement to release.* All requests for proprietary treatment shall include either an agreement to permit disclosure under administrative protective order, or a statement itemizing which portions of the proprietary information should not be released under administrative protective order and all arguments supporting that conclusion for each portion. The Secretary ordinarily will not provide the submitter further opportunity for argument on whether to grant a request for disclosure under administrative protective order.

(d) *Return of information as a result of nonconforming request.* The Secretary may return to the submitter any factual information for which the submitter requested proprietary treatment when the request does not conform to the requirements of this section and in any event will not consider the information. If the Secretary returns the information, the Secretary will provide a written explanation of the reasons why it does not conform and will not consider it unless it is resubmitted with a new request which complies with the requirements of this section not later than two business days after receipt of the Department's explanation for rejection of the information.

(e) *Status during consideration of request.* While considering whether to grant a request for proprietary treatment, the Secretary will not disclose or make public the information. The Secretary normally will decide not later than 14 days after the Secretary receives the request.

(f) *Treatment of proprietary information.* Unless the Secretary otherwise provides, the person to whom the Secretary discloses information shall not disclose the information to any other person. The Secretary may disclose factual information which the Secretary decides is proprietary only to:

(1) A representative of an interested party who requests and is granted an administrative protective order under § 353.34;

(2) An employee of the Department directly involved in the proceeding for which the information is submitted;

(3) An employee of the Commission directly involved in the proceeding for which the information is submitted;

(4) An employee of the Customs Service directly involved in conducting a fraud investigation relating to an antidumping duty proceeding on the merchandise;

(5) Any person to whom the submitter specifically authorizes (in writing) disclosure; and

(6) A charged party or counsel for the charged party under Part 354 of this title (19 CFR Part 354).

(g) *Denial of request for proprietary treatment.* If the Secretary decides that the factual information does not warrant proprietary treatment in whole or in part, the Secretary will notify the submitter. Unless the submitter agrees that the information be considered public, the Secretary will return the information to the submitter with written notice stating the reasons for return of the information and will not consider it in the proceeding.

§ 353.33 Information exempt from disclosure.

Privileged or classified information is exempt from disclosure to the public or to representatives of interested parties.

§ 353.34 Disclosure of proprietary information under administrative protective order.

(a) *In general.* The Secretary may disclose, or require to be disclosed, proprietary information under an administrative protective order to an attorney or other representative of a party to the proceeding if the Secretary decides that the representative has stated a sufficient need for disclosure and would adequately protect the proprietary status of the information disclosed. In deciding whether to disclose information under administrative protective order, the Secretary will consider the probable effectiveness of sanctions for violation of the order, including those described in paragraph (b)(4) of this section. The Secretary also will consider the ability of the Secretary to obtain factual information in the future.

(b) *Request for disclosure.* (1) A representative must file a request for disclosure under administrative protective order not later than the later of:

(i) 30 days after the date of publication in the **Federal Register** of the notice of initiation under § 353.11 or § 353.13, or the notice of initiation of administrative review under § 353.22; or

(ii) 10 days after the date the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 353.38, are due.

(2) The representative must file the request for disclosure on the standard form provided by the Secretary (Form ITA–367). The standard form will require only such particularity in the description of the requested information as is consistent with both the criteria the Secretary uses to decide whether to disclose, and with the fact that a request may be made for factual information not yet submitted.

(3) The request shall obligate the representative:

(i) Not to disclose the proprietary information to anyone other than the submitter and other persons authorized by an administrative protective order to have access to the information;

(ii) To use the information solely for the segment of the proceeding in which it was submitted;

(iii) To ensure the security of the proprietary information at all times; and

(iv) To report promptly to the Secretary any apparent violation of the terms of the protective order.

(4) The request shall contain an acknowledgment by the representative that:

(i) A representative determined to have violated a protective order may be subject to any or all of the sanctions listed in Part 354 of this title; and

(ii) The firm of which a person determined to have violated a protective order is a partner, associate, or employee, and any partner, associate,

employer, or employee of such person, may be subject to any or all of the sanctions listed in Part 354 of this title.

(5) The Secretary normally will decide whether to disclose information under administrative protective order not later than 14 days after the Secretary receives the request for disclosure.

(c) *Opportunity to withdraw proprietary information.* If the Secretary decides to disclose proprietary information under administrative protective order without the consent of the submitter, the Secretary will provide to the submitter written notice of the decision and the reasons thereof and will permit the submitter to withdraw the information from the official record within two business days. The Secretary will not consider withdrawn information.

(d) *Disposition of proprietary information disclosed under administrative protective order.* (1) At the expiration of the time for filing for judicial review of a decision by the Secretary, if there is no filing by any party to the proceeding, or at an earlier date the Secretary decides appropriate, the representative must return or destroy all proprietary information released under this section and all other materials containing the proprietary information (such as notes or memoranda). The representative at that time must certify to the Secretary full compliance with the terms of the protective order and the return or destruction of all proprietary information.

(2) The representative of a party to the proceeding that files for judicial review or intervenes in the judicial review may retain the proprietary information, provided that the party applies for a court protective order for the information not later than 15 days after the Secretary files the administrative record with the court. If the court denies the party's application for a court protective order, the representative must return or destroy the proprietary information and all other materials containing the proprietary information not later than 48 hours after the court's decision and certify to the Secretary as provided under paragraph (d)(1) of this section.

(e) *Violation of administrative protective order.* The procedures for investigating any alleged violation of an administrative protective order issued under this section and for imposing sanctions for a violation of such order are set forth in Part 354 of this title (19 CFR Part 354).

§ 353.35 Ex parte meeting.

The Secretary will prepare for the official record a written memorandum of any *ex parte* meeting between any person providing factual information in connection with a proceeding and the person to whom the Secretary has delegated the authority to make the decision in question or the person making a final recommendation to that person. The memorandum will include the date, time, and place of the meeting, the identity and affiliation of all persons present, and a public summary of the factual information submitted.

§ 353.36 Verification of information.

(a) *In general.* (1) The Secretary will verify all factual information the Secretary relies on in:

(i) A final determination under § 353.18(i) or § 353.20;

(ii) The final results of an expedited review under § 353.22(g);

(iii) A revocation under § 353.25;

(iv) The final results of an administrative review under § 353.22 (c) or (f) if the Secretary decides that good cause for verification exists; and

(v) The final results of an administrative review under § 353.22(c) if:

(A) An interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, not later than 120 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) If the Secretary decides that, because of the large number of producers and resellers included in an investigation or administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample. The Secretary will apply the results of the verification of the sample to all producers and resellers included in the investigation or review.

(b) *Notice of verification.* In publishing a notice of final determination, revocation, or final results of administrative review, the Secretary will report the methods and procedures used to verify under this section.

(c) *Procedures for verification.* In verifying under this section, the Secretary will notify the government of the foreign country in which verification takes place that employees of the Department will visit with producers or resellers in order to verify the accuracy and completeness of submitted factual information. As part of the verification, employees of the Department will request access to all files, records, and personnel of the producers, resellers, importers, or unrelated purchasers which the Secretary considers relevant to factual information submitted.

§ 353.37 Best information available.

(a) *Use of best information available.* The Secretary will use the best information available whenever the Secretary:

(1) Does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or

(2) Is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted.

(b) *What is best information available.* The best information available may include the factual information submitted in support of the petition or subsequently submitted by interested parties, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2. If an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is the best information available.

§ 353.38 Written argument and hearings.

(a) *Written argument.* The Secretary will consider in making the final determination under § 353.18(i) or § 353.20 or the final results under § 353.22 only written arguments in case or rebuttal briefs filed within the time limits in this section. The Secretary will not consider or retain in the record of the proceeding any written argument, unless requested by the Secretary (and received within the time limit specified by the Secretary), that is submitted after the time limits specified in this section. At any time during the proceeding, the Secretary may request written argument on any issue from any interested party or United States government agency. The Secretary will return to the submitter, with written notice stating the reasons for return of the document, any written argument submitted after the time limits specified in this section or by the Secretary.

(b) *Request for hearing.* Not later than 10 days after the date of publication of the Secretary's preliminary determination or preliminary results of administrative review, unless the Secretary alters this time limit, any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs. To the extent

practicable, a party requesting a hearing shall identify arguments to be raised at the hearing. At the hearing, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief.

(c) *Case brief.* (1) Any interested party or U.S. Government agency may submit a "case brief":

(i) Not later than 50 days after the date of publication of the Secretary's preliminary determination in an investigation, unless the Secretary alters this time limit;

(ii) Not later than 30 days after the date of publication of the preliminary results of administrative review under § 353.22 (c) or (f); or

(iii) At any time specified by the Secretary in an expedited review under § 353.22(g).

(2) The case brief shall separately present in full all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results.

(d) *Rebuttal brief.* Not later than the time limit stated in the notice of the Secretary's preliminary determination or preliminary results (or otherwise specified by the Secretary for an expedited review under § 353.22(g)), ordinarily five days in an investigation and seven days in an administrative review after the time limit for filing the case brief, any interested party or U.S. Government agency may submit a "rebuttal brief." The rebuttal brief shall separately present in full all rebuttal arguments, responding only to arguments raised in case briefs.

(e) *Service of briefs.* The submitter of either a case or rebuttal brief shall serve a copy of that brief on any interested party on the Department's service list and on any U.S. Government agency that has submitted in the segment of the proceeding a case or rebuttal brief. If the party has designated under § 353.31(h) an agent in the United States, service shall be either by personal service on the same day the brief is filed with the Secretary or by overnight mail or courier on the next day and, if the party has designated an agent outside the United States, service shall be by first class airmail. The submitter shall attach to each brief a certificate of service listing the parties (including agents) served and, for each, the date and method of service.

(f) *Hearings.* If an interested party submits a request under paragraph (b) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review (or otherwise specified by the Secretary in an expedited review under § 353.22(g)), unless the Secretary alters the date. Ordinarily, the hearing will be held, in an investigation, two days after the scheduled date for submission of rebuttal briefs and, in an administrative review, seven days after the scheduled date for submission of rebuttal briefs.

