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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: February 23, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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Presidential Documents

Title 3—

The President

Proclamation 6092 of February 8, 1990

National Burn Awareness Week, 1990 and 1991

By the President of the United States of America

A Proclamation

Burn injury is a serious problem in the United States. Each year, some two million people suffer from burn injuries. Approximately 70,000 of these Americans must be hospitalized for some period of time, and more than 12,000 burn victims die each year as a result of their injuries. Tragically, children, elderly men and women, and persons with disabilities are those most likely to become the victims of serious burns.

All Americans can make their homes, cars, and workplaces safer by learning more about the causes of burn injuries and how to prevent them. One of the most important steps we can take is installing—and carefully maintaining—smoke detectors in our homes and places of business. Developing good safety habits is also critical. For example, both children and adults should take time to learn about the safe use of stoves, heaters, and electrical power. Adults should be sure to know the proper way to store and handle flammable materials, and every American should learn what to do in the event of fire, including the "Stop, drop, and roll" maneuver that can help prevent serious burn injuries. Those families that have not yet done so should make plans for escaping a house fire—and every American family should review and practice the plan it has.

In recent years, scientific research has yielded major advances in the prevention and treatment of burn injuries. The development of new technology and materials has helped bring about the production of safer fabrics and improved fire detection equipment. Improved medical techniques are helping to reduce the time burn victims must spend in the hospital. They are also saving lives. Today greater assistance is available to those suffering from the psychological and emotional impact of burn injuries.

Across the country, dedicated health care professionals, firefighters, and educators are working tirelessly to prevent burn injuries and to care for those who fall victim to them. In recognition of their efforts and in order to promote public awareness of the need to prevent burn injuries, the Congress, by Senate Joint Resolution 217, has designated the weeks beginning February 4, 1990, and February 3, 1991, as "National Burn Awareness Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the weeks of February 4 through February 10, 1990, and February 3 through February 9, 1991, as National Burn Awareness Week. I call upon all Government agencies, health care organizations, public safety organizations, and the people of the United States to observe these weeks with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of February, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 90–3534
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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

Agricultural Marketing Service

7 CFR Part 985

[FV-90-116 IFR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for "Class 3" Native Spearmint Oil for the 1989-90 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on increasing the quantity of "Class 3" (Native) spearmint oil produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1989-90 marketing year which began June 1, 1989. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended by the Spearmint Oil Administrative Committee, which is responsible for local administration of the order.

EFFECTIVE DATES: Interim final rule effective February 13, 1990. Comments which are received by March 15, 1990, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, F&V, AMS, USDA, Room 2522-S, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 475-3920.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West. 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 interim 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 action on small entities.

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

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 160 producers hold "Class 1" oil (Scotch) allotment base and 136 producers hold "Class 3" oil (Native) allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of Far West spearmint oil may be classified as small entities.

At its September 21, 1988, meeting, the Spearmint Oil Administrative Committee (Committee) estimated trade demand for Native spearmint oil for the 1989-90 marketing year to be 818,266 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 818,266 pounds. The Committee estimated that 40,000 pounds would be carried-in on June 1, 1989. This amount was deducted from the total supply needed, leaving 778,266 pounds as the salable quantity needed. This quantity, divided by 1,859,743 pounds, the total allotment base, resulted in a figure of 41.8 percent which was the computed allotment percentage. This figure was adjusted to 42 percent and established as the 1989-90 Native allotment percentage which resulted in a 1989-90 salable quantity of 781,092 pounds based on the estimated total base of 1,859,743 pounds.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage (which is the salable quantity multiplied by 100 divided by the total of all allotment bases) to the producer's allotment base for that class of oil.

The 1989-90 salable percentage of 42 percent for Native oil, when applied to the revised total allotment base of 1,857,007 pounds, gave a 1989-90 salable quantity of 779,943 pounds. Since all growers were expected to either produce their individual salable quantity or fill deficiencies with reserve pool oil, the total salable quantity made available, when this figure was combined with the actual carry-in on June 1, 1989, was 789,139 pounds. This was the total supply available for the 1989-90 marketing year. Carry-in on June 1, 1989, was 9,196 pounds of Native oil, which was lower than the Committee had estimated.

The 1989-90 salable quantity and allotment percentage for Native spearmint oil were issued in a final rule published in the March 8, 1989, issue of the **Federal Register** (54 FR 9766). Subsequently, an interim final rule increasing the salable quantity and allotment percentage for Native spearmint oil for the 1989-90 marketing year was published in the September 14,

1989, issue of the **Federal Register** (54 FR 37932). That interim final rule increased the 1989–90 salable quantity for Native oil from 781,092 to 891,363 pounds and the allotment percentage from 42 to 48 percent. The increases in the September 14, 1989, interim final rule were adopted without modification in a final rule published in the November 30, 1989, issue of the **Federal Register** (54 FR 49264). Those revisions were issued pursuant to § 985.52(a) of the spearmint oil marketing order.

This interim final rule modifies the November 30, 1989, final rule by increasing the salable quantity of Native spearmint oil from 891,363 to 1,277,154 pounds and increasing the allotment percentage from 48 to 92 percent.

At its November 28, 1989, meeting, the Committee unanimously voted to recommend that the Secretary make more Native spearmint oil available to the market by further increasing the salable quantity and allotment percentage. This was due to an increase in market demand at that time. The Committee therefore recommended that the 1989–90 Native spearmint oil salable percentage be increased from 48 to 66 percent resulting in an increase in the salable quantity from 891,364 to 1,107,689 pounds.

After the November 28 meeting, however, handlers reported unexpectedly brisk market activity which resulted in a depletion of the bulk of the available Native spearmint oil. Therefore, the Committee conducted a teleconference meeting on December 6, 1989, and unanimously voted to revise its November 28, 1989, recommendation. The Committee's recommendation increased the Native spearmint oil allotment percentage from 66 to 78 percent, resulting in an increase in the salable quantity from 1,107,689 to 1,201,278 pounds.

The Committee conducted another teleconference meeting on January 8, 1990, and unanimously recommended to revise its December 6, 1989, recommendation. The Committee indicated that, due to continuing strong demand for Native spearmint oil, it is necessary to allow more reserve pool oil to be made available for sale. The Committee's recommendation increases the Native spearmint oil allotment percentage from 78 to 92 percent, resulting in an increase in the salable quantity from 1,201,278 to 1,277,154 pounds.

The following table summarizes the computations used in arriving at the Committee's recommendations.

	Orig. Rec. 9/21/88	Rec. 6/28/89	Rec. 11/28/89	Rec. 12/6/89	Rev. Rec. 1/8/90
Pounds					
(1) Carry-in	40,000	9,196	9,196	9,196	9,196
(2) Total supply available	821,092	900,560	1,116,885	1,210,474	1,286,350
(3) Desirable carryout	0	0	0	0	0
(4) Total Allotment Base for Native oil	1,859,743	1,857,007	1,857,007	1,857,007	1,867,007
(5) Allotment percentage	42	48	66	78	92
(6) Salable Quantity	781,092	891,363	[1] 1,107,689	[2] 1,201,278	[3] 1,277,154

[1] Although 18 percent of the total 1989-90 allotment base figure of 1,867,007 pounds results in a figure of 336,061 pounds, the recommended action would have made only 216,325 pounds available. This is because there are a number of growers who do not have reserve pool oil. Thus, an 18 percent increase was needed to release the additional oil needed.

[2] Although 12 percent of the total 1989-90 allotment base figure of 1,867,007 pounds results in a figure of 224,040 pounds, the action would have made only an additional 93,589 pounds available. This is because there are a number of growers who do not have reserve pool oil. Thus, a 12 percent increase was needed to release the additional oil needed.

[3] Although 14 percent of the total 1989-90 allotment base figure of 1,867,007 pounds results in a figure of 261,381 pounds, the action taken would make only an additional 75,876 pounds available. This is because there are a number of growers who do not have reserve pool oil. Thus, a 14 percent increase is needed to release the additional oil needed. The total increase in the allotment percentage from that established on November 30, 1989, is 44 percent, making a total of 385,790 pounds of additional oil available.

Thus, the Department has determined that an allotment percentage of 92 percent should be established for Native spearmint oil for the 1989–90 marketing year. This percentage will make available 1,286,350 pounds of Far West Native spearmint oil to handlers of Far West spearmint oil.

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

After consideration of all relevant matter presented, including that contained in the prior interim and final rules in connection with the establishment of the salable quantity and allotment percentage for Native spearmint oil for the 1989–90 marketing year, the Committee's recommendation and other available information, it is found that to revise § 985.209 (54 FR 9766) so as to change the salable quantity and allotment percentage for Native spearmint oil, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This final action relieves restrictions on handlers by increasing the quantity of Native oil that may be freely marketed immediately; and (2) it should be effective as soon as possible to enable handlers to satisfy current market needs for Native oil.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

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

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

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

2. Section 985.209 is amended by revising paragraph (b) to read as follows:

§ 985.209 Salable quantities and allotment percentages—1989–90 marketing year.

* * * * *

(b) "Class 3" (Native) oil—a salable quantity of 1,277,154 pounds and an allotment percentage of 92 percent.

Dated: February 9, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-3497 Filed 2-9-90; 2:39 pm]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1965

Rural Rental Housing Displacement Prevention

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its rural rental housing (RRH) and labor housing (LH) regulations which deal with prepayment of these loans. The action is being taken to correct problems raised by the interim rule currently in effect governing these procedures. It has been pointed out that the sequence of steps dealing with the acceptance of prepayment and offer of incentives to avert prepayment are reversed from the sequence mandated by law. No change other than this sequence reversal is being made. Changes being made are therefore mandated by the provisions of Subtitle C, "Rural Rental Housing Displacement Prevention," portion of the Housing and Community Development Act of 1987.

DATES: Effective on February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Arlene Halfon, Senior Loan Specialist, Multiple Family Housing Servicing and Property Management Division, Room 5329, South Agriculture Building, Washington, DC 20250, telephone (202) 447-3187.

SUPPLEMENTARY INFORMATION:

Classification: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement: This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, and Environmental Impact Statement is not required.

Intergovernmental Review: This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.427, Rural Rental Assistance Payments (Rental Assistance); 10.415, Rural Rental Housing Loans; 10.405, Farm Labor Housing Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, this program/activity is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act: In compliance with the Regulatory Flexibility Act (Public Law 96-354), Mr. Neal Sox Johnson, Acting Administrator of FmHA, has determined that this action will not have a significant economic impact on a substantial number of small entities because only a few hundred borrowers have attempted to prepay since implementation of the interim rule in May 1988.

General Information

Background and Statutory Authority

The Housing and Community Development Amendments to the Housing Act of 1949, signed into law in 1979, and the Housing and Community Development Act of 1980, implemented in § 1965.90 of Subpart B of Part 1965 of this chapter, provided that FmHA Section 514 and Section 515 Multi-Family Housing borrowers, who received loans prior to December 21, 1979, and who have not subsequently become subject to restrictions due to specified servicing actions, may prepay their loans and remove their housing from the low- and moderate-income market without restrictions. Those who received loans or other qualifying servicing actions on or after December 21, 1979, are only eligible to prepay after their restrictive-use requirements expire in either 15 or 20 years from the date of the loan or the servicing action. Under these provisions, 51 percent of FmHA projects and 44 percent of FmHA units nationwide were eligible to prepay. To keep the problems of tenants displaced from these prepaid projects from growing severe, Congress issued several moratoriums in 1986 and 1987 preventing prepayments, except under specified conditions. FmHA, in June 1987, issued revised regulations to ease the burden of displacement on tenants. A more recent legislative action on this issue was the passage of the Housing and Community Development Act of 1987. This law included provisions dealing with "Rural Rental Housing Displacement Prevention." As part of the law, Congress mandated the FmHA issue regulations to carry out the legislation within 60 days of enactment. These regulations were published in the **Federal Register** on April 22, 1988, and effective May 23, 1988, as an interim rule with comments on an emergency basis.

Several comments to that interim rule stated that two steps in the published procedure were reversed from the sequence required by law. There have also been two lawsuits based on that interpretation. While we do not feel that there has been a significant impact on tenants due to the reversal of the sequence, we are changing the interim rule, again on an interim and emergency basis, to bring the regulation into compliance with the law. This is in compliance with 5 U.S.C. section 553, "The Administrative Procedures Act," which allows an exception to proposed rulemaking and comment period, for good cause, if comment is shown to be unnecessary, impractical or contrary to the public good. It would be impractical to go through a public comment period since Congress had mandated the initial issuance of regulations within 60 days and these new changes should have been in that rule.

Due to the emergency nature of this regulation, and in accordance with section 534(c) of the Housing Act of 1949, as amended, there will be no prior notification to Congress before publication of this rule, and no waiting period between the date this final rule is published and the effective date of the regulation.