(1) The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

(2) One of the following employees of the Department will chair the hearing: the Assistant Secretary for Import Administration; the Deputy Assistant Secretary for Import Administration; the Deputy Assistant Secretary for Investigations; the Deputy Assistant Secretary for Compliance; or the office or division director responsible for the proceeding.

(3) The hearing is not subject to the Administrative Procedure Act. Witness testimony, if any, shall not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any interested party or witness and may request interested parties to present additional written argument.

(g) *Where to file; time of filing.* The requirements in § 353.31(d) apply to this section.

(h) *Format and number of copies.* The requirements in § 353.31(e) apply to this section, except that in an administrative review submit 10 copies of each brief and five copies of the public version, including the public summary required under § 353.32(b).

Subpart D—Calculation of United States Price, Fair Value, and Foreign Market Value

§ 353.41 Calculation of United States price.

(a) *In general.* "United States price" means the purchase price or the exporter's sales price of the merchandise, as appropriate. In calculating the United States price, the Secretary will use sales or, in the absence of sales, likely sales, as defined in § 353.2(t).

(b) *Purchase price.* "Purchase price" means the price at which the merchandise is sold or likely to be sold prior to the date of importation, by a producer or reseller of the merchandise for exportation to the United States. The Secretary will make appropriate adjustments for costs and expenses under paragraph (d) of this section if they are not reflected in the sales price to the importer. Whenever purchase price is used and there is reason to believe that the sales price to the importer does not reflect the cost and expenses incident to bringing the merchandise from the country of exportation, then the Secretary will make appropriate adjustments for such cost and expenses under paragraph (d) of this section.

(c) *Exporter's sales price.* "Exporter's sales price" means the price at which merchandise is sold or likely to be sold in the United States, before or after the time of importation, by or for the account of the exporter (defined in section 771(13) of the Act), as adjusted under paragraphs (d) and (e).

(d) *Adjustments to United States price.* (1) The Secretary will increase the United States price by:

(i) When not included in the price, the cost of containers, coverings, and other expenses incident to placing the merchandise in condition packed ready for shipment to the United States;

(ii) The amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of exportation of the merchandise;

(iii) The amount of any taxes imposed in the country of exportation directly on the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise, but only to the extent that such taxes are added to or included in the price of such or similar merchandise sold in the country of exportation; and

(iv) The amount of any countervailing duty imposed on the merchandise to offset an export subsidy.

(2) The Secretary will reduce the United States price by the amount, if included in the price, of:

(i) Except as provided in paragraph (d)(1)(iv), any cost and expenses, and United States import duties incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and

(ii) Any export tax, duty, or other charge imposed by the country of exportation on the exportation of the merchandise, other than an export tax, duty, or other charge described in section 771(6)(C) of the Act.

(e) *Additional adjustments to exporter's sales price.* The Secretary

also will reduce the exporter's sales price by the amount of:

(1) Commissions for selling in the United States the merchandise;

(2) Expenses generally incurred by or for the account of the exporter in selling the merchandise, or attributable under generally accepted accounting principles to the merchandise; and

(3) Any increased value resulting from a process of production or assembly performed on the merchandise after importation and before sale to a person who is not the exporter of the merchandise, which value the Secretary generally will determine from the cost of material, fabrication, and other expenses incurred in such production or assembly.

§ 353.42 Fair value.

(a) *Relationship to foreign market value.* Fair value, used during the investigation, is an estimate of foreign market value. Except as otherwise specifically noted, a reference in this subpart to "foreign market value" applies to "fair value," but a reference to "fair value" in this subpart does not necessarily apply to "foreign market value."

(b) *Sales examined.* (1) The Secretary normally will examine not less than 60 percent of the dollar value or volume of the merchandise sold during a period of at least 150 days prior to and 30 days after the first day of the month during which the petition was filed or the Secretary initiated the investigation under § 353.11, but the Secretary may examine the merchandise for any additional or alternative period the Secretary concludes is appropriate.

(2) If the Secretary examines less than 85 percent of the dollar value or volume of the merchandise sold during the period described in paragraph (b)(1), the Secretary will notify the affected foreign government what percentage of total sales are being examined.

§ 353.43 Sales used in calculating foreign market value.

(a) *Sales and offers for sale.* In calculating foreign market value, the Secretary will use sales, as defined in § 353.2(t), and offers for sale, but the Secretary normally will consider offers only in the absence of sales and only if the Secretary concludes that acceptance of the offer can be reasonably expected.

(b) *Fictitious sales and offers.* In calculating foreign market value, the Secretary will reject any fictitious sale or offer.

(c) *Restricted sales.* When sales used to calculate foreign market value are restricted, the Secretary will adjust the price, as appropriate, to compensate for restrictions that affect the value of the merchandise to the purchasers.

§ 353.44 Sales at varying prices.

(a) *Weighted-average price or prices.* If the sales which the Secretary may use to calculate foreign market value vary in price (after allowances provided for in §§ 353.55, 353.56, 353.57, and 353.58), the Secretary normally will calculate foreign market value based on the weighted average of those prices.

(b) *Preponderant price.* If not less than 80 percent of the sales which the Secretary may use to calculate foreign market value during the period under examination were made at the same price, the Secretary will calculate foreign market value based on the sales at that price.

(c) *Other reasonable method.* If the Secretary decides that paragraph (b) does not apply and that paragraph (a) is inappropriate, the Secretary will use any other method for calculating foreign market value which the Secretary deems appropriate.

(d) *Sales below cost of production.* For purposes of paragraph (a) or (b), the Secretary will not use sales disregarded under § 353.51.

§ 353.45 Transactions between related persons.

(a) *Sales to a related person.* If a producer or reseller sold such or similar merchandise to a person related as described in section 771(13) of the Act, the Secretary ordinarily will calculate foreign market value based on that sale only if satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to a person not related to the seller.

(b) *Sales through a related person.* If a producer or reseller sold such or similar merchandise through a person related as described in section 771(13) of the Act, the Secretary may calculate foreign market value based on the sale by such related person.

§ 353.46 Calculation of foreign market value based on price in the home market country.

(a) *In general.* (1) The Secretary ordinarily will calculate the foreign market value of the merchandise based on the price at which such or similar merchandise is sold or offered for sale in the principal markets of the home market country, in the usual commercial quantities and in the ordinary course of trade for home consumption, plus, when not included in the price, the cost of containers, coverings, and other expenses incident to placing the merchandise in condition packed ready for shipment to the United States.

(2) When United States price is based on purchase price, under § 353.41(b), the Secretary will calculate foreign market value, under paragraph (a)(1), based on the price at the time the producer or reseller sells the merchandise for exportation to the United States.

(3) When United States price is based on exporter's sales price, under § 353.41(c), the Secretary will calculate foreign market value, under paragraph (a)(1), based on the price at the time the importer sells the merchandise in the United States to a person not related under section 773(e)(4) of the Act.

(b) *Ordinary course of trade.* In determining the ordinary course of trade, the Secretary will consider the conditions and practices which, for a reasonable period prior to the time described in paragraph (a), have been normal in the trade of merchandise of the same class or kind in the home market country.

(c) *Transshipments.* If the merchandise is not imported directly from the home market country but is merely transshipped through another country, the Secretary will not, except under § 353.47, calculate foreign market value based on the price at which such or similar merchandise is sold in the country of transshipment.

§ 353.47 Exportation from an intermediate country.

The Secretary will calculate the foreign market value of such or similar merchandise based on sales in the intermediate country rather than sales in the home market country if:

(a) A reseller in an intermediate country purchases the merchandise from the producer;

(b) The producer of the merchandise does not know (at the time of the sale to that reseller) the country to which such reseller intends to export the merchandise;

(c) The merchandise enters the commerce of the intermediate country but is not substantially transformed in that country; and

(d) The merchandise subsequently is exported to the United States.

§ 353.48 Calculation of foreign market value if sales in the home market country are inadequate.

(a) *In general.* Except as provided in § 353.53, if the quantity of such or similar merchandise sold during the period being examined for consumption in the home market country is so small in relation to the quantity sold for exportation to third countries (normally, less than five percent of the amount sold to third countries) that it is an

inadequate basis for the foreign market value of the merchandise, the Secretary will calculate the foreign market value of the merchandise under either § 353.49 or § 353.50.

(b) *Preference for third country sales.* The Secretary normally will prefer foreign market value based on sales to a third country rather than on constructed value if adequate information is available and can be verified, if a verification is conducted, within the time required.

(c) *Definition of "third country."* For purposes of this section and of § 353.49, a "third country" means any country other than the home market country or the United States.

§ 353.49 Calculation of foreign market value based on sales to a third country.

(a) *In general.* (1) If foreign market value is based on sales to a third country, the Secretary will calculate the foreign market value based on the price at which such or similar merchandise is sold or offered for sale to a third country, plus, when not included in the price, the cost of containers, coverings, and other expenses incident to placing the merchandise in condition packed ready for shipment to the United States.

(2) When United States price is based on purchase price, under § 353.41(b), the Secretary will calculate foreign market value, under paragraph (a)(1), based on the price at the time the producer or a reseller sells the merchandise for exportation to the United States.

(3) When United States price is based on exporter's sales price, under § 353.41(c), the Secretary will calculate foreign market value, under paragraph (a)(1), based on the price at the time the importer sells the merchandise in the United States to a person not related under section 773(e)(4) of the Act.

(b) *Selection of third country.* The Secretary generally will select the third country based on the following criteria:

(1) Such or similar merchandise exported to the country is more similar to the merchandise exported to the United States than is such or similar merchandise exported to other countries, and the Secretary decides that the volume of sales to the country is adequate;

(2) The volume of sales to the country is the largest to any country other than the home market country or the United States; and

(3) The market in the country, in terms of organization and development, is most like the United States market.

(c) *Selection of more than one third country.* In order to find adequate sales under paragraph (b), the Secretary may aggregate sales to more than a single third country.

§ 353.50 Calculation of foreign market value based on constructed value.

(a) *Method of calculating constructed value.* If foreign market value is based on constructed value, the Secretary will calculate the foreign market value by adding:

(1) The cost of materials used in producing such or similar merchandise (exclusive of any internal tax in the home market country applied directly to the materials or their disposition, but remitted or refunded upon exportation) and the cost of fabrication or other processing of any kind used in producing such or similar merchandise, at a time specified in paragraph (b) which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) General expenses and profit usually reflected in sales of merchandise of the same class or kind as the merchandise by producers in the home market country, in the usual commercial quantities and in the ordinary course of trade, except that the amount for general expenses shall not be less than 10 percent of the cost under paragraph (a)(1) and the amount for profit shall not be less than 8 percent of the sum of the amount for general expenses and the cost under paragraph (a)(1); and

(3) The cost of containers, coverings, and other expenses incident to placing the merchandise in condition packed ready for shipment to the United States.

(b) *Time for calculating constructed value.* (1) When United States price is based on purchase price, under § 353.41(b), the Secretary will calculate constructed value, under paragraph (a), based on the relevant costs and expenses at a time preceding the time the producer or a reseller sells the merchandise for exportation to the United States.

(2) When United States price is based on exporter's sales price, under § 353.41(c), the Secretary will calculate constructed value, under paragraph (a), based on the relevant costs and expenses at a time preceding the time the importer sells the merchandise in the United States to a person not related under section 773(e)(4) of the Act.

(c) *Transactions with related parties.* In calculating constructed value under paragraph (a), the Secretary may disregard any direct or indirect transaction between persons related under section 773(e)(4) of the Act for any element of value required to be considered under paragraph (a) that does not fairly reflect the usual amount for sales in that market of that element. If the Secretary disregards a transaction and there are no other transactions available for consideration, the Secretary will calculate the amount based on available information as to what the amount would have been if the transaction had occurred between persons not related.

§ 353.51 Calculation of foreign market value if sales are made at less than cost of production.

(a) *Disregarding sales at less than cost.* If the Secretary has reasonable grounds to believe or suspect that the sales on which the Secretary could base the calculation of foreign market value under § 353.46, 353.49, or 353.53 are at prices less than the cost of production, the Secretary, in calculating foreign market value, will disregard such sales if they:

(1) Have been made over an extended period and in substantial quantities; and

(2) Are not at prices which permit recovery of all costs within a reasonable period in the normal course of trade.

(b) *Use of constructed value if above-cost sales are inadequate.* If the Secretary disregards sales under paragraph (a), and concludes that the remaining sales at not less than the cost of production are inadequate for calculating foreign market value, the Secretary will calculate foreign market value based on constructed value under § 353.50.

(c) *Calculation of cost of production.* The Secretary will calculate the cost of production based on the cost of materials, fabrication, and general expenses, but excluding profit, incurred in producing such or similar merchandise.

§ 353.52 Calculation of foreign market value of merchandise from state-controlled-economy countries.

(a) *In general.* If the Secretary determines that the economy of the home market country is state-controlled to the extent that sales or offers for sale of such or similar merchandise in that country or to a third country do not permit calculation of foreign market value under § 353.46, 353.49, or 353.53, the Secretary will calculate foreign market value based on, in order of preference:

(1) The prices, calculated in accordance with § 353.46 or 353.49, at which such or similar merchandise produced in a non-state-controlled-economy country is sold either:

(i) For consumption in that country; or

(ii) To another country, including the United States; or

(2) The constructed value of such or similar merchandise in a non-state-controlled-economy country, calculated in accordance with § 353.50.

(b) *Comparability of economies.* For purposes of paragraph (a), the Secretary will select, in order of preference, prices or costs in:

(1) A non-state-controlled-economy country other than the United States at a stage of economic development that the Secretary concludes is comparable to that of the home market country, based on generally recognized criteria, including per capita gross national product and infrastructure development (particularly in the industry producing such or similar merchandise);

(2) A non-state-controlled-economy country other than the United States that is not at a stage of economic development comparable to that of the home market country (in which case the Secretary will adjust the foreign market value for known differences in the costs of material and fabrication); or

(3) The United States.

(c) *Use of factors of production.* If such or similar merchandise is not produced in a non-state-controlled-economy country which the Secretary concludes to be comparable in terms of economic development to the home market country, the Secretary may calculate the foreign market value using constructed value based on factors of production incurred in the home market country in producing the merchandise, including, but not limited to, hours of labor required, quantities of raw materials employed, and amounts of energy consumed, if the Secretary obtains and verifies such information from the producer of the merchandise in the home market country. The Secretary will value the factors of production in a non-state-controlled-economy country which the Secretary considers comparable in economic development to the home market country. The Secretary will include in this calculation of constructed value an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act, and the cost of containers, coverings, and other expenses, as required by section 773(e)(1)(C) of the Act.

§ 353.53 Calculation of foreign market value based on sales by a multinational corporation.

The Secretary will calculate the foreign market value of merchandise sold by certain multinational corporations described in section 773(d) of the Act in accordance with provisions of that section.

§ 353.54 Claims for adjustment to foreign market value.

Any interested party that claims an adjustment under §§ 353.55 through 353.58 must establish the claim to the satisfaction of the Secretary.

§ 353.55 Differences in quantities.

(a) *In general.* In comparing the United States price with foreign market value, the Secretary normally will use sales of comparable quantities of merchandise. The Secretary will make a reasonable allowance for any difference in quantities, to the extent that the Secretary is satisfied that the amount of any price differential is wholly or partly due to that difference in quantities. In making the allowance, the Secretary will consider, among other things, the practice of the industry in the relevant country with respect to affording quantity discounts to those which purchase in the ordinary course of trade.

(b) *Sales with quantity discount in calculating foreign market value.* The Secretary will calculate foreign market value based on sales with quantity discounts if:

(1) During the period examined or during a more representative period, the producer or reseller granted quantity discounts of at least the same magnitude on 20 percent or more of sales of such or similar merchandise for the relevant country; or

(2) The producer demonstrates to the Secretary's satisfaction that the discounts reflect savings specifically attributable to the production of the different quantities.

(c) *Sales with quantity discounts in calculating weighted-average foreign market value.* If the producer or reseller does not satisfy the conditions in paragraph (b), the Secretary will calculate foreign market value based on a weighted-average price or prices that include sales at a discount.

(d) In determining whether a discount has been given, the existence of a published price list reflecting such a discount will not be controlling. A price list ordinarily will be accepted only if, in the line of trade and market under consideration, the producer or reseller demonstrates that it has adhered to its price list.

§ 353.56 Differences in circumstances of sale.

(a) *In general.* (1) In calculating foreign market value, the Secretary will make a reasonable allowance for a *bona fide* difference in the circumstances of the sales compared if the Secretary is satisfied that the amount of any price differential is wholly or partly due to such difference. In general, the Secretary will limit allowances to those circumstances which bear a direct relationship to the sales compared.

(2) Differences in circumstances of sale for which the Secretary will make reasonable allowances normally are those involving differences in commissions, credit terms, guarantees, warranties, technical assistance, and servicing. The Secretary also will make reasonable allowances for differences in selling costs (such as advertising) incurred by the producer or reseller but normally only to the extent that such costs are assumed by the producer or reseller on behalf of the purchaser from that producer or reseller.

(b) *Special rule.* (1) Notwithstanding paragraph (a), the Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, but the Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

(2) In comparisons with exporter's sales price, the Secretary will make a reasonable deduction from foreign market value for all expenses, other than those described in paragraph (a)(1) or (a)(2), incurred in selling such or similar merchandise up to the amount of the expenses, other that those described in paragraph (a)(1) or (a)(2), incurred in selling the merchandise.

(c) *Reasonable allowance.* In deciding what is a reasonable allowance for any difference in circumstances of sale, the Secretary normally will consider the cost of such difference to the producer or reseller but, if appropriate, may also consider the effect of such difference on the market value of the merchandise.

§ 353.57 Differences in physical characteristics.

(a) *In general.* In calculating foreign market value, the Secretary will make a reasonable allowance for differences in the physical characteristics of merchandise compared to the extent that the Secretary is satisfied that the amount of any price differential is wholly or partly due to such difference.

(b) *Reasonable allowance.* In deciding what is a reasonable allowance for any difference in physical characteristics, the Secretary normally will consider differences in the cost of production but, where appropriate, may also consider differences in the market value. The Secretary will not consider differences

in cost of production when compared merchandise has identical physical characteristics.

§ 353.58 Level of trade.

The Secretary normally will calculate foreign market value and United States price based on sales at the same commercial level of trade. If sales at the same commercial level of trade are insufficient in number to permit an adequate comparison, the Secretary will calculate foreign market value based on sales of such or similar merchandise at the most comparable commercial level of trade as sales of the merchandise and make appropriate adjustments for differences affecting price comparability.

§ 353.59 Disregarding insignificant adjustments; use of averaging and sampling.

(a) *Insignificant adjustments.* The Secretary may disregard adjustments to foreign market value which are insignificant. Ordinarily, the Secretary will disregard individual adjustments having an *ad valorem* effect of less than 0.33 percent, or any group of adjustments having an *ad valorem* effect of less than 1.0 percent, of the foreign market value. Groups of adjustments are differences in circumstances of sale, differences in the physical characteristics of the merchandise, and differences in the levels of trade.

(b) *Averaging or sampling.* (1) In calculating United States price or foreign market value, the Secretary may use averaging or generally recognized sampling techniques whenever a significant volume of sales or number of adjustments are involved.

(2) The Secretary will select the appropriate representative samples.

§ 353.60 Conversion of currency.

(a) *Rule for conversion.* The Secretary will convert, under section 522 of the Act (31 U.S.C. 5151(c)), a foreign currency into the equivalent amount of United States currency at the rates in effect on the dates described in § 353.46, 353.49, or 353.50, as appropriate.

(b) *Special rules for investigations.* For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

ANNEX I—Time Limits for Submissions Specified in This Part

Description of time limit [1]	Section
Administrative protective order:	
Request for disclosure under	353.34(b)
Return of information released under	353.34(d)
Withdrawal of information subject to	353.34(c)
Administrative review:	
Request for changed circumstances review	353.22(f)
Request for review of all exporters covered by suspension agreement	353.22(a)
Request for review of specified producers or resellers	353.22(a)
Withdrawal of request for review	353.22(a)
Commission:	
Filing of petition with	353.12(c)
Request for review of revised suspension agreement	353.19(b)
Request for review of suspension agreement	353.18(i)
Critical circumstances findings:	
Request for	353.16(a)
Request for final finding only	353.16(d)
Request for preliminary and final finding.	353.16(b)
Exclusion from order:	
Request for	353.14(a)
Factual information:	
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[1] Documents are filed when stamped by the Central Records Unit of the Department of Commerce. *See* § 353.31(d) for hours of operation.