We are not inviting comments to this interim rule. Comments pertinent to this rule were received in response to the initial interim rule and will be addressed fully in the proposed rule.

The Change in this rule is as follows:

Exhibit E to subpart B of part 1965 is being amended to reverse the present sequence of steps and provide that incentive offers to avert prepayment will be made to *all* borrowers without restrictive-use provisions who request to prepay, even if the borrowers are willing to accept restrictions in their releases, or the loan can legally be accepted without restrictions. Incentives offered in these cases may be minimal.

List of Subjects in 7 CFR Part 1965

Administrative practice and procedure, Low- and moderate-income housing—Rental, Mortgages.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1965—REAL PROPERTY

1. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

Exhibit E—Prepayment of Loans Not Subject to Restrictive-Use Provisions

2. In Exhibit E to subpart B of part 1965 the paragraphs in the first column below are redesignated as shown in the second column below:

Old paragraph	New paragraph
V A.	III. F
V C., D. E., F	IV B., C., D., E
V B.	V C.
IV A., B.	V A., B.

Exhibit E—Prepayment of Loans Not Subject to Restrictive-Use Provisions

3. Paragraph I B is revised to read as follows:

I. *Purpose:*

* * * * *

B. Requests to pay FmHA multiple family housing loans in full require that certain actions be taken to ensure the affordability of the housing for specified tenants for a guaranteed period of time. When a prepayment request is received from a borrower who can document the ability to pay the loan in full, FmHA is required to: provide incentives to borrowers to either remain in the program themselves or to sell the project to a new borrower who will remain in the program; accept the prepayment if it can be shown that doing so will not cause displacement of tenants or affect the supply of affordable housing for tenants served by the Section 514 or 515 programs; or require that borrowers sell their projects to non-profit borrowers who, with FmHA assistance, will continue to operate the project for the benefit of very-low- and low-income tenants. FmHA assistance to non-profits through the latter provision are limited by legislation each year.

* * * * *

4. Newly redesignated paragraph III F is revised to read as follows:

III. *Prepayment of Loans Covered by this Exhibit:*

* * * * *

F. *Notification to new tenants.* Leases of tenants who move to the project will state that a prepayment of the loan is pending, and that they have been given a copy of the letter sent to tenants in accordance with paragraph III C of this Exhibit.

* * * * *

5. The introductory language of newly redesignated paragraph IV and IV B are revised, and paragraph IV A is added to read as follows:

IV. *Determination of Need and Offer of Incentives to Extend Low-Income Use.*

A. *Determination of Need.* The District Office will review local market conditions, information submitted for the prepayment report, and reponses to a 30-day tenant comment period. They will determine how much need there is for the housing.

B. *Offer of Incentives to Extend Low-Income Use.* The borrower will show evidence of the nature of the prepayment to be made, whether through refinancing or sale of the project. If the possibility of an actual prepayment cannot be demonstrated by the borrower, the prepayment offer will be withdrawn by this borrower, or it will be rejected and appeal rights given. If the borrower can demonstrate the ability to prepay, the District Office will send a letter stating that:

* * * * *

6. Newly redesignated paragraph IV B 1 is amended by changing the reference "paragraph V D" to read "paragraph IV C 2."

7. Newly redesignated paragraph IV B 5 is amended in the first sentence by removing the words "or appeal this action."

8. Newly redesignated paragraph IV C 1 is amended by changing the reference "paragraph V C" to read "paragraph IV B."

9. Newly redesignated paragraph IV D 1 is amended in the heading and first sentence by removing the words "or loses the appeal."

10. Newly redesignated paragraph IV D 2 is amended by changing the reference "Form FmHA 1965–B–1" to read "FmHA Form Letter 1965–B–1."

11. Newly redesignated paragraph IV E 4 is amended by changing the word "increases" in the first sentence to read "increase".

12. The introductory text of newly redesignated paragraphs V and V A, and paragraph V C are revised to read as follows:

* * * * *

V. *When the Borrower Rejects the Incentive Package:*

A. *Determination of Acceptance of Prepayment.* The District Office will determine whether the prepayment may be accepted. Section 1965.90(b)(4) may be used in helping to make this determination. The District Office may accept prepayment if:

* * * * *

C. *Appeal Rights if Prepayment is Rejected.* The borrower will be notified by letter that:

1. Prepayment was denied. The letter should state the reasons for denial and appeal rights should be given in accordance with Subpart B of Part 1900 of this chapter. Borrowers should be advised that when the denial of prepayment is appealed, the level of incentives offered may be appealed simultaneously. The appeal must be received within 30 days of the date of the letter.

2. If the borrower does not respond within 30 days or loses the appeal, the State Office will advise the National Office by means of FmHA Form Letter 1965–B–1 to remove the name from the waiting list. Tenants and any agencies notified in accordance with paragraph III C will be notified by the District Office that prepayment will not take place.

13. In Paragraph VI the introductory text is revised to read as follows:

VI. *Sale to Non-Profit Organization or Public Agency.* If prepayment cannot be accepted, the borrower will be required to offer to sell the project to a non-project organization or public agency. The following steps will be taken in this process.

* * * * *

14. Paragraph VI B is amended in the last sentence by adding the phrase "including publications directed to minorities" between the words "media" and "determined."

15. Paragraph VI C 4 is amended by changing the reference "paragraph E–3 of this subsection" to read "paragraph E 3 of this section."

Dated: January 23, 1990.

Neal Sox Johnson,

Administrator, Farmers Home Administration.

[FR Doc. 90–3231 Filed 2–12–90; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 078CE, Special Condition 23–ACE–49]

Special Conditions: SOCATA Model TBM–700 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: These special conditions are being issued to become part of the type certification basis for the SOCATA Model TRM–700 series airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These novel and unusual design features include the

installation of electronic displays and the protection of them from indirect effects of lightning and high energy radiated electromagnetic fields (HERF), and evacuation of fumes from pressurized airplanes for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: March 14, 1990.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Service, Central Region, Federal Aviation Administration, Room 1544, 601 East 12th Street, Federal Office Building, Kansas City. Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 1989, SOCATA—Group Aerospatiale made an application for type certificate approval of the Model TBM-700 Series airplane to the FAA and Direction Generale De L'Aviation Civile (DGAC) of France. The Model TBM-700 airplane is a pressurized, single-engine turboprop, of conventional metal material, with 6-7 seats and a maximum altitude of 30,000 feet. The installation may incorporate an electronic attitude director indicator (EADI) and an electronic horizontal situation indicator (EHSI) in lieu of the traditional mechanical or electro-mechanical displays providing similar information to the flight crew.

Type Certification Basis

The type certification basis for the SOCATA Model TBM-700 series airplane is as follows: Part 21 of the Federal Regulation (FAR) § 21.29; Part 23 of the FAR, effective February 1, 1965, including amendments 23-1 through 23-33 and §§ 23.783 and 23.807 of amendment 23-36; SFAR 27 effective February 1, 1974, as amended by amendments 27-2 through 27-5; Part 36, effective December, 1969 as amended by amendments 36-1 through the amendment effective on the date of type certification; exemptions, if any; and the special conditions that may result from this proposal.

Discussion

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

The proposed type design of the SOCATA Model TBM-700 series airplane contains a number of novel and design features not envisaged by the applicable airworthiness standards. Special conditions are considered necessary because the applicable airworthiness standards do not contain adequate or appropriate safety standards for the novel or unusual design features of the SOCATA Model TBM-700 series airplane. Special conditions resulting from this notice will also be applicable to all SOCATA Model TBM series airplanes, including the installation of similar EFIS, without further amendment of the special conditions.

Electronic Flight Instrument System (EFIS)

The proposed cathode-ray tube (CRT) electronic display units will contain primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel configuration would feature two displays, an EADI and an EHSI on the pilot side of the instrument panels. All other displays, i.e., airspeed, altitude, vertical speed, etc., will be conventional electromechanical instruments. On some later installations, another EADI and EHSI may be installed on the copilot side.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electromechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting condition, including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single-fault" or "fail-safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplanes requirements envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case.

Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight. Standby instruments for flight instruments are not required by the small airplane airworthiness requirements because the FAA has long accepted that the small airplane could be flown safely by using partial panel techniques following a single instrument failure. The basic airman certification program for an instrument flight rules (IFR) rating has long included requirements for the pilot to demonstrate the ability to fly the airplane safely following failure of any one of the previously cited instruments.

The special condition will provide appropriate requirements for installation of electronic displays featuring design characteristics where a single malfunction or failure could affect more than one primary instrument, display, or system. The special condition would also provide requirements to assure adequate reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane.

For installations where electronic displays take the place of traditional instruments, the reliability must be less than that of the traditional instruments. This concerns the collective reliability of the traditional instruments rather than the reliability of a single traditional instrument. For this reason, the special condition includes requirements needed for their certification.

The special condition will also require a detailed examination of each item of equipment/component of the electronic display system, and installation of the system, to determine if the airplane is dependent upon its function for continued safe flight and landing or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these diverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the proposed special condition.

The existing § 23.1309, which was incorporated into Part 23 by amendment 23–14, dated December 20, 1973, has been used as a means of evaluating systems for those airplanes that include § 23.1309 in their type certification basis. The "no-single-fault" or "fail-safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgment, have been used to successfully evaluate most airplane systems and equipment. The type of certification basis for this airplane includes § 23.1309, however, the "single-fault" concept does not provide an adequate means for determining and evaluating the effect of certain failure conditions which may exist in complex systems such as an EFIS installation. Therefore, the FAA considers it necessary to include the proposed additional system analysis requirements in the certification basis. This will also allow the use of the "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur. Rational methods for showing compliance for safety assessment of systems may be shown by the use of numerical analysis, but it is not mandatory. In many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently a more acceptable substantiation of compliance with the various required levels of system reliability than a numerical analysis alone.

If it is determined that the airplane includes systems that perform critical functions, it will be necessary to show that those systems meet more stringent requirements. These systems would be required to establish either that there will be no failures of that system or that a failure is extremely improbable. Critical functions means those functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane. This special condition provides reliability requirements that are based on the criticality of the system's function and provides the standards needed for certification of complex safety-critical systems being proposed for installation.

The special condition also requires that the occurrence of system(s) failures that would significantly reduce the airplane's capability or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be the degree leading to potentially catastrophic results.

Protection of Systems From High Energy Radiated Electromagnetic Fields (HERF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of solid state components and digital electronics, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the high energy radiated electromagnetic fields (HERF) incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisioned when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

At present, aircraft certification requirements, as well as the industry standards for protection from the adverse effects of HERF, are inadequate in view of the aforementioned technological advances. In addition, some significant safety events have been reported of incidents and accidents involving military aircraft equipped with advanced electronic systems when they were exposed to electromagnetic radiation.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the aircraft. Effective measures against the effects of exposure to high energy radiated electromagnetic fields (HERF) must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical functions; (2) the reduced electromagnetic shielding afforded airplane systems by advanced technology airframe materials; (3) the adverse service experience of military airplanes that use these technologies; and (4) the increase in the number and power of radio frequency emitters and expected future increases.

Cognizant of the need for aircraft certification standards to cope with the developments in technology and environment in 1986, the FAA initiated a high priority program (1) to determine and define the electromagnetic energy levels; (2) to develop and describe guidance material for design, test, and analysis; and (3) to prescribe and promulgate regulatory standards. The FAA sought and received the participation of international airworthiness authorities and industry to develop internationally recognized standards for certification

At this time, the FAA and other airworthiness authorities have established an agreed level of HERF environment that the airplane is expected to be exposed to in service. While the HERF requirements are being finalized, the FAA has adopted special conditions for the certification of aircraft that employ electrical and electronic systems that perform critical functions. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. This special condition requires that the airplane be evaluated uder these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HERF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HERF environment, defined below, or

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10-500 KH_z	80	80
500-2000	80	80
2-30 MH_z	200	200
30-100	33	33
100-200	33	33
200-400	150	33
400-1000	6.3K	2K
1-2 GH_z	9K	1.5K
2-4	17K	1.2K
4-6	14.5K	800
6-8	4K	666
8-12	9K	2K
12-20	4K	509
20 40	4K	1K

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions withstand a peak of electromagnetic field strength of 100 volts per meter in a frequency range of 10KH_z to 18GH_z. When using a laboratory test to show compliance with the HERF requirements, no credit is given for signal attenuation due to installation.