[FR Doc. 89-5009 Filed 3-27-89; 8:45am]

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federal register

Tuesday
March 28, 1989

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Air Contaminants; Guide and Bibliography to Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Air Contaminants

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Guide and Bibliography to final rule.

SUMMARY: On January 19, 1989 OSHA published (54 FR 2332) amendments to its Air Contaminants standard, 29 CFR 1910.1000, and an explanatory Preamble. This new standard includes a new Table Z–1–A to replace the Permissible Exposure Limits (PEL) previously listed in the Z-Tables. This notice published today provides guides to facilitate use of the January 19, 1989 publication. This includes: (1) An individual substance index and an integrated Table of Contents which are both referenced to specific pages in the January 19, 1989, **Federal Register** publication; and (2) the list of references OSHA relied upon to develop the health effects evaluations in Section VI (54 FR 2394) of the January 19, 1989 preamble.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N–3647, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8151. Copies of this document may be obtained two weeks after publication date from the OSHA Publications Office, Rm. N–3101, at the above address, (202) 523–9667 or at any OSHA regional or area office.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Overview.
II. Page Index for the 428 substances discussed in the January 19, 1989 **Federal Register** publication.
III. Page Index for the integrated Table of Contents, for the January 19, 1989 **Federal Register** publication.
IV. List of individual references for the health effects discussions in the January 19, 1989 **Federal Register** publication.
V. Authority.

I—Overview

The January 19, 1989 publication on Air Contaminants; Final Rule (52 FR 2332) was extensive (over 650 pages) and discussed 428 substances. To facilitate review by the public, two Table of Contents (54 FR 2332 and 2724), and an Index to the individual substances in the Preamble (Section II; 54 FR 2335) were provided. However, **Federal Register** page references for individual substances and Preamble Sections could not be provided. To further assist the public, OSHA is publishing:

(a) An index which alphabetically lists the 428 substances discussed in that Preamble, and identifies the **Federal Register** page for those discussions in the January 19, 1989 **Federal Register.**

(b) An integrated Table of Contents (previously published on 54 FR 2332 and 2724) with specific **Federal Register** pages, for the January 19, 1989 publication, identifying the start of each section.

(c) An alphabetical list of individual references used by OSHA to develop the health effects discussions and cited in Section VI of the Preamble to the Final Regulation published on January 19, 1989.

BILLING CODE 4510–26–M

II. Index to January 19, 1989 Preamble Discussion of Individual Substances

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1001	ACETALDEHYDE	75-07-0	SENSORY IRRITATION	VI.C.3	2445
1002	ACETIC ACID	64-19-7	SENSORY IRRITATION	VI.C.3	2445
1003	ACETIC ANHYDRIDE	108-24-7	ANALOGY	VI.C.12	2621
1004	ACETONE	67-64-1	SENSORY IRRITATION	VI.C.3	2446
1005	ACETONITRILE	75-05-8	SYSTEMIC TOXICITY	VI.C.8	2553
1006	ACETYLSALICYLIC ACID (ASPIRIN)	50-78-2	SYSTEMIC TOXICITY	VI.C.8	2553
1007	ACROLEIN	107-02-8	SENSORY IRRITATION	VI.C.3	2448
1008	ACRYLAMIDE	79-06-1	CANCER	VI.C.15	2674
1009	ACRYLIC ACID	79-10-7	ANALOGY	VI.C.12	2621
1010	ALLYL ALCOHOL	107-18-6	SENSORY IRRITATION	VI.C.3	2449
1011	ALLYL CHLORIDE	107-05-1	LIVER AND KIDNEY EFFECTS	VI.C.4	2482
1012	ALLYL GLYCIDYL ETHER (AGE)	106-92-3	SENSORY IRRITATION	VI.C.3	2449
1013	ALLYL PROPYL DISULFIDE	2179-59-1	SENSORY IRRITATION	VI.C.3	2449
1014	ALPHA-ALUMINA	1344-28-1	PHYSICAL IRRITATION	VI.C.10	2589
1015	ALUMINUM (ALKYLS)	7429-90-5	ANALOGY	VI.C.12	2621
1016	ALUMINUM (METAL)	7429-90-5	PHYSICAL IRRITATION	VI.C.10	2589
1017	ALUMINUM (PYRO POWDERS)	7429-90-5	RESPIRATORY EFFECTS	VI.C.6	2508

II. Index to January 19, 1989 Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1018	ALUMINUM (SOLUBLE SALTS)	7429-90-5	ANALOGY	VI.C.12	2621
1019	ALUMINUM (WELDING FUMES)	7429-90-5	SYSTEMIC TOXICITY	VI.C.8	2554
1020	AMITROLE (3-AMINO-1,2,4-TRIAZOLE)	61-82-5	CANCER	VI.C.15	2676
1021	AMMONIA	7664-41-7	SENSORY IRRITATION	VI.C.3	2450
1022	AMMONIUM CHLORIDE (FUME)	12125-02-9	SENSORY IRRITATION	VI.C.3	2450
1024	AMMONIUM SULFAMATE (AMMATE)	7773-06-0	PHYSICAL IRRITATION	VI.C.10	2590
1025	ANILINE	62-53-3	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2649
1028	ASPHALT FUMES	8052-42-4	CANCER	VI.C.15	2679
1029	ATRAZINE	1912-24-9	NOAELs	VI.C.9	2575
1031	BARIUM SULFATE	7727-43-7	PHYSICAL IRRITATION	VI.C.10	2590
1032	BENOMYL	17804-35-2	PHYSICAL IRRITATION	VI.C.10	2590
1033	BERYLLIUM & COMPOUNDS	7440-41-7	CANCER	VI.C.15	2679
1034	BISMUTH TELLURIDE (SE-DOPED)	1304-82-1	RESPIRATORY EFFECTS	VI.C.6	2508
1035	BISMUTH TELLURIDE (UNDOPED)	1304-82-1	PHYSICAL IRRITATION	VI.C.10	2590
1036	BORATES, TETRA, SODIUM (ANHYDROUS)	1330-43-4	SENSORY IRRITATION	VI.C.3	2451
1037	BORATES, TETRA, SODIUM (DECAHYDRATE)	1303-96-4	SENSORY IRRITATION	VI.C.3	2451

II. Index to January 19, 1989 Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1038	BORATES, TETRA, SODIUM (PENTAHYDRATE)	12179-04-3	SENSORY IRRITATION	VI.C.3	2451
1039	BORON OXIDE	1303-86-2	PHYSICAL IRRITATION	VI.C.10	2590
1040	BORON TRIBROMIDE	10294-33-4	ANALOGY	VI.C.12	2622
1041	BROMACIL	314-40-9	NOAELs	VI.C.9	2575
1042	BROMINE	7726-95-6	SENSORY IRRITATION	VI.C.3	2452
1043	BROMINE PENTAFLUORIDE	7789-30-2	ANALOGY	VI.C.12	2622
1044	BUTANE	106-97-8	NARCOSIS	VI.C.2	2423
1045	2-BUTANONE (MEK)	78-93-3	SENSORY IRRITATION	VI.C.3	2452
1046	2-BUTOXY ETHANOL	111-76-2	SYSTEMIC TOXICITY	VI.C.8	2554
1047	N-BUTYL ACETATE	123-86-4	SENSORY IRRITATION	VI.C.3	2453
1048	BUTYL ACRYLATE	141-32-2	ANALOGY	VI.C.12	2622
1049	SEC-BUTYL ALCOHOL	78-92-2	NARCOSIS	VI.C.2	2423
1050	TERT-BUTYL ALCOHOL	75-65-0	NARCOSIS	VI.C.2	2423
1051	N-BUTYL ALCOHOL	71-36-3	NEUROPATHY	VI.C.1	2407
1052	N-BUTYL GLYCIDYL ETHER (BGE)	2426-08-6	SYSTEMIC TOXICITY	VI.C.8	2555
1053	N-BUTYL LACTATE	138-22-7	SENSORY IRRITATION	VI.C.3	2453
1054	BUTYL MERCAPTAN	109-79-5	SENSORY IRRITATION	VI.C.3	2454

II. Index to January 19, 1989 Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1055	O-SEC-BUTYL PHENOL	89-72-5	ANALOGY	VI.C.12	2622
1056	P-TERT-BUTYLTOLUENE	98-51-1	NOAELs	VI.C.9	2575
1057	CALCIUM CARBONATE	1317-65-3	PHYSICAL IRRITATION	VI.C.10	2591
1058	CALCIUM CYANAMIDE	156-62-7	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2650
1059	CALCIUM HYDROXIDE	1305-62-0	ANALOGY	VI.C.12	2623
1060	CALCIUM OXIDE	1305-78-8	ANALOGY	VI.C.12	2623
1061	CALCIUM SILICATE, TOTAL DUST	1344-95-2	PHYSICAL IRRITATION	VI.C.10	2591
1062	CALCIUM SULFATE	7778-18-9	PHYSICAL IRRITATION	VI.C.10	2591
1063	CAMPHOR (SYNTHETIC)	76-22-2	INCREASING PEL	VI.C.16	2698
1064	CAPROLACTAM (DUST)	105-60-2	SENSORY IRRITATION	VI.C.3	2454
1065	CAPROLACTAM (VAPOR)	105-60-2	SENSORY IRRITATION	VI.C.3	2454
1066	CAPTAFOL (DIFOLATAN)	2425-06-1	SENSITIZATION EFFECTS	VI.C.14	2663
1067	CAPTAN	133-06-2	SYSTEMIC TOXICITY	VI.C.8	2555
1068	CARBOFURAN (FURADAN)	1563-66-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2650
1069	CARBON DIOXIDE	124-38-9	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2650
1070	CARBON DISULFIDE	75-15-0	CARDIOVASCULAR EFFECTS	VI.C.7	2535
1071	CARBON MONOXIDE	630-08-0	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2651
1072	CARBON TETRABROMIDE	558-13-4	LIVER AND KIDNEY EFFECTS	VI.C.4	2482

II. Index to January 19, 1989 Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1073	CARBON TETRACHLORIDE	56-23-5	CANCLR	VI.C.15	2679
1074	CARBONYL FLUORIDE	353-50-4	ANALOGY	VI.C.12	2624
1075	CATECHOL (PYROCATECHOL)	120-80-9	ANALOGY	VI.C.12	2624
1076	CELLULOSE	9004-34-6	PHYSICAL IRRITATION	VI.C.10	2592
1077	CESIUM HYDROXIDE	21351-79-1	SENSORY IRRITATION	VI.C.3	2455
1078	CHLORINATED CAMPHENE	8001-35-2	NEUROPATHY	VI.C.1	2408
1079	CHLORINE	7782-50-5	SENSORY IRRITATION	VI.C.3	2455
1080	CHLORINE DIOXIDE	10049-04-4	RESPIRATORY EFFECTS	VI.C.6	2508
1081	1-CHLORO-1-NITROPROPANE	600-25-9	ANALOGY	VI.C.12	2624
1082	2-CHLORO-6-TRICHLOROMETHYL PYRIDINE (NITRAPYRIN)	1929-82-4	PHYSICAL IRRITATION	VI.C.10	2592
1083	CHLOROACETYL CHLORIDE	79-04-9	SENSORY IRRITATION	VI.C.3	2456
1084	O-CHLOROBENZYLIDENE MALONONITRILE	2698-41-1	SENSORY IRRITATION	VI.C.3	2457
1085	CHLORODIFLUOROMETHANE	75-45-6	NOAELS	VI.C.9	2576
1086	CHLOROFORM	67-66-3	CANCLR	VI.C.15	2681
1087	CHLOROPENTAFLUOROETHANE	76-15-3	CARDIOVASCULAR EFFECTS	VI.C.7	2538
1088	CHLOROPRENE	126-99-8	SYSTEMIC TOXICITY	VI.C.8	2555
1089	O-CHLOROSTYRENE	2039-87-4	LIVER AND KIDNEY EFFECTS	VI.C.4	2483

II. Index to January 19, 1989 Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1090	O-CHLOROTOLUENE	95-49-8	NOAELs	VI.C.9	2576
1091	CHLORPYRIFOS	2921-88-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2652
1092	CHROMIC ACID & CHROMATES	Varies	CANCER	VI.C.15	2683
1093	CHROMIUM, METAL	7440-47-3	RESPIRATORY EFFECTS	VI.C.6	2508
1094	CHROMYL CHLORIDE	14977-61-8	CANCER	VI.C.15	2684
1095	CLOPIDOL (COYDEN)	2971-90-6	PHYSICAL IRRITATION	VI.C.10	2592
1096	COAL DUST, < 5% QUARTZ	None	RESPIRATORY EFFECTS	VI.C.6	2509
1097	COAL DUST, ≥ 5% QUARTZ	None	RESPIRATORY EFFECTS	VI.C.6	2509
1098	COBALT CARBONYL	10210-68-1	ANALOGY	VI.C.12	2625
1099	COBALT HYDROCARBONYL	16842-03-8	ANALOGY	VI.C.12	2625
1100	COBALT METAL, FUME, DUST	7440-48-4	SENSITIZATION EFFECTS	VI.C.14	2664
1101	COPPER (FUME)	7440-50-8	INCREASING PEL	VI.C.16	2698
1102	CRAG® HERBICIDE (SESONE)	136-78-7	PHYSICAL IRRITATION	VI.C.10	2592
1103	CRUFOMATE	299-86-5	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2653
1104	CYANAMIDE	420-04-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2653
1105	CYANOGEN	460-19-5	SENSORY IRRITATION	VI.C.3	2457
1106	CYANOGEN CHLORIDE	506-77-4	SENSORY IRRITATION	VI.C.3	2458
1107	CYCLOHEXANOL	108-93-0	CHANGE IN SKIN DESIGNATION ONLY	VI.C.18	2718

II. Index to January 19, 1989 Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1108	CYCLOHEXANONE	108-94-1	LIVER AND KIDNEY EFFECTS	VI.C.4	2483
1109	CYCLOHEXYLAMINE	108-91-8	SYSTEMIC TOXICITY	VI.C.8	2556
1110	CYCLONITE	121-82-4	NOAELs	VI.C.9	2577
1111	CYCLOPENTANE	287-92-3	NARCOSIS	VI.C.2	2423
1112	CYHEXATIN	13121-70-5	SYSTEMIC TOXICITY	VI.C.8	2557
1113	DDT	50-29-3	SYSTEMIC TOXICITY	VI.C.8	2557
1114	DECABORANE	17702-41-9	NEUROPATHY	VI.C.1	2408
1116	DI-SEC-OCTYL-PHTHALATE	117-81-7	NEUROPATHY	VI.C.1	2409
1117	2,6-DI-TERT-BUTYL-P-CRESOL	128-37-0	NOAELs	VI.C.9	2577
1118	DIAZINON	333-41-5	ANALOGY	VI.C.12	2625
1119	DIBUTYL PHOSPHATE	107-66-4	SENSORY IRRITATION	VI.C.3	2458
1120	2-N-DIBUTYLAMINOETHANOL	102-81-8	SYSTEMIC TOXICITY	VI.C.8	2557
1121	1,1-DICHLORO-1-NITROETHANE	594-72-9	ANALOGY	VI.C.12	2625
1122	1,3-DICHLORO-5, 5-DIMETHYLHYDANTOIN	118-52-5	SENSORY IRRITATION	VI.C.3	2458
1123	DICHLOROACETYLENE	7572-29-4	NEUROPATHY	VI.C.1	2410
1125	P-DICHLOROBENZENE	106-46-7	ANALOGY	VI.C.12	2626
1126	1,1-DICHLOROETHANE	75-34-3	INCREASING PEL	VI.C.16	2699

II. Index to January 19, 1989 Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1127	DICHLOROETHYL ETHER	111-44-4	SENSORY IRRITATION	VI.C.3	2458
1128	DICHLOROMONOFLUOROMETHANE	75-43-4	ANALOGY	VI.C.12	2626
1129	1,3-DICHLOROPROPENE	542-75-6	LIVER AND KIDNEY EFFECTS	VI.C.4	2488
1130	2,2-DICHLOROPROPIONIC ACID	75-99-0	SENSORY IRRITATION	VI.C.3	2459
1131	DICROTOPHOS (BIDRIN)	141-66-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2654
1132	DICYCLOPENTADIENE	77-73-6	LIVER AND KIDNEY EFFECTS	VI.C.4	2488
1133	DICYCLOPENTADIENYL IRON	102-54-5	PHYSICAL IRRITATION	VI.C.10	2592
1134	DIETHANOLAMINE	111-42-2	NOAELs	VI.C.9	2577
1135	DIETHYL KETONE	96-22-0	ANALOGY	VI.C.12	2627
1136	DIETHYLPHTHALATE	84-66-2	NOAELs	VI.C.9	2578
1137	DIETHYLAMINE	109-89-7	SENSORY IRRITATION	VI.C.3	2459
1138	DIETHYLENE TRIAMINE	111-40-0	ANALOGY	VI.C.12	2627
1139	DIGLYCIDYL ETHER (DGE)	2238-07-5	SYSTEMIC TOXICITY	VI.C.8	2558
1140	DIISOBUTYL KETONE	108-83-8	SENSORY IRRITATION	VI.C.3	2459
1141	DIMETHYL 1,2-DIBROMO-2, 2-DICHLOROETHYL PHOSPHATE	300-76-5	CHANGE IN SKIN DESIGNATION ONLY	VI.C.18	2718
1142	DIMETHYL SULFATE	77-78-1	CANCER	VI.C.15	2684
1143	DIMETHYLANILINE	121-69-7	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2654

II. Index to January 19, 1989 Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1144	DINITOLMIDE (3,5-DINITRO-O-TOLUAMIDE)	148-01-6	NOAELs	VI.C.9	2578
1145	DIOXANE (DIETHYLENE DIOXIDE)	123-91-1	LIVER AND KIDNEY EFFECTS	VI.C.4	2483
1146	DIOXATHION (DELNAV)	78-34-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2654
1147	DIPHENYLAMINE	122-39-4	NOAELs	VI.C.9	2578
1148	DIPROPYL KETONE	123-19-3	ANALOGY	VI.C.12	2627
1149	DIPROPYLENE GLYCOL METHYL ETHER	34590-94-8	NEUROPATHY	VI.C.1	2410
1150	DIQUAT	85-00-7	ANALOGY	VI.C.12	2627
1151	DISULFIRAM	97-77-8	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2655
1152	DISULFOTON	298-04-4	ANALOGY	VI.C.12	2628
1153	DIURON	330-54-1	NOAELs	VI.C.9	2578
1154	DIVINYL BENZENE	1321-74-0	ANALOGY	VI.C.12	2628
1155	EMERY	112-62-9	PHYSICAL IRRITATION	VI.C.10	2593
1156	ENDOSULFAN	115-29-7	ANALOGY	VI.C.12	2628
1158	EPICHLOROHYDRIN	106-89-8	SENSORY IRRITATION	VI.C.3	2460
1159	ETHANOLAMINE	141-43-5	SYSTEMIC TOXICITY	VI.C.8	2558
1160	ETHION (NIALATE)	563-12-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2655
1161	ETHYL ACRYLATE	140-88-5	RESPIRATORY EFFECTS	VI.C.6	2509