In view of the revised HERF envelope, the requirement for the fixed value test has been changed to 100 v/m from the previously used value of 200 v/m. The applicant opting for the fixed value laboratory test, in lieu of the HERF envelope, will be subject to post certification reassessment based on the finalized rule requirements. The applicants should be cautioned that choosing 100 v/m may make it difficult, under post certification reassessment requirements, to qualify the installation without design upgrade. If the system should not meet the post certification reassessment requirements, additional protection provisions and/or testing may be required.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the aircraft. The systems that perform critical functions as identified by the hazard analysis, are candidates for application of HERF requirements. The primary electronic flight display and the full authority digital engine control (FADEC) systems are examples of systems that perform critical functions. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HERF requirements only apply to critical functions.

Compliance with HERF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HERF environmental condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HERF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

The modulation should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80% depth of modulation in the frequency range from 10 KHz to 400 MHz and 1 KHz square wave with greater than 90% depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal caused deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance is attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable and will need to be independently assessed for each application for approval by the FAA.

Protection of EFIS from Indirect Effect of Lightning

Concern for the vulnerability of airplane electronic systems to the effects of lightning has increased substantially over the past few years due to the use of solid-state components and digital electronics in airplane systems that are susceptible to transient effects of induced electrical current and voltage caused by either a direct lightning strike to the airplane or by the electric fields created by a nearby lightning flash. These induced transient currents and voltages can degrade electronic system performance by damaging components or upsetting system functions.

The applicable regulations include standards for protection from lightning damage to the structure of the airplane (§ 23.867) and from lightning ignition of fuel vapor (§ 23.954). However, these standards do not provide the level of safety for the EFIS that is inherently provided by traditional mechanical or electromechanical displays providing similar information to the flight crew.

The advent of an advanced electronic system in airplane design requires additional consideration be given to protect these systems from the indirect effects of lightning. Increased dependence on electronic equipment for safe operation of an airplane makes adequate protection of that equipment a primary requirement.

The Society of Automotive Engineers (SAE) and the Radio Technical Commission for Aeronautics (RTCA) has developed acceptable methods and procedures for determining compliance with these special conditions. They are as follows: SAE AE4L Committee Report AE4L-87-3, REV B, "Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning", dated October 1989, and RTCA DO-160B, Section 22, "Lightning Induced Transient Susceptibility", dated March 8, 1988. SAE Report AE4L-87-3, REV B provides procedures to verify the protection of systems installed in an aircraft, while Section 22 of RTCA DO-160B, provides methods to qualify equipment prior to installation in an aircraft.

Cockpit Evacuation of Noxious/Toxic Fumes

Small airplanes have typically been unpressurized where noxious/toxic fumes could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be readily depressurized to evacuate noxious/toxic fumes without creating an unsafe condition. The SOCATA Model TBM-700 airplane will not have noxious/toxic fume evacuation provisions because of higher differential pressures and longer times needed to depressurize and ventilate the cockpit. Because of the need to maintain an acceptable environment at the maximum operating altitudes of this airplane, this notice proposes special conditions to require the capability to evacuate noxious/toxic fumes from the cockpit and to require the ventilation air for normal operations to be free of harmful or hazardous concentrations of gases and vapors.

Conclusion

In review of the design features discussed for the installation in the SOCATA Model TBM–700 series airplane, the following special conditions are issued to provide a level of safety equivalent to that intended by the referenced regulations. This action is not a rule of general applicability and affects only the model/series of airplanes identified in these special conditions.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances (54 FR 4317; October 25, 1989), (54 FR 41955; October 13, 1989), (53 FR 14782; April 26, 1988), and (51 FR 37711; October 24, 1986). Also, special conditions with similar requirements have been promulgated without public procedures because the FAA has determined that good cause existed for immediate adoption (55 FR 270; January 4, 1990) and (54 FR 242; December 19, 1989). For this reason, and because a delay would significantly affect the applicant's installation of the system and the certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without further notice. Therefore, special conditions are being issued without substantive change for this airplane and made effective 30 days from the date of publication.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a); 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator of the Federal Aviation Administration, the following special conditions are issued as part of the type certification basis for the SOCATA Model TBM–700 series airplanes:

1. Electronic Flight Instrument Displays

In addition to, and in lieu of, the applicable requirements of Part 23 of the FAR and requirements to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine whether the airplane is dependent upon its function for continued safe flight and landing and whether its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for proper functioning to ensure continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any foreseeable operating condition that would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures under any foreseeable operating condition that would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize initiation of crew action that would create additional hazards.

(4) Compliance with the requirements of this special condition may be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunction and damage from foreseeable sources;

(ii) The probability of multiple failures, and undetected faults;

(iii) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(iv) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display indicators, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The electronic display indicators:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation, do not inhibit the primary display of attitude; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The electronic display indicators, including their systems and installations, must be designed so that one display of information essential to safety and successful completion of the flight will remain available to the pilot, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this section.

2. Protection of Electronic Flight Instrument Systems from Indirect Effects of Lightning and High Energy Radiated Electromagnetic Fields (HERF)

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to: (1) lightning and (2) high energy radiated electromagnetic fields external to the airplane.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning.

(c) For the purpose of the above, the following definitions apply:

(1) Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

(2) Essential Functions. Functions whose failure would contribute to or would cause a hazardous failure condition that would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

3. Cockpit Evacuation of Noxious/Toxic Fumes

In the absence of specific requirements for evacuating noxious/toxic fumes from the cockpit the following applies:

The ventilating air in the flight crew and passenger compartments must be free of harmful or hazardous concentrations of gases and vapors in normal operations and in the event of a reasonable probable failure or malfunctioning of the ventilation heating, pressurization, or other system and equipment. If the accumulating of hazardous quantities of noxious/toxic fumes in the cockpit area is reasonably probable, the evacuation of such fumes must be readily accomplished, starting with full cockpit pressurization and without depressurizing beyond safe limits.

Issued in Kansas City, Missouri on January 31, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-3208 Filed 2-12-90; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 252

[OST Docket No. 46783; Notice 90-4]

RIN 2105-AB58

Smoking Aboard Aircraft

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule and request for comments.

SUMMARY: The Department is amending its smoking rule to incorporate a recent statutory ban on smoking aboard aircraft on almost all fight segments within the United States. The statutory ban applies to both U.S. and foreign air carriers. The rule also codifies a blanket waiver concerning single-entity charters and makes other clarifying changes.

DATES: This interim final rule is effective February 25, 1990, in order to correspond with the statutory ban on smoking on most flight segments within the United States. Comments must be received on or before April 16, 1990.

ADDRESSES: Comments should be mailed in duplicate to Documentary Services Division, C-55, Department of Transportation, room 4107, 400 Seventh Street, SW., Washington, DC 20590. In order to facilitate the Department's review, we request that six additional copies of the comments be submitted and that commenters include a reference to the docket number of this notice. Comments will be available for review by the public at this address from 9 a.m. through 5 p.m., Monday through Friday. Persons wishing acknowledgement of their comments' receipt should include a stamped, self-addressed postcard. The Documentary Services Division will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-9306.

SUPPLEMENTARY INFORMATION:

Current Requirements

Until 1985, the Civil Aeronautics Board (CAB) had authority over certain aspects of airline service, including smoking aboard aircraft. (Any safety considerations regarding smoking aboard aircraft were, and still are, regulated by the Federal Aviation Administration.) The CAB originally adopted regulations governing smoking aboard aircraft in 1973 and completed a comprehensive review and rulemaking on the subject in 1984. Pursuant to the CAB Sunset Act of 1984, responsibility for oversight and enforcement of this, and other aviation consumer protection regulations, is now lodged in the Office of the Secretary, U.S. Department of Transportation.

14 CFR part 252 sets forth rules for the smoking of tobacco aboard aircraft. The rule bans smoking when the ventilation system is not fully functioning, when a plane is on the ground, and on all aircraft of less than 30 seats. It also bans smoking of cigars and pipes. In addition, the rule provides that any confirmed passenger who checks in on time is entitled to a seat in the no-smoking section. The air carrier must expand the no-smoking section to accommodate all qualified passengers, and must make special provision to ensure that if a no-smoking section is placed between the smoking sections, the nonsmoking passengers are not "unreasonably burdened." The regulations are focused on the rights of nonsmokers; there is no right to a smoking seat. Airlines are free to ban smoking if they choose. At least one U.S. air carrier currently bans smoking on all of its flights in North America.

14 CFR parts 121 and 135, which are administered by the Federal Aviation Administration (the FAA), require that each airplane having more than 19 passenger seats be equipped with "no smoking" signs that must be turned on for each takeoff and landing, and at any other time deemed necessary by the pilot in command. In response to requirements contained in the 1987 DOT Appropriations Act (Pub. L. 100-202), the rules also currently provide that the signs be turned on during domestic flight segments that are scheduled in the *Official Airline Guide* to be 2 hours or less in duration. No one may smoke when these signs are turned on. Both the statute and the regulation banning smoking on flights of 2 hours or less expire on April 24, 1990. Another FAA provision requires that passengers be briefed on the smoking regulations before takeoff. Finally, the FAA regulation requires that no person smoke in a lavatory and that air carriers post placards notifying passengers that tampering with smoke detectors is prohibited by Federal law. Violations of the various Office of the Secretary (OST) and FAA regulations may result in civil and criminal penalties.

Recent Statutory Changes

Public Law 101-164, which was signed by President Bush on November 21, 1989, amended section 404(d)(1)(A) of the Federal Aviation Act of 1958 (49 U.S.C. 1374(d)(1)(A)), so that it reads as follows:

> * * * it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight segment in air transportation or intrastate air transportation, which is—
>
> (i) between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska and Hawaii), or between any point in any one of the aforesaid jurisdictions (other than Alaska and Hawaii) and any point in any other of such jurisdictions;
>
> (ii) within the State of Alaska or within the State of Hawaii; or
>
> (iii) scheduled for 6 hours or less in duration, and between any point described in clause (i) and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

The statute provided that the amendment would take effect upon the commencement of the 96th day following the date of enactment of this Act.

The Interim Final Rule

This interim final rule incorporates the statutory ban into the regulations so that the public can have one clear statement of the provisions governing smoking aboard aircraft. The statutory ban is self-executing and goes into effect whether or not the OST and FAA regulations are updated. As provided in Public Law 101-164, it shall be unlawful to smoke aboard the specified flight

segments in the United States as of February 25, 1990.

Over the years, we have received a number of questions concerning part 252. In addition to incorporating the statutory change, we are also making other minor editorial changes in this document for clarity. The changes are discussed in detail in the following section. We invite public comment on both the editorial changes and our implementation of the statutory ban.

Section by Section Analysis

The interim final rule adds a new § 252.1, *Purpose,* in order to describe the statutory ban on smoking on specified U.S. flight segments that is mandated by Congress and the continuance of the other protections that are set out in the rule. In addition, the statement that there is no right to smoke is transferred from the current *Applicability* section to this new section for clarity.

Section 252.3, *Applicability,* for the first time adds a reference to foreign carriers. Public Law 101–164 (and the accompanying legislative history) make it clear that the statute bans smoking on U.S. flight segments by foreign air carriers. For example, if a foreign air carrier flies from London to New York to Chicago, it must ban smoking on the New York to Chicago flight segment. Foreign air carriers may, however, continue to set whatever smoking rules they wish on inbound or outbound flight segments to or from the U.S.

Section 252.5, *Smoking ban on U.S. segments,* is a new section that implements Public Law 101–164. It states that U.S. and foreign direct air carriers shall prohibit smoking on each nonstop flight segment between locations specified by Congress. It applies to flights that are listed in the *Official Airline Guide,* or that are part of a longer flight that is listed in that publication, since the statutory ban applies only to scheduled service. U.S. and foreign air carriers may allow smoking on U.S. flight segments to or from Hawaii or Alaska (or between Hawaii and Alaska), if the flight segment is scheduled in the current *Official Airline Guide* to be more than 6 hours in duration.

This rule makes several minor, clarifying changes to § 252.7, *No-smoking sections.* For clarity, we are adding a phrase to indicate that this section only applies to flights not covered by the domestic-segment ban. In paragraph (b), we are adding a statement that the requirement to accommodate all non-smokers applies to each class of service; a carrier cannot comply with part 252 by giving a coach non-smoking seat to a first class passenger. Over the years, we have received a number of questions on this point and believe that this addition will provide clarification of what the rule has always required. We have also made a number of minor editorial corrections. First, we are changing the term "smoking area" to "smoking section" in paragraph (1) so that it will be consistent with the rest of this provision. Second, we are deleting the phrase "and charter service" from paragraph (1) because it is confusing. As noted in § 252.3, the entire rule, with the exception of § 252.5, applies to charters.