II. Index to January 19, 1989 Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1162	ETHYL BENZENE	100-41-4	SENSORY IRRITATION	VI.C.3	2460
1163	ETHYL BROMIDE	74-96-4	NARCOSIS	VI.C.2	2424
1164	ETHYL ETHER	60-29-7	SENSORY IRRITATION	VI.C.3	2461
1165	ETHYL MERCAPTAN	75-08-1	SENSORY IRRITATION	VI.C.3	2461
1166	ETHYL SILICATE	78-10-4	LIVER AND KIDNEY EFFECTS	VI.C.4	2489
1167	ETHYLENE CHLOROHYDRIN	107-07-3	SYSTEMIC TOXICITY	VI.C.8	2558
1168	ETHYLENE DICHLORIDE (1,2-DICHLOROETHANE)	107-06-2	LIVER AND KIDNEY EFFECTS	VI.C.4	2484
1169	ETHYLENE GLYCOL	107-21-1	SENSORY IRRITATION	VI.C.3	2462
1170	ETHYLENE GLYCOL DINITRATE	628-96-6	CARDIOVASCULAR EFFECTS	VI.C.7	2538
1171	ETHYLIDENE NORBORNENE	16219-75-3	SENSORY IRRITATION	VI.C.3	2462
1172	N-ETHYLMORPHOLINE	100-74-3	OCULAR EFFECTS	VI.C.5	2493
1173	FENAMIPHOS	22224-92-6	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2655
1174	FENSULFOTHION (DASANIT)	115-90-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2656
1175	FENTHION	55-38-9	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2656
1176	FERBAM	14484-64-1	PHYSICAL IRRITATION	VI.C.10	2593
1177	FERROVANADIUM DUST	12604-58-9	RESPIRATORY EFFECTS	VI.C.6	2510
1178	FIBROUS GLASS DUST	None	RESPIRATORY EFFECTS	VI.C.6	2510

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1179	FLUORINE	7782-41-4	INCREASING PEL	VI.C.16	2699
1180	FLUOROTRICHLOROMETHANE	75-69-4	CARDIOVASCULAR EFFECTS	VI.C.7	2539
1181	FONOFOS	944-22-9	ANALOGY	VI.C.12	2629
1182	FORMAMIDE	75-12-7	ANALOGY	VI.C.12	2629
1183	FURFURAL	98-01-1	SENSORY IRRITATION	VI.C.3	2463
1184	FURFURYL ALCOHOL	98-00-0	SENSORY IRRITATION	VI.C.3	2463
1185	GASOLINE	8006-61-9	NARCOSIS	VI.C.2	2424
1186	GERMANIUM TETRAHYDRIDE	7782-65-2	ANALOGY	VI.C.12	2629
1187	GLUTARALDEHYDE	111-30-8	SENSORY IRRITATION	VI.C.3	2464
1188	GLYCERIN (MIST)	56-81-5	PHYSICAL IRRITATION	VI.C.10	2593
1189	GLYCIDOL (2,3-EPOXY 1-PROPANOL)	556-52-5	SYSTEMIC TOXICITY	VI.C.8	2559
1190	GRAIN DUST	None	RESPIRATORY EFFECTS	VI.C.6	2510
1191	GRAPHITE, NATURAL (CONTAINING <1% QUARTZ)	7782-42-5	RESPIRATORY EFFECTS	VI.C.6	2513
1191A	GRAPHITE, SYNTHETIC (CONTAINING <1% QUARTZ)	None	PHYSICAL IRRITATION	VI.C.10	2593
1192	GYPSUM, TOTAL DUST	13397-24-5	PHYSICAL IRRITATION	VI.C.10	2594
1194	N-HEPTANE	142-82-5	NARCOSIS	VI.C.2	2424
1195	HEXACHLOROBUTADIENE	87-68-3	LIVER AND KIDNEY EFFECTS	VI.C.4	2489

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1196	HEXACHLOROCYCLOPENTADIENE	77-47-4	SENSORY IRRITATION	VI.C.3	2464
1197	HEXACHLOROETHANE	67-72-1	INCREASING PEL	VI.C.16	2699
1198	HEXAFLUOROACETONE	684-16-2	SYSTEMIC TOXICITY	VI.C.8	2559
1200	N-HEXANE	110-54-3	NEUROPATHY	VI.C.1	2411
1201	HEXANE ISOMERS	Varies	NARCOSIS	VI.C.2	2425
1202	2-HEXANONE	591-78-6	NEUROPATHY	VI.C.1	2412
1203	HEXONE (METHYL ISOBUTYL KETONE)	108-10-1	LIVER AND KIDNEY EFFECTS	VI.C.4	2490
1204	HEXYLENE GLYCOL	107-41-5	SENSORY IRRITATION	VI.C.3	2464
1205	HYDRAZINE	302-01-2	LIVER AND KIDNEY EFFECTS	VI.C.4	2485
1206	HYDROGEN BROMIDE	10035-10-6	SENSORY IRRITATION	VI.C.3	2465
1207	HYDROGEN CYANIDE	74-90-8	SYSTEMIC TOXICITY	VI.C.8	2560
1208	HYDROGEN FLUORIDE	7664-39-3	SENSORY IRRITATION	VI.C.3	2465
1209	HYDROGEN SULFIDE	7783-06-4	OCULAR EFFECTS	VI.C.5	2493
1210	HYDROGENATED TERPHENYLS	61788-32-7	SYSTEMIC TOXICITY	VI.C.8	2560
1211	2-HYDROXYPROPYL ACRYLATE	999-61-1	SENSORY IRRITATION	VI.C.3	2465
1212	INDENE	95-13-6	ANALOGY	VI.C.12	2630
1213	INDIUM & COMPOUNDS	7440-74-6	RESPIRATORY EFFECTS	VI.C.6	2513
1214	IODOFORM	75-47-8	ANALOGY	VI.C.12	2630
1215	IRON OXIDE (DUST AND FUME)	1309-37-1	RESPIRATORY EFFECTS	VI.C.6	2513

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1216	IRON PENTACARBONYL	13463-40-6	NEUROPATHY	VI.C.1	2412
1217	IRON SALTS (SOLUBLE)	Varies	SENSORY IRRITATION	VI.C.3	2466
1218	ISOAMYL ALCOHOL	123-51-3	NARCOSIS	VI.C.2	2425
1219	ISOBUTYL ALCOHOL	78-83-1	ANALOGY	VI.C.12	2630
1220	ISOOCTYL ALCOHOL	26952-21-6	ANALOGY	VI.C.12	2631
1221	ISOPHORONE	78-59-1	NARCOSIS	VI.C.2	2426
1222	ISOPHORONE DIISOCYANATE	4098-71-9	SENSITIZATION EFFECTS	VI.C.14	2664
1223	2-ISOPROPOXYETHANOL	109-59-1	SYSTEMIC TOXICITY	VI.C.8	2561
1224	ISOPROPYL ACETATE	108-21-4	SENSORY IRRITATION	VI.C.3	2466
1225	ISOPROPYL ALCOHOL	67-63-0	SENSORY IRRITATION	VI.C.3	2466
1226	ISOPROPYL ETHER	108-20-3	ODOR EFFECTS	VI.C.11	2604
1227	ISOPROPYL GLYCIDYL ETHER	4016-14-2	SYSTEMIC TOXICITY	VI.C.8	2561
1228	ISOPROPYLAMINE	75-31-0	SENSORY IRRITATION	VI.C.3	2467
1229	N-ISOPROPYLANILINE	768-52-5	ANALOGY	VI.C.12	2631
1230	KAOLIN, TOTAL DUST	None	PHYSICAL IRRITATION	VI.C.10	2594
1231	KETENE	463-51-4	ANALOGY	VI.C.12	2631
1232	LIMESTONE, TOTAL DUST	1317-65-3	PHYSICAL IRRITATION	VI.C.10	2594
1233	MAGNESITE, TOTAL DUST	546-93-0	PHYSICAL IRRITATION	VI.C.10	2594

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1234	MAGNESIUM OXIDE FUME+	1309-48-4	PHYSICAL IRRITATION	VI.C.10	2595
1235	MALATHION+	121-75-5	PHYSICAL IRRITATION	VI.C.10	2595
1236A	MANGANESE, FUME	7439-96-5	NEUROPATHY	VI.C.1	2412
1237	MANGANESE CYCLOPENTADIENYL TRICARBONYL	12079-65-1	NEUROPATHY	VI.C.1	2413
1238	MANGANESE TETROXIDE	1317-35-7	NEUROPATHY	VI.C.1	2413
1239	MARBLE, TOTAL DUST	1317-65-3	PHYSICAL IRRITATION	VI.C.10	2595
1240	MERCURY (ARYL AND INORGANIC COMPOUNDS)	Varies	NEUROPATHY	VI.C.1	2414
1241	MERCURY (VAPOR)	7439-97-6	NEUROPATHY	VI.C.1	2415
1242	MERCURY, (ORGANO) ALKYL COMPOUNDS	Varies	NEUROPATHY	VI.C.1	2416
1243	MESITYL OXIDE	141-79-7	SENSORY IRRITATION	VI.C.3	2467
1244	METHACRYLIC ACID	79-41-4	ANALOGY	VI.C.12	2631
1245	METHOMYL (LANNATE)	16752-77-5	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2657
1246	METHOXYCHLOR+	72-43-5	PHYSICAL IRRITATION	VI.C.10	2596
1247	4-METHOXYPHENOL	150-76-5	ANALOGY	VI.C.12	2632
1248	METHYL 2-CYANOACRYLATE	137-05-3	SENSORY IRRITATION	VI.C.3	2467
1249	METHYL ACETATE	79-20-9	NOAELs	VI.C.9	2579

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1250	METHYL ACETYLENE/PROPADIENE MIXTURE	None	ANALOGY	VI.C.12	2632
1251	METHYL ACRYLONITRILE	126-98-7	NEUROPATHY	VI.C.1	2417
1252	METHYL ALCOHOL	67-56-1	OCULAR EFFECTS	VI.C.5	2494
1253	METHYL BROMIDE	74-83-9	NEUROPATHY	VI.C.1	2417
1254	METHYL CHLORIDE	74-87-3	NARCOSIS	VI.C.2	2426
1255	METHYL CHLOROFORM (1,1,1-TRICHLOROETHANE)	71-55-6	NARCOSIS	VI.C.2	2427
1256	METHYL DEMETON	8022-00-2	ANALOGY	VI.C.12	2632
1257	METHYL ETHYL KETONE PEROXIDE	1338-23-4	ANALOGY	VI.C.12	2632
1258	METHYL FORMATE	107-31-3	ANALOGY	VI.C.12	2634
1259	METHYL IODIDE	74-88-4	ANALOGY	VI.C.12	2634
1260	METHYL ISOAMYL KETONE	110-12-3	ANALOGY	VI.C.12	2634
1261	METHYL ISOBUTYL CARBINOL	108-11-2	SENSORY IRRITATION	VI.C.3	2468
1262	METHYL ISOPROPYL KETONE	563-80-4	ANALOGY	VI.C.12	2635
1263	METHYL MERCAPTAN	74-93-1	SENSORY IRRITATION	VI.C.3	2468
1264	METHYL N-AMYL KETONE	110-43-0	SENSORY IRRITATION	VI.C.3	2468
1265	METHYL PARATHION	298-00-0	ANALOGY	VI.C.12	2635

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1266	METHYL SILICATE	681-84-5	OCULAR EFFECTS	VI.C.5	2495
1267	ALPHA-METHYL STYRENE	98-83-9	SENSORY IRRITATION	VI.C.3	2469
1268	METHYLCYCLOHEXANE	108-87-2	ANALOGY	VI.C.12	2635
1269	METHYLCYCLOHEXANOL	25639-42-3	LIVER AND KIDNEY EFFECTS	VI.C.4	2486
1270	O-METHYLCYCLOHEXANONE	583-60-8	SENSORY IRRITATION	VI.C.3	2469
1271	METHYLCYCLOPENTADIENYL MN TRICARBONYL	12108-13-3	ANALOGY	VI.C.12	2635
1272	METHYLENE BIS (4-CYCLOHEXYLISOCYANATE)	5124-30-1	RESPIRATORY EFFECTS	VI.C.6	2514
1273	4,4'-METHYLENE BIS (2-CHLOROANILINE)	101-14-4	SYSTEMIC TOXICITY	VI.C.8	2562
1275	METRIBUZIN	21087-64-9	NOAELs	VI.C.9	2579
1276	MICA	12001-26-2	RESPIRATORY EFFECTS	VI.C.6	2515
1277	MINERAL WOOL FIBER	None	RESPIRATORY EFFECTS	VI.C.6	2515
1278	MOLYBDENUM (INSOLUBLE COMPOUNDS)+	7439-98-7	PHYSICAL IRRITATION	VI.C.10	2596
1279	MONOCROTOPHOS (AZODRIN)	6923-22-4	ANALOGY	VI.C.12	2636
1280	MONOMETHYL ANILINE	100-61-8	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2657
1281	MORPHOLINE	110-91-8	ANALOGY	VI.C.12	2636

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1282	NAPHTHALENE	91-20-3	OCULAR EFFECTS	VI.C.5	2496
1283	NICKEL (SOLUBLE COMPOUNDS)	Varies	RESPIRATORY EFFECTS	VI.C.6	2515
1284	NICKEL CARBONYL	13463-39-3	INCREASING PEL	VI.C.16	2700
1286	NITRIC ACID	7697-37-2	ANALOGY	VI.C.12	2637
1287	P-NITROANILINE	100-01-6	ANALOGY	VI.C.12	2637
1288	P-NITROCHLOROBENZENE	100-00-5	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2657
1289	NITROGEN DIOXIDE	10102-44-0	RESPIRATORY EFFECTS	VI.C.6	2517
1290	NITROGLYCERIN	55-63-0	CARDIOVASCULAR EFFECTS	VI.C.7	2538
1291	2-NITROPROPANE	79-46-9	CANCER	VI.C.15	2685
1292	NITROTOLUENE (ALL ISOMERS)	99-08-1, 99-99-0, 88-72-2	ANALOGY	VI.C.12	2637
1293	NONANE	111-84-2	ANALOGY	VI.C.12	2638
1295	OCTACHLORONAPHTHALENE	2234-13-1	LIVER AND KIDNEY EFFECTS	VI.C.4	2486
1296	OCTANE	111-65-9	NARCOSIS	VI.C.7	2421
1297	OIL MIST (MINERAL)	8012-95-1	NOAELs	VI.C.9	2579
1298	OSMIUM TETROXIDE	20816-12-0	SENSORY IRRITATION	VI.C.3	2469
1299	OXALIC ACID	144-62-7	ANALOGY	VI.C.12	2638

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1300	OXYGEN DIFLUORIDE	7783-41-7	RESPIRATORY EFFECTS	VI.C.6	2519
1301	OZONE	10028-15-6	RESPIRATORY EFFECTS	VI.C.6	2519
1302	PARAFFIN WAX FUME	8002-74-2	SENSORY IRRITATION	VI.C.3	2470
1303	PARAQUAT, RESPIRABLE DUST	4685-14-7	RESPIRATORY EFFECTS	VI.C.6	2520
1294	PARTICULATES NOT OTHERWISE REGULATED	None	PHYSICAL IRRITATION	VI.C.10	2596
1304	PENTABORANE	19624-22-7	NEUROPATHY	VI.C.1	2417
1305	PENTAERYTHRITOL, TOTAL DUST	115-77-5	PHYSICAL IRRITATION	VI.C.10	2597
1306	PENTANE	109-66-0	NARCOSIS	VI.C.2	2428
1307	2-PENTANONE (METHYL PROPYL KETONE)	107-87-9	NARCOSIS	VI.C.2	2428
1308	PERCHLOROETHYLENE	127-18-4	CANCER	VI.C.15	2686
1309	PERCHLORYL FLUORIDE	7616-94-6	ANALOGY	VI.C.12	2638
1310	PERLITE	None	PHYSICAL IRRITATION	VI.C.10	2597
1312	PETROLEUM DISTILLATES (NAPHTHA)	None	NOAELs	VI.C.9	2580
1313	PHENOTHIAZINE	92-84-2	SENSITIZATION EFFECTS	VI.C.14	2665
1314	PHENYL ETHER (VAPOR)	101-84-8	ODOR EFFECTS	VI.C.11	2604
1315	PHENYL GLYCIDYL ETHER	122-60-1	SENSITIZATION EFFECTS	VI.C.14	2665
1316	PHENYL MERCAPTAN	108-98-5	NEUROPATHY	VI.C.1	2418
1317	PHENYLHYDRAZINE	100-63-0	SYSTEMIC TOXICITY	VI.C.8	2562

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1318	PHENYLPHOSPHINE	638-21-1	SYSTEMIC TOXICITY	VI.C.8	2563
1319	PHORATE (THIMET)	298-02-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2658
1320	PHOSDRIN (MEVINPHOS)	7786-34-7	ANALOGY	VI.C.12	2638
1321	PHOSPHINE	7803-51-2	SYSTEMIC TOXICITY	VI.C.8	2563
1322	PHOSPHORIC ACID	7664-38-2	SENSORY IRRITATION	VI.C.3	2470
1323	PHOSPHORUS OXYCHLORIDE	10025-87-3	ANALOGY	VI.C.12	2639
1324	PHOSPHORUS PENTASULFIDE	1314-80-3	ANALOGY	VI.C.12	2639
1325	PHOSPHORUS TRICHLORIDE	7719-12-2	SENSORY IRRITATION	VI.C.3	2470
1326	PHTHALIC ANHYDRIDE	85-44-9	ANALOGY	VI.C.12	2639
1327	M-PHTHALODINITRILE	626-17-5	NOAELs	VI.C.9	2580
1328	PICLORAM (TORDOM)	1918-02-1	PHYSICAL IRRITATION	VI.C.10	2598
1329	PICRIC ACID	88-89-1	SENSITIZATION EFFECTS	VI.C.14	2666
1330	PIPERAZINE DIHYDROCHLORIDE	142-64-3	SYSTEMIC TOXICITY	VI.C.8	2564
1331	PLASTER OF PARIS, TOTAL DUST	7778-18-9	PHYSICAL IRRITATION	VI.C.10	2598
1332	PLATINUM, METAL	7440-06-4	NOAELs	VI.C.9	2580
1333	PORTLAND CEMENT	65997-15-1	PHYSICAL IRRITATION	VI.C.10	2598
1334	POTASSIUM HYDROXIDE	1310-58-3	SENSORY IRRITATION	VI.C.3	2470
1335	PROPARGYL ALCOHOL	107-19-7	ANALOGY	VI.C.12	2640

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1336	PROPIONIC ACID	79-09-4	ANALOGY	VI.C.12	2640
1337	PROPOXUR (BAYGON)	114-26-1	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2659
1338	N-PROPYL ACETATE	109-60-4	ANALOGY	VI.C.12	2640
1339	PROPYL ALCOHOL	71-23-8	ANALOGY	VI.C.12	2640
1340	N-PROPYL NITRATE	627-13-4	SYSTEMIC TOXICITY	VI.C.8	2564
1341	PROPYLENE DICHLORIDE	78-87-5	LIVER AND KIDNEY EFFECTS	VI.C.4	2486
1342	1,2-PROPYLENE GLYCOL DINITRATE	6423-43-4	NEUROPATHY	VI.C.1	2418
1343	PROPYLENE GLYCOL MONOMETHYL ETHER	107-98-2	SENSORY IRRITATION	VI.C.3	2471
1344	PROPYLENE OXIDE	75-56-9	ANALOGY	VI.C.12	2641
1346	RESORCINOL	108-46-3	NOAELs	VI.C.9	2581
1347	RHODIUM (METAL, FUME & INSOLUBLE COMPOUNDS)	7440-16-6	INCREASING PEL	VI.C.16	2700
1348	RHODIUM (SOLUBLE SALTS)	Varies	INCREASING PEL	VI.C.16	2700
1349	RONNEL	299-84-3	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2659
1350	ROSIN CORE SOLDER PYROLYSIS PRODUCT (AS HCHO)	None	SENSORY IRRITATION	VI.C.3	2471
1351	ROUGE, TOTAL DUST	None	PHYSICAL IRRITATION	VI.C.10	2599