Section 252.11, *Aircraft on the ground,* continues an existing provision but is now set off in its own provision for clarity. A note concerning air taxis is added in § 252.13, *Small Aircraft,* for clarity. In addition, we request comments on changing the applicability of this section from "less than 30 seats" to "30 or fewer seats." The FAA currently defines air carriers as having "30 or fewer seats" or "more than 30 seats." We believe that this change would have no practical impact on air carriers and would eliminate the current anomaly between this OST rule and the FAA definitions concerning air carriers.

Section 252.17, *Enforcement,* draws a distinction between U.S. air carriers' obligations concerning no-smoking sections on flight segments not covered by the total ban and all carriers' obligations concerning the U.S. flight segment ban. In addition, the rule removes a redundant phrase ("the banning of smoking") because the section already notes that "smoking is not permitted."

A new section, § 252.19, *Single-entity charters,* is also added to codify a blanket waiver issued in 1982 (Order 82–1–106, January 25, 1982). A single-entity charter is defined in § 207.1 as "a charter, the cost of which is borne by the charterer and not the individual passenger, directly or indirectly." Examples include where a school charters a plane for an athletic team or if a company charters a plane to take its employees to a business function. The provision provides that on single-entity charters, air carriers need not comply with the procedures of part 252 if such a request is made by the charterer, provided that each passenger on such a flight is given notice of the smoking procedures for the flight at the time he or she first makes arrangements to take the flight. The order noted that the waiver shall apply only to the extent passengers on single-entity charter flights have advance notice that the airline will not be assigning seats and that separate seating for nonsmokers may not be available.

The rule eliminates the current § 252.7, *Waivers,* because it is no longer necessary. Originally, the provision was added to encourage carriers to consider innovative ways to accommodate non-smoking passengers. With the new statutory ban, waivers will rarely be needed. To the extent they might be needed, however, the Federal Aviation Act, as amended, provides for exemptions from the regulation if it is in the public interest.

This rule also makes a number of other minor changes. An editorial note is added to part 252 to cross reference the FAA rules concerning passenger briefing on smoking and on "no smoking" lights or placards. Because the old rule applied only to U.S. airlines, it used the term "air carriers," which is defined in the Federal Aviation Act as U.S. air carriers. The new rule uses the terms "U.S. air carriers" and "foreign air carriers" to avoid confusion, particularly since some parts of the rule will only apply to U.S. carriers while other parts will apply to both U.S. and foreign air carriers. The rule modifies statements that "carriers shall adopt and enforce rules prohibiting smoking" to read "carriers shall prohibit smoking." The more direct language is simpler and is equally applicable to flights in U.S. and foreign air transportation. Finally, the rule uses only odd-number section numbers in order to leave room for further regulatory additions.

Regulatory Impacts

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

This proposed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves a subject of substantial public interest. A full regulatory evaluation is not required, however, because the overall economic impact of the proposal is expected to be minimal. In addition, the rulemaking will merely implement statutory requirements, and the Office of the

Secretary has no discretion to minimize whatever minor economic impact may result from the statutory change.

I certify that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. Similarly, it would have no impact on the environment. The rule would not impose any reporting or paperwork requirements under the Paperwork Reduction Act. In accordance with Executive Order 12612, I have determined that this rule does not have sufficient federalism implications to warrant preparation of a Federal Assessment. Because the statutory ban goes into effect on February 25, 1990, I find good cause to make this interim final rule effective in less than 30 days.

List of Subjects in 14 CFR Part 252

Air Carriers, Foreign Air Carriers, Consumer protection, Smoking.

Accordingly, the Office of the Secretary of the U.S. Department of Transportation is revising 14 CFR part 252 so that it reads as follows:

PART 252—SMOKING ABOARD AIRCRAFT

Sec.

252.1 Purpose.
252.3 Applicability.
252.5 Smoking ban on U.S. segments.
252.7 No-smoking sections.
252.9 Ventilation systems.
252.11 Aircraft on the ground.
252.13 Small aircraft.
252.15 Cigars and pipes.
252.17 Enforcement.
252.19 Single-entity charters.

Authority: Secs. 204, 404, 407 and 416 of Pub. L. 85–726 and 101–164, as amended, 72 Stat. 743, 760, 766, 771, 49 U.S.C. 1324, 1374, 1377, 1386.

Cross Reference: For smoking rules of the Federal Aviation Administration, see 14 CFR 121.317(c), 121.571(a)(l)(i), 129.29, 135.117(a)(1), and 135.127(a).

§ 252.1 Purpose.

This part implements a ban on smoking of tobacco on flight segments between most U.S. points as required by section 335 of Public Law 101–164. It also continues smoking restrictions on other flights. Nothing in this regulation shall be deemed to require U.S. or foreign air carriers to permit the smoking of tobacco aboard aircraft.

§ 252.3 Applicability.

Section 252.5 applies to scheduled-service flight segments operated by U.S. and foreign direct air carriers between the U.S. points specified in that section. The remainder of this part applies to all operations of U.S. direct air carriers, except on-demand services of air taxi operators

§ 252.5 Smoking ban on U.S. segments.

U.S. and foreign direct air carriers shall prohibit smoking in the passenger cabin and lavatories on any nonstop flight segment that is listed in the current *Official Airline Guide,* or is part of a longer flight that is listed in that publication, and that is:

(a) Between any two points within an area composed of Puerto Rico, the U.S. Virgin Island, the District of Columbia, and the 48 contiguous states of the United States;

(b) Between any two points within the State of Alaska or within the State of Hawaii; or

(c) Scheduled in the current *Official Airline Guide* to be six hours or less in duration and that is:

(1) Between any point in paragraph (a) of this section and any point in Alaska or Hawaii; or

(2) Between any point in Alaska and any point in Hawaii.

§ 252.7 No-smoking sections.

(a) Except as provided in paragraph (b) of this section, U.S. air carriers operating nonstop flight segments to which §§ 252.5 and 252.13 do not apply shall provide, at a minimum:

(1) A no-smoking section for each class of service;

(2) A sufficient number of seats in each no-smoking section to accommodate all persons in that class of service who wish to be seated there;

(3) Expansion of no-smoking sections to meet passenger demand; and

(4) Special provisions to ensure that if a no-smoking section is placed between smoking sections, the nonsmoking passengers are not unreasonably burdened.

(b) On flights for which passengers may make confirmed reservations and on which seats are assigned before boarding, a U.S. air carrier need not provide a seat in a no-smoking section to a passenger who has not met the carrier's requirements as to time and method of obtaining a seat on the flight, or who does not have a confirmed reservation. If a seat is available in the established no-smoking section, however, a U.S. air carrier shall seat there any enplaning passenger who so requests, regardless of boarding time or reservation status.

§ 252.9 Ventilation systems.

U.S. air carriers shall prohibit smoking whenever the ventilation system is not fully functioning. Fully functioning for this purpose means operating so as to provide the level and quality of ventilation specified and designed by the manufacturer for the number of persons currently in the passenger compartment.

§ 252.11 Aircraft on the ground.

U.S. air carriers shall prohibit smoking whenever the aircraft is on the ground.

§ 252.13 Small aircraft.

U.S. air carriers shall prohibit smoking on aircraft designed to have a passenger capacity of less than 30 seats.

Note.—This section, like the rest of this part, does not apply to on-demand services of air taxi operators; see § 252.3 in this part.

§ 252.15 Cigars and pipes.

U.S. air carriers shall prohibit the smoking of cigars and pipes aboard aircraft.

§ 252.17 Enforcement

U.S. and foreign air carriers shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in the passenger cabin or lavatories on no-smoking flight segments. U.S. air carriers shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in no-smoking sections or at other times or places where smoking is prohibited by this part, and to maintain required separation of passengers in smoking and no-smoking areas.

§ 252.19 Single-entity charters.

On single-entity charters operated pursuant to §§ 207.50 or 208.300 of this title, U.S. air carriers need not comply with the procedures of part 252 if such a request is made by the charterer, provided that each passenger on such flights is given notice of the smoking procedures for the flight at the time he or she first makes arrangements to take the flight.

Issued February 7, 1990, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 90–3300 Filed 2–8–90; 10:07 am]

BILLING CODE 4910–62–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 5 and 31

Fees for Applications for Contract Market Designation, Audits of Leverage Transaction Merchants, and Leverage Commodity Registration

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs of processing applications for contract market designation (17 CFR part 5, appendix B), audits of leverage transaction merchants (17 CFR part 31, appendix B) and leverage commodity registration (17 CFR part 31, appendix A). The following fee schedule for FY 1990 reflects the costs to the Commission of providing those services during fiscal years 1987, 1988 and 1989. Accordingly, the fee for applications for contract market designation will be reduced to $14,500 from $16,000 and the fee for leverage commodity registration will remain at $4,500. The Commission has authorized the National Futures Association to perform audits of leverage transaction merchants and will therefore no longer charge a fee for that service.

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Special Assistant to the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone number 202–254–6090.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts its fees accordingly. In connection with its most recent review, the Commission has determined that fees for contract market designations should be adjusted.

I. Computation of Fees

In accordance with the Futures Trading Act of 1982 (7 U.S.C. 16a) the Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of processing applications for contract market designation, performing audits of leverage transaction merchants and registering leverage commodities, the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on each project under the BAC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A–76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1987—101%; FY 1988—100%; FY 1989—100%.

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1987, FY 1988 and FY 1989 are averaged. This results in a calculation of the average annual cost for each project over the three-year period, which is the basis for the fee.

II. Applications for Contract Market Designation

A review of actual costs of processing applications for contract market designation for FY 1987, FY 1988 and FY 1989 revealed that the average costs for review of an application for contract market designation over the three year period was $14,962. Therefore, the fee for applications for contract market designation will be reduced to $14,500, in accordance with the Commission's regulations (17 CFR part 5, appendix B).

III. Audits of Leverage Transaction Merchants

Effective January 1, 1990, the Commission transferred the responsibility for performing audits of leverage transaction merchants to the National Futures Association. 54 FR 41133 (October 5, 1989). Therefore, the Commission will no longer charge a fee for this service.

IV. Leverage Commodity Registration

No new applications for leverage commodity registration were received by the Commission in FY 1989. Accordingly, the Commission will maintain the present fee of $4,500 for leverage commodity registration.

V. Regulatory Flexibility Act

The fees implemented in this release affect contract markets (also referred to as "exchanges") and leverage transaction merchants. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Leverage transaction merchants also are not considered "small entities" by the Commission because of the minimum financial requirements for registration. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or leverage transaction merchants. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on February 7, 1990, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–3344 Filed 2–12–90; 8:45 am]

BILLING CODE 6351–01–M

[1] For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19]

Project Cost Limits Under Blanket Certificates; Order

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(e)(1), the Director of the Office of Pipeline and Producer Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Martin A. Burless, Jr., Chief, Pipeline Certificates and Projects Branch, Division of Pipeline Certificates, OPPR (202) 357–9030.

Order of the Director, OPPR

Issued: February 7, 1990.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC § 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits

specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant § 375.307(e)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline and Producer Regulation. The cost limits for calendar years 1982 through 1990, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

Accordingly, 18 CFR part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), unless otherwise noted.

§ 157.208 [Amended]

2. Table I in § 157.208(d) is revised to read as follows:

TABLE I

Year	Limit	
	Auto. Proj. Cost Limit (Col. 1)	Prior Notice Proj. Cost Limit (Col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000

§ 157.215 [Amended]

3. Table II in § 157.215(a) is revised to read as follows:

Table II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000

Table II—Continued

Year	Limit
1988	3,400,000
1989	3,500,000
1990	3,600,000

[FR Doc. 90–3308 Filed 2–12–90; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 90-13]

Addition of Australia, Colombia, Madagascar and the People's Republic of China to List of Countries Included as Parties to UNESCO Convention on Cultural Property

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule amends part 12 of the Customs Regulations, (19 CFR part 12), buy adding Australia, Colombia, Madagascar and the People's Republic of China to the list of countries identified as signatories to the UNESCO Convention on Cultural Property. As a party to the Convention, the United States actively participates in efforts to eliminate illicit traffic in cultural property, that is, items of importance for archaeology, prehistory, history, literature, art or science. Countries become eligible for inclusion in the list by ratifying, accepting, or acceding to the 1970 UNESCO Convention. Upon receipt of notification that a country has so ratified, accepted, or acceded to the Convention, Customs accords that country all rights and privileges under the Convention, and adds its name to the list of signatory countries in order to provide the public notification of this fact.

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Samuel Orandle, Commercial Rulings Division (202–566–5765); Operational Aspects: Pamela Wenner, Trade Operations (202–535–4931).

SUPPLEMENTARY INFORMATION:

Background

Beginning in the late 1960's, the U.S. began participating, with other nations, in negotiations sponsored by the United Nations Educational, Scientific and Cultural Organization (UNESCO), addressing the problem of illicit international trade in cultural property. Cultural property was defined as property which, on religious or secular grounds, is specifically designated by a country as being important in the archaeology, prehistory, history, literature, art, or science of that country.

These negotiations resulted in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (19 U.S.C. 2601–2613).

In order to effectively implement the provisions of this Act, the Customs Service amended part 12, title 19, Code of Federal Regulations, by adding a new center head, "Cultural Property", and §§ 12.102–12.104i. Section 12.104b listed the State Parties to the Convention, and indicated that it would be amended from time to time as additional States either became parties to the Convention or withdrew from it.

Additional State Parties

The Cultural Heritage Division of UNESCO in Paris has advised that several additional countries have become state parties to the 1970 UNESCO Convention on Cultural Property. Accordingly, we are amending the regulations to reflect these additional countries, and the date of entry into force for each of those State Parties.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the majority of the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(c)(1).

The Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined

in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs inspection and duties, Imports, Exports.

Accordingly, part 12 of the Customs Regulations (19 CFR part 12) is amended as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

§§ 12.104–12.104i also issued under 19 U.S.C 2612.

§ 12.104b [Amended]

2. Section 12.104b, Customs Regulations (19 CFR 12.104b), is amended by inserting, in appropriate alphabetical order, the following State Parties, and the date of entry into force for each State Party:

State party	Date of entry into force
Australia	Jan. 30, 1990.
Colombia	Aug. 25, 1988.
Madagascar	Sept. 21, 1989.
People's Republic of China	Feb. 28, 1990.

Carol B. Hallett,

Commissioner of Customs.

Approved: January 26, 1990.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 90-3351 Filed 2-12-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 89-21]

RIN 2125-AC37

Truck Size and Weight; Dromedary Decks and Plates

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising the dromedary box provisions of the final rule on truck size and weight adopted on June 5, 1984 [49 FR 23302]. That rule preempted inconsistent State laws and regulations to allow truck tractors equipped with dromedary boxes having the capacity to carry cargo that were in legal use on December 1, 1982, to continue to operate on the National Network throughout their useful lives. Proof of such legal operation on December 1, 1982 rests upon the operator of the equipment.

Disagreements have developed about the meaning of the term "dromedary box," and thus about the scope of the rule. FHWA is therefore adopting a clarifying amendment that changes the relevant language to "dromedary box, deck or plate."

EFFECTIVE DATE: March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Office of Motor Carrier Information Managment and Analysis, (202–366–4029) or Mr. Charles Medalen, Office of the Chief Counsel (202–366–1354), Federal Highway Administration, 400 Seventh Steet, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. 4:15 p.m., ET, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97–424, 96 Stat. 2097, required the States to permit the operation of specified equipment on the National Network (NN). The purpose of the legislation was to increase motor carrier productivity, but its definition of a truck tractor as a "noncargo carrying power unit" inadvertently denied to operators of tractors already equipped with dromedary boxes the opportunity to use the larger semitrailers authorized by the statute. However, the STAA also authorized the Secretary of Transportation to establish rules to accommodate specialized equipment on the NN. The FHWA, therefore, concluded that it was consistent with the intent of Congress to allow truck tractors with dromedary boxes in lawful operation on December 1, 1982 (the cut-off date for other grandfather rights created by the STAA), to operate on the NN for the remainder of their useful lives. A final rule requiring the States to permit the operation of such vehicles was adopted on June 5, 1984 (49 FR 23302) and codified at 23 CFR 658.13(f).

Truck tractors equipped with functionally-similar, cargo-carrying dromedary decks or plates were not the subject of any of the comments to the docket for this rulemaking and were, therefore, not addressed in the June 5, 1984, final rule. We subsequently learned that a small group of carriers were using dromedary decks or plates to carry cargo, particularly crated household goods, before December 1, 1982. Some States refused to recognize decks or plates as genuine dromedaries since they were not "boxes." To address this inequity, the FHWA published a notice of proposed rulemaking (NPRM) on August 24, 1989 (54 FR 35199) which proposed to add dromedary decks and plates to the dromedary box provision.

FHWA received one hundred forty-one comments in response to the NPRM. The respondents fell into the following general categories: Individual drivers or owner-operators—134, State agencies—4, Trucking companies—1, Businesses—1, and Transportation consultants—1. One hundred five of the 134 comments received from individual drivers or owner-operators were virtually identical.

Comments Submitted

The NPRM solicited comments on two questions. (1) Should dromedary decks and plates (some equipped with plywood ends and tops and side curtains) be subject to the same regulations as dromedary boxes in 23 CFR 658.13(f)? (2) Are there other types of dromedary equipment that should be considered in this proceeding?

In response to the first question, all 134 individual commenters, the trucking company, and the business favored the proposed amendment. However, all 105 of the drivers and owner-operators who submitted form letters, as well as 27 of the remaining 29 commenters in this group, advocated eliminating the grandfather provision in order to allow dromedary boxes, decks, or plates to be added to truck tractors put into use after 1982. They noted that this step would increase productivity and give dromedary users the same privileges as automobile transporters, who can carry cargo on the truck tractor. The transportation consultant requested an extension of the comment period to prepare an argument for eliminating the grandfather data from the regulation. The 105 commenters who submitted form letters favored a rule that would impose no overall length limit on dromedary combinations while allowing them to operate with 3-foot cargo overhangs in front and 4-foot overhangs in the rear.

The California Highway Patrol (CHP) and the Iowa Department of Transportation (IDOT) stated that they did not object to adding dromedary decks and plates to the dromedary box provision. However, the CHP felt that a definition of "dromedary" should be

added to part 658 to aid in uniform application of the provision, and IDOT was concerned that, in the absense of a definition, truck-trailer combinations might attempt to qualify under the rule. IDOT also expressed opposition to elimination of the grandfather provision. The CHP also said that dromedary boxes should be sufficiently sturdy to contain the contents and that dromedary decks and plates should have adequate tiedowns.

The Kansas Department of Transportation (KDOT) opposed the use of dromedaries because, in its view, they make truck tractor-semitrailer combinations dangerously long. KDOT also noted that the extra capacity might lead to violations of gross weight or axle weight limitations.

The California Department of Transportation (Caltrans) argued that "there is no basis for this proposed rulemaking." It criticized the statement in the preamble to the NPRM that the STAA "inadvertently denied to operators of tractors already equipped with dromedary boxes the opportunity to use the larger semitrailers authorized by the statute" [54 FR 35199]. Caltrans argued that because the STAA defines a tractor as a "noncargo carrying power unit," dromedary tractors are subject to State regulation. It charged that FHWA was inconsistent in treating auto transporters as specialized equipment, while dealing with dromedaries as vehicles which were " 'inadvertently' overlooked in the June 5, 1984 Federal Register." Caltrans asserted that "[i]f FHWA * * * requires allowance of a 48-foot trailer on droms, this sets a new base vehicle for definition of the National Network. Under those circumstances Caltrans must consider the drom as the new 'design vehicle' with more severe operating requirements than the current STAA semi."

There were no comments on the second question.

Discussion of Comments

On September 14, 1983, FHWA issued a proposed rule to implement the STAA (48 FR 41276). In discussing dromedaries, we said the following: "Pursuant to the provisions of Section 411(d) of the STAA [which authorize the Secretary of Transportation to establish rules to accommodate specialized equipment], FHWA intends to grandfather for their useful life [dromedary] units which were in actual and lawful operation" on a certain date (48 FR at 41279). We proposed to codify the dromedary box provision in the specialized equipment section (49 CFR 658.13(D)(2), 48 FR at 41285). Although ultimately codified elsewhere (Section 658.13(d)(2), 48 FR at 41285). Although ultimately codified elsewhere (Section 658.13(f), 49 FR 23302, 23317, June 5, 1984), the dromedary rule, like the auto transporter rule, rests upon FHWA's authority to designate specialized equipment and preempts conflicting State laws. Therefore, operators of truck tractors that were equipped, and lawfully operating, with dromedary boxes on December 1, 1982, are authorized to pull a 48-foot, or grandfathered length, semitrailer on the National Network (NN). This is not "a new base vehicle for definition of the National Network," as Caltrans asserted. Such vehicles have been legal everywhere on the NN since 1984, provided they satisfy the grandfather requirement. In fact, regular tractors as long as dromedary tractors may also be operating on the NN, since Section 411(b) of the STAA forbids a State to establish a length limit on a truck tractor (49 U.S.C. App. 2311(b)).

As for the suggestions of the CHP and IDOT that the term "dromedary" be defined, we believe the amendment adopted in this rulemaking adequately addresses any confusion that may have existed. State officials should have no difficulty distinguishing between straight trucks and genuine dromedaries. The CHP also commented on cargo tiedowns and the structural strength of dromedaries. The Federal Motor Carrier Safety Regulations (FMCSRs) include rules for securing cargo (49 CFR Part 390, Subpart I (1988)) which apply to truck tractors as well as trailers. A dromedary that has been damaged or shows signs of structural failure may be a danger to the motoring public. State officials should handle that problem as they would a damaged or disabled trailer or semitrailer. We do not believe additional regulation is needed.

KDOT argued that the dromedary rule promotes excessively long and heavy vehicles. These vehicles have been operating under the current regulation since 1984, and we are not aware of any safety problems attributable to the dromedary configuration. As for weight violations, there is no evidence that the incentive to overload is greater for dromedary operators than for other motor carriers.

Individual drivers and owner-operators were nearly unanimous in requesting elimination of the grandfather date. Such an amendment is well beyond the scope of this rulemaking and would in any case fundamentally change the purpose of the dromedary rule. The rule FHWA adopted in 1984 was a transitional measure to give operators of dromedary tractors time to depreciate equipment in use in 1982 while adjusting to the new operational environment created by the STAA. Dropping the grandfather date would make dromedaries universally available, a result never intended by FHWA. The transportation consultant's request for an extension of the comment period was denied since further discussion of the grandfather date is irrelevant to this proceeding.

The form letters submitted to the docket included a proposed regulation that would impose no overall length limit on dromedary combinations while allowing them to operate with 3-foot cargo overhangs to the front and 4-foot overhangs to the rear. As explained above, the dromedary rule serves a limited purpose. FHWA does not intend to expand the rule in any fundamental way or to make it analogous to the auto and boat transporter regulations. However, no amendment is needed to enable dromedary tractors to pull 48-foot, or grandfathered length, semitrailers without an overall length limit. States may not impose an overall length limit on tractor semitrailer combinations on the NN, whether the tractor is equipped with a dromedary or not.

Discussion of Rule

Nearly all of the comments to the docket favored adoption of the proposed rule, or at least did not object to it, although many commenters also requested additional benefits for operators of dromedaries. While we are not acting upon comments beyond the scope of this rulemaking, we have decided to adopt the amendment as proposed. The inclusion of the phrase "deck, or plate" merely clarifies the scope of the 1984 rule. There is no functional difference between dromedary boxes and dromedary decks or plates. We do not believe operators of tractors equipped with decks or plates should be treated differently from those using boxes. However, all dromedary equipment will remain subject to the December 1, 1982, grandfather date. In addition to adding "deck, or plate" to the rule, minor grammatical corrections, not intended to change the meaning, were also made.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. As discussed above, the

rule merely clarifies the current regulation on dromedary boxes. A small number of vehicles, whose productivity will be increased, will be affected by this rule.

Regulatory Impact

The FHWA has considered the impact of this rule and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the DOT. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the June 5, 1984, final rule [49 FR 23302], clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this rulemaking do not differ in substance from those fully considered in the original impact statement accompanying the June 5 final rule. The Regulatory Impact Analysis prepared for that rule is available for inspection in the Headquarters Office of FHWA, Public Docket Room 4232, 400 Seventh Street, SW., Washington, DC 20590.

Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

A regulatory information number (RIN) 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 in 23 CFR Part 658

Grants program—transportation, Highways and roads, Motor carrier size and weight.

Issued on February 5, 1990.

T. D. Larson,

Administrator.

In consideration of the foregoing, the FHWA hereby amends chapter 1 of title 23, Code of Federal Regulations, part 658, as set forth below.

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat 2097 (23 U.S.C. 127; 49 U.S.C. App. 2311, 2312, 2313, and 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48

2. Section 658.13 is amended by revising paragraph (f) to read as follows:

§ 658.13 Length.

* * * * *

(f) A truck tractor containing a dromedary box, deck, or plate in legal operation on December 1, 1982, shall be permitted to continue to operate, notwithstanding its cargo carrying capacity, throughout its useful life. Proof of such legal operation on December 1, 1982, shall rest upon the operator of the equipment.

[FR Doc. 90–3299 Filed 2–12–90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8284]

RIN 1545–AJ42

Arbitrage Restrictions on Qualified Student Loan Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations relating to arbitrage restrictions on qualified student loan bonds (T.D. 8284) which was published in the **Federal Register** on Thursday, January 25, 1990 (55 FR 2511).