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1352	SILICA, AMORPHOUS, DIATOMACEOUS EARTH	61790-53-2	INCREASING PEL	VI.C.16	2701
1353	SILICA, AMORPHOUS, PRECIPITATED AND GEL	None	INCREASING PEL	VI.C.16	2701
1354	SILICA, CRYSTALLINE-CRISTOBALITE	14464-46-1	RESPIRATORY EFFECTS	VI.C.6	2521
1355	SILICA, CRYSTALLINE QUARTZ, RESPIRABLE	14808-60-7	RESPIRATORY EFFECTS	VI.C.6	2521
1356	SILICA, CRYSTALLINE TRIDYMITE	15468-32-3	RESPIRATORY EFFECTS	VI.C.6	2523
1357	SILICA, CRYSTALLINE TRIPOLI (AS QUARTZ DUST)	1317-95-9	RESPIRATORY EFFECTS	VI.C.6	2523
1358	SILICA, FUSED	60676-86-0	RESPIRATORY EFFECTS	VI.C.6	2523
1359	SILICON	7440-21-3	PHYSICAL IRRITATION	VI.C.10	2599
1360	SILICON CARBIDE	409-21-2	PHYSICAL IRRITATION	VI.C.10	2599
1361	SILICON TETRAHYDRIDE	7803-62-5	ANALOGY	VI.C.12	2641
1362	SILVER, METAL, DUST, AND FUME	7440-22-4	INCREASING PEL	VI.C.16	2702
1363	SOAPSTONE, TOTAL DUST	None	RESPIRATORY EFFECTS	VI.C.6	2523
1363A	SOAPSTONE, RESPIRABLE DUST	None	RESPIRATORY EFFECTS	VI.C.6	2523
1364	SODIUM AZIDE (as HN_3) (as NaN_3)	26628-22-8	CARDIOVASCULAR EFFECTS	VI.C.7	2540

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1365	SODIUM BISULFITE	7631-90-5	SENSORY IRRITATION	VI.C.3	2472
1366	SODIUM FLUOROACETATE	62-74-8	SYSTEMIC TOXICITY	VI.C.8	2564
1367	SODIUM HYDROXIDE	1310-73-2	SENSORY IRRITATION	VI.C.3	2472
1368	SODIUM METABISULFITE	7681-57-4	SENSORY IRRITATION	VI.C.3	2473
1369	STARCH, TOTAL DUST	9005-25-8	PHYSICAL IRRITATION	VI.C.10	2599
1371	STODDARD SOLVENT	8052-41-3	NARCOSIS	VI.C.2	2429
1372	STYRENE (PHENYLETHYLENE)	100-42-5	NARCOSIS	VI.C.2	2429
1373	SUBTILISINS (PROTEOLYTIC ENZYMES)	1395-21-7	SENSITIZATION EFFECTS	VI.C.14	2666
1374	SUCROSE, TOTAL DUST	57-50-1	PHYSICAL IRRITATION	VI.C.10	2600
1375	SULFUR DIOXIDE	7446-09-5	RESPIRATORY EFFECTS	VI.C.6	2524
1376	SULFUR MONOCHLORIDE	10025-67-9	SENSORY IRRITATION	VI.C.3	2473
1377	SULFUR PENTAFLUORIDE	5714-22-7	SENSORY IRRITATION	VI.C.3	2473
1378	SULFUR TETRAFLUORIDE	7783-60-0	RESPIRATORY EFFECTS	VI.C.6	2526
1379	SULFURYL FLUORIDE	2699-79-8	ANALOGY	VI.C.12	2641
1380	SULPROFOS	35400-43-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2659
1381	TALC (CONTAINING NO ASBESTOS)	14807-96-6	RESPIRATORY EFFECTS	VI.C.6	2526
1382	TANTALUM	7440-25-7	NOAELs	VI.C.9	2581
1383	TEMEPHOS	3383-96-8	PHYSICAL IRRITATION	VI.C.10	2600

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H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1384	TERPHENYLS	26140-60-3	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2660
1385	1,1,2,2-TETRACHLOROETHANE	79-34-5	LIVER AND KIDNEY EFFECTS	VI.C.4	2487
1386	TETRAETHYL LEAD	78-00-2	INCREASING PEL	VI.C.16	2702
1387	TETRAHYDROFURAN	109-99-9	SENSORY IRRITATION	VI.C.3	2473
1388	TETRAMETHYL LEAD	75-74-1	INCREASING PEL	VI.C.16	2702
1389	TETRASODIUM PYROPHOSPHATE	7722-88-5	SENSORY IRRITATION	VI.C.3	2474
1391	4,4'-THIOBIS (6-TERT-BUTYL-M-CRESOL)	96-69-5	PHYSICAL IRRITATION	VI.C.10	2600
1392	THIOGLYCOLIC ACID	68-11-1	SENSORY IRRITATION	VI.C.3	2474
1393	THIONYL CHLORIDE	7719-09-7	ANALOGY	VI.C.12	2642
1394	TIN (ORGANIC COMPOUNDS)	Varies	CHANGE IN SKIN DESIGNATION ONLY	VI.C.18	2718
1395	TIN OXIDE	21651-19-4	RESPIRATORY EFFECTS	VI.C.6	2527
1396	TITANIUM DIOXIDE	13463-67-7	PHYSICAL IRRITATION	VI.C.10	2600
1397	TOLUENE	108-88-3	NARCOSIS	VI.C.2	2431
1398	TOLUENE-2,4-DIISOCYANATE	584-84-9	SENSITIZATION EFFECTS	VI.C.14	2667
1399	O-TOLUIDINE	95-53-4	CANCER	VI.C.15	2689
1400	P-TOLUIDINE	106-49-0	CANCER	VI.C.15	2690
1401	M-TOLUIDINE	108-44-1	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2660

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H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1402	TRIBUTYL PHOSPHATE	126-73-8	ANALOGY	VI.C.12	2642
1403	1,1,2-TRICHLORO-1,2, 2-TRIFLUOROETHANE	76-13-1	CARDIOVASCULAR EFFECTS	VI.C.1	2540
1404	TRICHLOROACETIC ACID	76-03-9	ANALOGY	VI.C.12	2642
1405	1,2,4-TRICHLOROBENZENE	120-82-1	SENSORY IRRITATION	VI.C.3	2474
1406	TRICHLOROETHYLENE	79-01-6	NARCOSIS	VI.C.2	2432
1407	1,2,3-TRICHLOROPROPANE	96-18-4	LIVER AND KIDNEY EFFECTS	VI.C.4	2487
1408	TRIETHYLAMINE	121-44-8	SENSORY IRRITATION	VI.C.3	2475
1409	TRIMELLITIC ANHYDRIDE	552-30-7	RESPIRATORY EFFECTS	VI.C.6	2528
1410	TRIMETHYL PHOSPHITE	121-45-9	NOAELs	VI.C.9	2581
1411	TRIMETHYLAMINE	75-50-3	ANALOGY	VI.C.12	2643
1412	TRIMETHYLBENZENE	25551-13-7	SYSTEMIC TOXICITY	VI.C.8	2564
1413	2,4,6-TRINITROTOLUENE (TNT)	118-96-7	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13	2660
1414	TRIORTHOCRESYL PHOSPHATE	78-30-8	CHANGE IN SKIN DESIGNATION ONLY	VI.C.18	2718
1415	TRIPHENYL AMINE	603-34-9	NOAELs	VI.C.9	2581
1416	TUNGSTEN & COMPOUNDS (INSOLUBLE)	7440-33-7	SYSTEMIC TOXICITY	VI.C.8	2565
1417	TUNGSTEN & COMPOUNDS (SOLUBLE)	7440-33-7	SYSTEMIC TOXICITY	VI.C.8	2565
1418	URANIUM (INSOLUBLE COMPOUNDS)	7440-61-1	NOAELs	VI.C.9	2582

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1419	URANIUM (SOLUBLE COMPOUNDS)	7440-61-1	INCREASING PEL	VI.C.16	2703
1420	N-VALERALDEHYDE	110-62-3	ANALOGY	VI.C.12	2643
1421	VANADIUM (V205, DUST)	1314-62-1	SENSORY IRRITATION	VI.C.3	2475
1422	VANADIUM (V205, FUME)	1314-62-1	SENSORY IRRITATION	VI.C.3	2476
1423	VEGETABLE OIL MIST	None	PHYSICAL IRRITATION	VI.C.10	2601
1424	VINYL ACETATE	108-05-4	SENSORY IRRITATION	VI.C.3	2476
1425	VINYL BROMIDE	593-60-2	CANCER	VI.C.15	2691
1426	VINYL CYCLOHEXENE DIOXIDE	106-87-6	CANCER	VI.C.15	2694
1427	VINYL TOLUENE	25013-15-4	ODOR EFFECTS	VI.C.11	2604
1428	VINYLIDENE CHLORIDE	75-35-4	SYSTEMIC TOXICITY	VI.C.8	2566
1429	VM & P NAPHTHA	8032-32-4	SENSORY IRRITATION	VI.C.3	2476
1430	WELDING FUMES (TOTAL PARTICULATE)	None	SYSTEMIC TOXICITY	VI.C.8	2567
1430a	WOOD DUST, HARD WOOD	None	RESPIRATORY EFFECTS	VI.C.6	2528
1430b	WOOD DUST, SOFT WOOD	None	RESPIRATORY EFFECTS	VI.C.6	2528
1430c	WOOD DUST, WESTERN RED CEDAR	None	RESPIRATORY EFFECTS	VI.C.6	2528
1431	XYLENE (O,M,P-ISOMERS)	1330-20-7	SENSORY IRRITATION	VI.C.3	2477
1432	M-XYLENE-ALPHA,ALPHA'-DIAMINE	1477-55-0	ANALOGY	VI.C.12	2643
1433	XYLIDINE	1300-73-8	ANALOGY	VI.C.12	2643

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H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section	Federal Register Page No.
1434	ZINC STEARATE	557-05-1	PHYSICAL IRRITATION	VI.C.10	2601
1435	ZINC CHLORIDE FUME	7646-85-7	SENSORY IRRITATION	VI.C.3	2477
1436	ZINC CHROMATES (CrVI)	Varies	CANCER	VI.C.15	2683
1437	ZINC OXIDE (FUME)	1314-13-2	SYSTEMIC TOXICITY	VI.C.8	2567
1438	ZINC OXIDE, TOTAL DUST	1314-13-2	PHYSICAL IRRITATION	VI.C.10	2601
1439	ZIRCONIUM COMPOUNDS	Varies	SYSTEMIC TOXICITY	VI.C.8	2568

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Signed at Washington, DC this 20th day of March 1989.

John A. Pendergrass,

Assistant Secretary of Labor.

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