FOR FURTHER INFORMATION CONTACT: George F. Delduke, 202–566–4545 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1990, Treasury decision (8284) relating to arbitrage restrictions on qualified student loan bonds was published in the **Federal Register** (55 FR 2511). The amendments provided rules under section 148 of the Internal Revenue Code changed by the Tax Reform Act of 1984 and the Tax Reform Act of 1986.

Need for Correction

As published, the Treasury decision contains errors which may prove to be misleading and are in need of correction.

Correction of Publication

Paragraph 1. On page 2512, in the preamble, under the caption "Public Comments", in column 1, lines 12 through 15, the language "include (as under § 1.103–13(c)(5)(iv)) the underwriter's spread and the cost of purchasing, carrying, and selling or redeeming student loans." is removed and the language "include (as under § 1.103–13(c)(5)(iv) (A) and (B)) the underwriter's spread," is added in its place.

Par. 2. On page 2512, column 2, line 5 of § 1.148(b)(ii), the language "meaning of § 1.103–13(c)(5)(iv)) that are" is removed and the language "meaning of § 1.103–13(c)(5)(iv) (A) and (B)) that are" is added in its place.

Dale D. Goode,

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

[FR Doc. 90–3281 Filed 2–12–90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–004G]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This notice amends appendix B of OSHA's lead standard, 29 CFR 1910.1025, by removing a sentence that is no longer applicable.

DATES: This amendment is effective February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N–3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION: When OSHA issued its standard for occupational exposure to lead, 29 CFR 1910.1025, a requirement in the medical surveillance provisions for "multiple physician review" was temporarily delayed by the Court of Appeals. A notification of the delay of the multiple physician review mechanism was included in appendix B to the standard.

This notice removes the sentence in appendix B, that refers to the temporary delay of the multiple physician review provision of the lead standard. This sentence is no longer applicable because of a decision by the U.S. Court of Appeals for the District of Columbia Circuit on August 15, 1980 (*United Steelworkers of America* v. *Marshall*, 647 F.2d 1189 (D.C. Cir. 1980), cert. denied, 453 U.S. 913 (1981), which upheld the validity of OSHA's lead standard, including multiple physician review. Accordingly, the sentence about temporary delay is being deleted from appendix B. For a more complete discussion of the lead standard and litigation history see 54 FR 29142 (July 11, 1989).

Under 5 U.S.C. 553, OSHA finds that there is good cause for making this amendment effective upon publication in the **Federal Register**. The amendment is minor and reflects the status of the lead standard since the above-mentioned *United Steelworkers* decision.

Authority

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for the Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to sections 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), 29 CFR part 1911, and 33 U.S.C. 941.

List of Subjects in 29 CFR Part 1910

Lead, Occupational safety and health.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR part 1911.

Section 1910.1000 Tables Z–1, Z–2, Z–3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z–1.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

§ 1910.1025 [Amended]

2. In § 1910.1025, in appendix B, in "VIII. Medical Surveillance—Paragraph (J)," in the eighth paragraph, the seventh sentence, which reads "This multiple physician review mechanism, however, has been temporarily delayed by the Court of Appeals.", is deleted.

Signed at Washington, DC, this 6th day of February 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90–3400 Filed 2–12–90; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 98a

[DoD Directive 7050.6]

RIN 0790–AB31

Military Whistleblower Protection

AGENCY: Inspector General, DoD.

ACTION: Final rule.

SUMMARY: This part provides policy and implements the military whistleblower protection provisions contained in Pub. L. 100–456. It applies to all DoD Components and personnel and establishes responsibilities, authorities, and operating procedures to ensure that military members of the Armed Forces are protected from reprisal for making lawful communication with a member of Congress or an Inspector General in which the member makes a complaint or disclose information that the member reasonably believes evidence a violation of law or regulation; mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public safety. This part specifically provides for the reporting and investigating of reprisal allegations. It also provides for remedies when reprisal is found including disciplinary action against persons taking reprisal, and the correction of military records when appropriate.

EFFECTIVE DATE: November 20, 1989.

ADDRESSES: Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–2884.

FOR FURTHER INFORMATION CONTACT: Ms. M. Campbell, telephone (202) 697–6645.

SUPPLEMENTARY INFORMATION: On May 1, 1989, Office of the Inspector General, Department of Defense published a proposed rule in the **Federal Register** (54 FR 18547) with a comment period ending May 31, 1989.

List of Subjects in 32 CFR Part 98a

Armed forces, Fraud, Investigations.

Accordingly, title 32 of the Code of Federal Regulations, is amended to add part 98a as follows:

PART 98a—MILITARY WHISTLEBLOWER

Sec.

98a.1 Purpose.
98a.2 Applicability.
98a.3 Definitions.
98a.4 Policy.
98a.5 Responsibilities.
98a.6 Authority.
Appendix-Operating Procedures

Authority: 10 U.S.C. 1034, Pub. L. 100–456.

§ 98a.1 Purpose.

This part:

(a) Establishes policy and implements Public Law 100–456 to provide protection against reprisal for military members of the Armed Forces for making a lawful communication to a Member of Congress or an Inspector General (IG) in which the military member makes a complaint or discloses information that he or she reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public safety.

(b) Assigns responsibilities and delegates authorities for such protection and prescribes operating procedures (Appendix).

§ 98a.2 Applicability.

This part applies to all DoD personnel and to the Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), and the Defense Agencies, including nonappropriated fund activities (hereafter referred to collectively as "DoD Components").

§ 98a.3 Definitions.

Board for the Correction of Military Records (BCMR). Any board

empowered under 10 U.S.C. 1552 to recommend correction of military records to the Secretary of the Military Department concerned.

Communication. Any lawful communication to a Member of Congress or an IG.

Corrective Action. Any action deemed necessary to make the complainant whole; changes in Agency regulations or practices; administrative or disciplinary action against offending personnel; or referral to the U.S. Attorney General or court-martial convening authority of any evidence of criminal violation.

Inspector General (IG). An IG appointed under the "Inspector General Act of 1978" (Public Law 95–452, and an officer of the Armed Forces assigned or detailed under regulations of the Secretary concerned to serve as an IG at any command level in one of the Armed Forces.

Member of Congress. In addition to a Representative or Senator, includes any Delegate or Resident Commissioner to Congress.

Member of the Armed Forces. All Regular and Reserve component officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, Marine Corps, and the Coast Guard (when operating as part of the Navy) on active duty (AD), and Reserve component officers (commissioned and warrant) and enlisted members whether on AD, on inactive duty for training, or not in a training status. This definition includes professors and cadets of the Military Service academies and officers and enlisted members of the National Guard.

Personnel Action. Any action taken regarding a member of the Armed Forces that affects or has the potential to affect the military member's current position or his or her career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision concerning pay, benefits, awards, or training; and any other significant change in duties or responsibilities inconsistent with the military member's rank.

Reprisal. Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action against a military member for making or preparing to make a communication to a Member of Congress or an IG.

§ 98a.4 Policy.

It is DoD policy that:

(a) No person shall restrict a member of the Armed Forces from lawfully communicating with a Member of Congress or an IG.

(b) Members of the Armed Forces shall be free from reprisal for making or preparing to make lawful communications to Members of Congress and IGs.

(c) Any employee or member of the Armed Forces who has the authority to take, direct others to take, or recommend or approve any personnel action shall not, under such authority, take, withhold, threaten to take, or threaten to withhold a personnel action regarding any member of the Armed Forces in reprisal for making or preparing to make a lawful communication to a Member of Congress or an IG.

§ 98a.5 Responsibilities.

(a) The *Inspector General, Department of Defense* (IG, DoD), shall:

(1) Expeditiously initiate an investigation of any allegation submitted to the IG, DoD, under this part by a member of the Armed Forces that a personnel action has been taken (or threatened) in reprisal for making or preparing to make a lawful communication to a Member of Congress or an IG in which the military member makes a complaint or discloses information that the military member reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. The IG, DoD, may request the appropriate DoD Component IG to conduct the investigation. No investigation is required when such allegation is submitted more than 60 days after the military member became aware of the personnel action that is the subject of the allegation.

(2) Initiate a separate investigation of the information the military member believes evidences wrongdoing if such investigation has not already been initiated. No investigation is required if the information that the military member believes evidences wrongdoing relates to actions that took place during combat.

(3) Complete the investigation of the allegation of reprisal and issue a report within 90 days of the receipt of the allegation. If a determination is made that the report cannot be issued within 90 days of receipt of the allegation, notify the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) and the military member or former military member making the allegation of the reasons why the report will not be submitted within that time and when the report will be submitted.

(4) Prepare a report of the results of the investigation. The report shall include a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted.

(5) Submit a copy of the investigation report to the ASD(FM&P) and to the military member or former military member making the allegation not later than 30 days after the completion of the investigation. The copy of the report issued to the military member may exclude any information not otherwise available to him and/or her under 32 CFR part 285.

(6) At the request of a Board for the Correction of Military Records (BCMR), submit a copy of the investigative report to the Board.

(7) At the request of a BCMR, gather further evidence and issue a further report to the Board.

(8) After the final action in any allegation filed under this part, whenever possible, interview the person who made the allegation to determine the views of that person on the disposition of the matter.

(9) Review and determine the adequacy of any DoD Component IG investigation of allegations of reprisal for making or preparing to make a lawful communication to a Member of Congress or an IG conducted under P.L. 100–456 and at the request of the IG, DoD. If such inquiry is found inadequate, start an investigation to correct the inadequacies or ensure that the DoD Component corrects the inadequacies.

(b) The *Inspectors General (IGs) of DoD Components* shall:

(1) Upon receipt of a military member's allegation of reprisal for making or preparing to make a lawful communication to a Member of Congress or an IG, expeditiously investigate the allegation and notify the IG, DoD, of the initiation and the expected date of completion of such investigation. No investigation is required when such allegation is submitted more than 60 days after the military member became aware of the personnel action that is the subject of the allegation.

(2) Upon completion of an investigation into an allegation that a military member or former military member suffered reprisal, forward a copy of the investigative report to the Head of the DoD Component and the military member. The copy of the report issued to the military member may exclude any information not otherwise

available to him and/or her under 32 CFR 285.

(3) For those investigations done at the request of the IG, DoD, within 90 days of the receipt of the allegation, provide the IG, DoD, with an investigative report containing a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted.

(4) At the request of a BCMR, submit a copy of the investigative report to the Board.

(5) At the request of a BCMR, gather further evidence and issue a further report to the Board.

(c) The *Boards for the Correction of Military Records* (BCMRs) shall:

(1) Determine whether to resolve an application for the correction of records made by a member or former member of the Armed Forces who has filed a timely complaint with the IG, DoD, alleging a personnel action was taken in reprisal for making or preparing to make a lawful communication to a Member of Congress or an IG, in accordance with 10 U.S.C. 1552. This may include the receipt of oral argument, examining and cross-examining witnesses, taking depositions, and conducting an evidentiary hearing at the Board's discretion.

(2) Review the report of any investigation into the military member's allegation of reprisal conducted by the IG, DoD, or the IG of a DoD Component.

(3) As deemed necessary, request that the IG, DoD, or the IG of the DoD Component originally investigating the allegation gather further evidence.

(4) If the Board elects to hold an administrative hearing, the military member may be represented by a judge advocate (JA) if:

(i) The IG, DoD, report of investigation finds there is probable cause to believe that a personnel action was taken, withheld, or threatened in reprisal for the military member making or preparing to make a lawful communication to a Member of Congress or an IG.

(ii) The Judge Advocate General concerned determines that the case is unusually complex or otherwise requires JA assistance to ensure proper presentation of the legal issues in the case.

(iii) The military member is not represented by outside counsel chosen by the military member.

(5) If the Board elects to hold an administrative hearing, ensure that the military member may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence in an IG investigatory record, but not included in the report released to the member.

(6) If the Board determines that a personnel action was taken in reprisal for a military member or former military member making or preparing to make a lawful communication to a Member of Congress or an IG, the Board may forward its recommendation to the Secretary concerned for appropriate administrative or disciplinary action against the individual or individuals who committed the action.

(d) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD (FM&P)) shall:

(1) Review and process, under the standards and procedures in section 5. of Appendix of this part, requests from members or former members of the Armed Forces for review of final decisions of a Secretary of a Military Department on applications for correction of military records decided under this part.

(2) Notify the IG, DoD, of decisions made on requests for review of a final decision of a Secretary of a Military Department on an application for correction of military records submitted under this part.

(e) The *Secretaries of Military Departments,* or their designees, under 10 U.S.C. 1552, shall:

(1) Within 180 days of its receipt, issue a final decision on an application for the correction of military records from a military member or former military member alleging reprisal for making or preparing to make a lawful communication to Members of Congress or an IG. When the final decision does not grant the full relief requested by the military member, advise the member that within 90 days he and/or she may request the Secretary of Defense to reconsider the decision.

(2) When reprisal is found, take appropriate corrective action, including the correction of the records of the military member in accordance with 10 U.S.C. 1552 and 1553.

(3) Ensure that administrative or disciplinary action, if appropriate, is taken against individuals found to have taken reprisal against a military member for making or preparing to make a communication to a Member of Congress or an IG.

(4) Notify the IG, DoD, of a decision on an application for the correction of military records received from a military member or former military member alleging reprisal for making or preparing to make a lawful communication to a Member of Congress or an IG, and of any disciplinary action taken.

(f) The *DoD Components* shall:

(1) Based on an IG investigative report, take appropriate corrective action.

(2) Publicize the content of this part to ensure that military and other DoD personnel fully understand the scope and application of the part. The publicity should include the definition of "communication" (see § 98a.3) and the procedures for filing a complaint (Appendix to this part).

§ 98a.6 Authority.

(a) The Assistant Secretary of Defense (Force Management and Personnel) (ASD (FM&P)) is hereby delegated authority to:

(1) Have access to all research, reports, investigations, audits, reviews, documents, papers, or any other material necessary to carry out the responsibilities of § 98a.5(d).

(2) Request the Secretaries of the Military Departments to comment on and make available for review, if necessary, evidence considered by a BCMR in cases in which the Secretary is requested to reconsider the final decision of the Secretary concerned.

(3) Issue instructions to amplify or amend the procedures in section 5. of the Appendix to this part, as may be necessary, to implement the responsibilities of § 98a.5(d).

(b) The Secretary of Defense shall, upon receipt of a timely request from a military member or former military member in accordance with the Operating Procedures annexed to this Directive, make a decision to uphold or reverse the decision of a Secretary of a Military Department in an application for the correction of military records alleging reprisal for making or preparing to make a communication to a Member of Congress or an IG.

Appendix—Operating Procedures

1. Any member of the Armed Forces who reasonably believes a personnel action (including the withholding of an action) was taken or threatened in reprisal for making or preparing to make a lawful communication to a Member of Congress or an IG may file a complaint with the DoD Hotline under 32 CFR part 98. Such a complaint may be filed by telephone (800) 424–9098, (202) 693–5080, or Autovon 223–5080 or by letter addressed to Department of Defense Hotline, The Pentagon, Washington, DC 20301–1900.

2. Complaints should include the name, address, and telephone number of the complainant; the name and location of the activity where the alleged violation occurred; the personnel action taken that is alleged to be motivated by reprisal; the DoD Component; and the individual(s) believed to be responsible for the personnel action, when the alleged reprisal occurred, and what

information suggests or evidences a connection between the communication and retaliatory action. The complaint should also include a description of the communication to a Member of Congress or an IG including a copy of any written communication and a brief summary of any oral communication showing date of communication, subject matter, and the name of the person or officer to whom the communication was made.

3. The IG, DoD, may refer complaints to the appropriate DoD Component for investigation. DoD Components conducting investigations shall provide the IG, DoD, with an investigative report containing a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted. The report shall be issued within 90 days of the receipt of the allegation.

4. A member of the Armed Forces who is alleging reprisal for making or preparing to make a lawful communication to a Member of Congress or an IG may file an application for the correction of military records with the appropriate BCMR using the procedures established by the Board.

5. A member or former member of the Armed Forces who has filed an application for the correction on military records under section 4., above, alleging reprisal for making or preparing to make a lawful communication to a Member of Congress or an IG, may request review by the Secretary of Defense of the final decision of the Secretary of a Military Department concerned on such application. The following procedures apply to requests for review by the Secretary of Defense:

a. *Content of Request.* The request for review must be in writing and include the military member's name, address, telephone number, copies of the application to the BCMR and the final decision of the Secretary concerned on such application, and a statement of the specific reasons why the military member is not satisfied with the decision of the Secretary concerned. Requests based on factual allegations or evidence not previously presented to the cognizant BCMR shall not be considered. New allegations or evidence must be submitted directly to the Board for reconsideration under procedures established by the Board.

b. *Standard of Review.* The Secretary of Defense shall review the allegations submitted by the military member or former military member requesting review and other records deemed appropriate and necessary by the Secretary of Defense for deciding, in his or her sole discretion, whether to uphold or reverse the decision of the Secretary concerned. The decision of the Secretary of Defense is final.

c. *Time Limits.* The request for review of the final decision of the Secretary concerned must be filed within 90 days of receipt by the military member of former military member.

d. *Address.* Requests for review by the Secretary of Defense must be submitted to:

Assistant Secretary of Defense (Force Management and Personnel) (Attention: Director, Legislation and Legal Policy, ODASD (MM&PP)), Room 3E764, The Pentagon, Washington, DC 20301–4000

Dated: February 7, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–3313 Filed 2–12–90; 8:45 am]

BILLING CODE 3810–01–M

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32 CFR Part 224

[DoD Directive 5105.18]

DoD Committee Management Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This part prescribes policies and responsibilities regarding the establishment, operation, and termination of operational interagency, international, intra-component, and joint DoD committees. This part complements DoD Directive 5105.4, which governs policies and procedures for managing Federal Advisory Committees.

EFFECTIVE DATE: January 18, 1990.

ADDRESSES: Office of the Director for Administration and Management, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. H. Gioia, telephone (202) 695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 224

Advisory committees.

Accordingly, 32 CFR part 224 is revised to read as follows:

PART 224—DoD COMMITTEE MANAGEMENT PROGRAM

Sec.

224.1 Purpose.
224.2 Applicability.
224.3 Definitions.
224.4 Policy.
224.5 Responsibilities.

Authority: 10 U.S.C. 137.

§ 224.1 Purpose.

This part:

(a) Revises 32 CFR part 224 and updates the policy, procedures, and responsibilities for the Department of Defense (DoD) Committee Management Program.

(b) Excludes Federal advisory committees from coverage under this part. They shall be established and administered in accordance with the provisions of DoD Directive 5105.4.[1]

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

§ 224.2 Applicability.

This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS) and Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

§ 224.3 Definitions.

(a) *Heads of OSD Organizations.* The Under Secretaries of Defense; Assistant Secretaries of Defense; Director of Defense Research and Engineering; DoD Comptroller; DoD General Counsel; DoD Inspector General; Director, Operational Test and Evaluation; Assistants to the Secretary of Defense; and, the Director, Administration and Management.

(b) *Committee.* A body of persons with a collective responsibility appointed to consider, investigate, advise, take action, and report on specific problems or subject areas. The prime characteristics of committees are their corporate and collective responsibility, and their permanent or ongoing (versus ad hoc) nature. The term "committee" applies to any committee, board, commission, council, conference, panel, task force, or other similar group or any subcommittee or sub-group thereof that is composed of officials of the U.S. or a foreign government, and is established by the direction of the DoD Component Head.

(1) *Operational Committee.* One whose primary functions and responsibilities are operational, rather than advisory.

(2) *Interagency Committee.* Any committee composed wholly of representatives from two or more U.S. Government agencies.

(3) *International Committee.* Any committee established by formal agreement between the United States and the government of another country or countries or by an international body in which the United States participates.

(4) *Intra-Component Committee.* Any committee composed wholly of representatives from one DoD Component.

(5) *Joint DoD Committee.* Any committee composed wholly of DoD representatives from two or more DoD Components.

§ 224.4 Policy.

It is DoD policy that:

(a) Committees shall be established only when their functions cannot be accomplished within the existing organizational structure.

(b) Committees shall be established to perform such tasks as fact-finding,

research, evaluation, studies, and reviews.

(c) Committees may be established to perform operational, administrative, or management functions.

(d) When establishing committees, consideration shall be given to ensuring necessity, economy and efficiency of operation, and execution within resource constraints.

(e) Committees shall be disestablished when the purpose for which they were established has been served.

(f) Nothing contained in this part shall be construed to limit or restrict the free exchange of information, advice, and ideas between representatives of DoD Components or other Federal Agencies through ad hoc occasional meetings or other means.

§ 224.5 Responsibilities.

(a) The *Director of Administration and Management, Office of the Secretary of Defense (DA&M, OSD), or his designee,* shall:

(1) Provide policy guidance on the DoD Committee Management Program to DoD Components.

(2) Represent the Department of Defense and maintain liaison with the Congress, General Accounting Office (GAO), Office of Management and Budget (OMB), and other Government agencies, as required, on matters involving the DoD Committee Management Program.

(3) Obtain such information, analyses, reports, and assistance from DoD Components as is required to respond to inquiries from the Congress, GAO, OMB, and other Government agencies, consistent with the provisions of DoD Directive 7750.5.[2]

(4) Serve as DoD Committee Management Officer with responsibility to monitor compliance with the provisions of this part.

(b) The *Heads of DoD Components, or their designees,* shall:

(1) Ensure that the committees under their cognizance are established and administered consistent with the provisions of this part.

(2) Develop operating procedures and provide supplemental guidance as required for the efficient operation of the committees under their cognizance.

(3) Administer their committee management programs, including: the approval or disapproval of proposals for the establishment, revision, continuation, or termination of operational, interagency, international, intra-Component, and joint DoD committees under their cognizance; the development of pertinent operating documents such as charters, membership lists, terms of reference, memoranda of understanding, and international agreements; and, the maintenance and disposition of reports, records, and minutes of meetings.

(4) Approve or disapprove proposals for participation by their Components on committees chaired by another DoD Component, Government agency, or foreign government.

(5) Maintain information about the program, objectives, and activities of each committee established within their Component and provide such information, when requested, to the DA&M.

(6) Conduct periodic reviews of existing committees, and evaluate recommendations for their revision, consolidation, or termination.

(7) Designate a Committee Management Officer to assist in the performance of the above responsibilities.

Dated: February 7, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-3314 Filed 2-12-90; 8:45 am]

BILLING CODE 3810-01-M

[2] See § 224.1(b).

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32 CFR Part 384

[DoD Directive 5124.2]

Assistant Secretary of Defense (Force Management and Personnel)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part is issued to reflect current organizational arrangements within the Office of the Secretary of Defense. Responsibility for Drug Enforcement Policy and Support has been transferred from the Assistant Secretary of Defense (Force Management and Personnel) to the newly established office of the DoD Coordinator for Drug Enforcement Policy and Support (32 CFR Part 396). In addition, editorial changes and updates were incorporated into the revised 32 CFR Part 384.

EFFECTIVE DATE: January 26, 1990.

ADDRESSES: Office of the Director for Administration and Management, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, telephone 202-697-0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 384

Organization and functions (Government agencies).

Accordingly, 32 CFR part 384 is revised to read as follows:

PART 384—ASSISTANT SECRETARY OF DEFENSE (FORCE MANAGEMENT AND PERSONNEL)

Sec.

384.1 Purpose.
384.2 Definitions.
384.3 Responsibilities.
384.4 Functions.
384.5 Relationships
384.6 Authorities.

Appendix A to Part 384—Delegations of Authority.

Authority: 10 U.S.C. 136.

§ 384.1 Purpose.

This part establishes the position of Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), with responsibilities, functions, relationships, and authorities, as prescribed herein.

§ 384.2 Definitions.

DoD components. The Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff (CJCS); the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense (OIG, DoD); the Defense Agencies, and the DoD Field Activities.

Reserve components. Refers collectively to the Army National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and Coast Guard Reserve. The term "National Guard and Reserve" is synonymous with the term "Reserve components."

Total force. The totality of organizations, units, and manpower that comprise the Defense Department's resources for meeting the national security strategy. It includes the manpower resources comprising DoD Active and Reserve military personnel, military retirees, DoD civilian personnel, contractor staff, and host-nation support personnel.

§ 384.3 Responsibilities.

The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)), as the Principal Staff Assistant and advisor to the Secretary of Defense for Total Force management, military and civilian manpower, military and civilian personnel and training matters, military and civilian family matters, and manpower requirements for weapons support shall:

(a) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DoD plans and programs.

(b) Develop systems and standards for the administration and management of approved DoD plans and programs.

(c) Develop and promulgate plans, programs, actions, and taskings to ensure adherence to DoD policies and national security objectives, including military manpower and personnel mobilization preparedness objectives and Total Force planning objectives, and to ensure that military and civilian manpower and personnel programs and systems efficiently and effectively support operational requirements and manpower readiness and sustainability of the Total Force.

(d) Review and evaluate plans and programs to ensure adherence to approved policies and standards.

(e) Participate in planning, programming, and budgeting activities related to ASD(FM&P) functions.

(f) Promote coordination, cooperation and mutual understanding within the Department of Defense and between the Department of Defense and other Federal Agencies, State and local governments, and the civilian community.

(g) Serve on boards, committees, and other groups pertaining to assigned functional areas and represent the Secretary of Defense on manpower and personnel matters outside the Department.

(h) Set manpower requirements determination policies, procedures, and standards.

(i) When acting as the functional proponent or participating when a system has a major impact on FM&P functional responsibilities, review and evaluate the requirements for major automated information systems in coordination with other members of the Major Automated Information System Review Council (MAISRC).

(j) Serve as the chair of the Conventional Forces Readiness Committee (CFRC) in accordance with DoD Directive 5120.50.[1]

§ 384.4 Functions.

The ASD(FM&P) shall carry out the responsibilities described in § 384.3, for the following functional areas for the Total Force:

(a) Total Force structure analysis as related to quantitative and qualitative manpower requirements, utilization, readiness, and support.

(b) The allocation of the Total Force structure among DoD Components and between the Active and Reserve components within the Military Departments.

(c) Development of civilian and military manpower, personnel, training, education, and safety programs and data bases to meet peacetime readiness, wartime sustainability, and system acquisition requirements of the Department of Defense.

(d) Military and civilian manpower mobilization planning guidance and coordination of manpower mobilization plans and their execution.

(e) Military and civilian manpower requirements analysis and related resource distribution in support of peacetime operations and mobilization needs.

(f) Administration and implementation of controls on military manpower strengths.

(g) Recruiting, advertising, processing, and retaining military personnel of the Armed Forces of the United States. This includes oversight of enlistment standards, personnel selection and job classification procedures, drug and alcohol testing of applicants and members under provisions of the New Entrant Drug and Alcohol Testing Program, and draft calls in the event of return to conscription.

(h) Compensation, retired pay, per diem, travel, and transportation allowances for military and civilian personnel.

(i) Taxation of military personnel compensation and benefits.

(j) Personnel management systems.

(k) Labor-management relations.

(l) Nonappropriated fund instrumentalities.

(m) Commercial affairs, commissaries, and post exchanges.

(n) Morale, discipline, and welfare.

(o) Personnel requirements and utilization.

(p) Community services for DoD personnel and their dependents.

(q) Equal opportunity, and Dod contractor compliance with equal employment opportunity requirements in Government contracts.

(r) Career development.

(s) DoD focal point for the provisions of DoD resources to other agencies for law enforcement and refugee control.

(t) Review and evaluation of the requirements of Defense Acquisition Board weapons programs and proposed weapons systems for manpower, personnel, training, and safety implications, and the implications of weapon system maintainability for qualitative and quantitative manpower requirements.

(u) Accident prevention, occupational health, and safety.

(v) Economic adjustment.

(w) Dependents education.

(x) Manpower, personnel, and training research and development.

(y) Employee motivation policies and programs, including efficiency reviews, to improve overall workforce productivity.

(z) Development of programs, unitiatives, and tools to enhance productivity of DoD operations, including the Productivity-Enhancing Capital Investment Program.

(aa) Family support policy and programs.

(bb) Defense Explosives Safety Program.

(cc) Equal opportunity management training.

(dd) Inter-Agency and intergovernmental activities stemming from the above functions, and special projects or external requests that create a demand for DoD manpower resources.

(ee) Productivity improvement initiatives.

(ff) Development of programs and procedures for detecting drug/alcohol dependency within the DoD Dependent Schools system and during pre-accession/new-entrant screening for military personnel.

§ 384.5 Relationships.

(a) In the performance of assigned functions, the ASD(FM&P) shall:

(1) Coordinate and exchange information with other officials in the Department of Defense exercising collateral or related functions.

(2) Use existing facilities and services of the Department of Defense or other Federal Agencies, whenever practicable, to avoid duplication and to achieve maximum efficiency and economy.

(3) Exercise direction, authority, and control over the Department of Defense Dependents Schools; Armed Forces Chaplains Board; Armed Forces Tax Council; DoD Corrections Council; DoD Explosives Safety Board; Defense Equal Opportunity Council; Defense Equal Opportunity Management Institute; Defense Advisory Committee on Women in the Services; Defense Advisory Committee on Military Personnel Testing; Per Diem, Transportation and Allowance Committee; Office of Economic Adjustment; the activities of the President's Economic Adjustment Committee; and the Joint Service Manpower and Training Research and Development Committee.

(4) Provide policy guidance, goal-setting, and management supervision for the Defense Manpower Data Center, DoD Office of the Actuary, DoD Wage Fixing Authority, NAF Personnel Office,

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

DoD Centralized Referral Activity, U.S. Military Entrance Processing Command, Joint Recruiting Advertising Program, Defense Productivity Program Office, Defense Training and Performance Data Center, and Defense Activity for Non-Traditional Education Support.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(FM&P) on all matters related to the functions in § 384.4.

§ 384.6 Authorities.

The ASD(FM&P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M,[2], that implement policies approved by the Secretary of Defense in the functions assigned to the ASD(FM&P). Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands shall be issued through the chairman, Joint chiefs of Staff (CJCS).

(b) Establish and distribute civilian manpower authorizations of the DoD Components and review and approve military and civilian manpower authorization changes during program execution.

(c) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5,[3] as necessary, in carrying out assigned functions.

(d) Communicate directly with the heads of DoD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated with the CJCS.

(e) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(FM&P) is assigned primary DoD cognizance.

(f) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(g) Exercise authorities contained in appendix A to this part.

Appendix A to Part 384—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, Directives, and Instructions, the ASD(FM&P), or in the absence of the ASD(FM&P), the person acting for the ASD(FM&P) is hereby delegated authority to:

1. Serve for the Secretary of Defense as Chairman of the President's Economic Adjustment Committee in accordance with Executive Order (E.O.) 12049, March 27, 1978.

2. Exercise the authorities of the Secretary of Defense to assist in meeting the cost of providing increased municipal services and facilities to the residents of communities located near major new DoD installations (DoD Instruction 3030.2 [4], May 24, 1983).

3. Establish advisory groups for oversight of morale, welfare, and recreation activities (DoD Directive 1015.1 [5], August 19, 1981).

4. Monitor vending facilities for the blind on Federal property and suspend or terminate a permit to operate a vending facility (DoD Directive 1125.3 [6], April 7, 1978).

5. Review annually deviations from Armed Services Exchange Regulations granted by the Military Department Secretaries (DoD Directive 1330.9 [7], December 15, 1986).

6. Act for the Secretary of Defense as the Secretary's representative on the Consumer Affairs Council (DoD Directive 5030.56 [8], August 12, 1982).

7. Extend to other Military Departments the action taken by an installation commander to deny or revoke the privileges of a company and its agents to conduct commercial solicitation activities, after consultation with the Department concerned (DoD Directive 1344.7 [9], February 13, 1986).

8. Act as the official liaison between the Department of Defense and the American Red Cross (DoD Directive 1330.5 [10], August 16, 1969).

9. Act as liaison between the Department of Defense and the Federal Bureau of Investigation and other government and civil law enforcement agencies on absentee and deserter policy matters (DoD Directive 1325.2 [11], August 20, 1979).

10. Act as the official DoD liaison on policy matters concerning relationships between the Department of Defense and the United Service Organizations as prescribed in DoD Directive 1330.12 [12], November 9, 1987.

11. Suspend the forward movement of DoD noncombatants to any danger area abroad (DoD Directive 5100.51 [13], October 11, 1966).

12. Act for the Secretary of Defense to approve or disapprove all recommendations for the Defense Superior Service Medal other than those for personnel assigned to the JCS (DoD 1348.33–M [14], August 26, 1985).

13. Determine acts or operations that warrant award of the Humanitarian Service Medal (DoD 1348.33–M, August 26, 1985).

14. Award the Joint Meritorious Unit Award for joint activities that report to a Principal Staff Assistant, to the Secretary of Defense, or for which the Secretary of the Military Department concerned has been designated as executive agent (DoD 1348.33–M, August 26, 1985).

15. Act for the Secretary of Defense to approve or disapprove recommendations for the Secretary of Defense Award for Productivity Excellence.

16. Establish educator positions; develop, adopt, and adjust compensation schedules; and develop regulatory guidance regarding orientation of educators employed in the DoD Dependents Schools System (DoD Directive 1400.13 [15], July 8, 1976).

17. Prescribe initial clothing allowances for enlisted personnel (DoD Instruction 1338.18 [16], July 29, 1985).

18. Approve uniform burial allowance (DoD Directive 1344.8 [17], September 25, 1978).

19. Act for the Secretary of Defense in conducting a review of the military compensation system pursuant to Secretary of Defense Memorandum, August 18, 1982.

20. Act for the Secretary of Defense in the administration of the Defense Advisory Committee on Women in the Services (DoD Directive 5120.14 [18], April 3, 1987).

21. Determine that recruiting personnel are being barred from the premises of institutions of higher learning as prescribed in Public Law 92–436, Department of Defense Authorization Act, 1973, September 26, 1972 (DoD Directive 1322.13 [19], May 9, 1984).

22. Issue DoD issuances pertaining to the management of commissioned officers that are required to be issued by the Secretary of Defense under those sections of Title 10, United States Code, added by Public Law 96–513, Defense Officer Personnel Management Act, December 12, 1980, as amended by P.L. 97–22, Defense Officer Personnel Management Act Technical Corrections Act, July 10, 1981, except when such delegation is specifically prohibited (Secretary of Defense Delegation Memorandum, March 5, 1982).

23. Resolve all conflicting issues among the Discharge Review Boards (DRBs) of the Military Departments, ensure uniformity in rights afforded applicants in the discharge review process, modify enclosures or supplements to governing Directives, and maintain the index of DRB decisions (DoD Directive 1332.28 [20], August 11, 1982).

24. Conduct military base reuse studies and make grants, conclude cooperative agreements, and supplement funds made available under other Federal programs to assist State and local governments in plannng community adjustment pursuant to Title 10, United States Code, Section 2391 (DoD Instruction 3030.2, May 24, 1983).

25. Coordinate appropriate DoD Federal development programs and activities in the United States with State and local governments and Federal Agencies, and encourage State and local governments and Federal Agencies to coordinate their programs and activities with the Department of Defense (DoD Directive 4165.61 [21], August 9, 1983).

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[2] See footnote 1 to § 384.3(j).

[3] *Ibid.*

[4] *Ibid.*

[5] *Ibid.*

[6] *Ibid.*

[7] *Ibid.*

[8] *Ibid.*

[9] *Ibid.*

[10] *Ibid.*

[11] *Ibid.*

[12] *Ibid.*

[13] *Ibid.*

[14] *Ibid.*

[15] *Ibid.*

[16] *Ibid.*

[17] *Ibid.*

[18] *Ibid.*

[19] *Ibid.*

[20] *Ibid.*

[21] *Ibid.*

26. Act for the Secretary of Defense as the designated safety and occupational health official prescribed in E.O. 12196, February 26, 1980; DoD Directive 1000.3 [22], March 29, 1979; and DoD Directive 6055.9 [23], November 25, 1983, in carrying out the provisions of Public Law 91–596, Occupational Safety and Health Act of 1970, December 29, 1970 (Title 29, United States Code, Section 651 *et seq.*), and in promulgating explosive safety standards pursuant to Title 10, United States Code, Section 172.

The ASD(FM&P) may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or prohibited by law or regulation.

Dated: February 7, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–3315 Filed 2–12–90; 8:45 am]

BILLING CODE 3810–01–M

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32 CFR Part 396

[DoD Directive 5149.1]

DoD Coordinator for Drug Enforcement Policy and Support

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: Under the provisions of title 10, United States Code, the DoD Coordinator for Drug Enforcement Policy and Support is established as a separate organization within the Office of the Secretary of Defense. The DoD Drug Coordinator acts as the principal staff assistant and advisor to the Secretary of Defense for drug control policy, requirements, priorities, systems, resourses, and programs.

EFFECTIVE DATES: January 26, 1990.

ADDRESSES: Office of the Director for Administration and Management, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, telephone 202–697–0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 396

Drugs, Organization and functions (Government agencies).

Accordingly, title 32 of the Code of Federal Regulations, subchapter R, is amended to add part 396 to read as follows:

PART 396—DoD COORDINATOR FOR DRUG ENFORCEMENT POLICY AND SUPPORT

Sec.

396.1 Purpose.
396.2 Applicability.
396.3 Responsibilities and Functions.
396.4 Relationships.
396.5 Authorities.

Authority: 10 U.S.C. 113.

§ 396.1 Purpose.

This part establishes the position of DoD coordinator for Drug Enforcement Policy and Support, with responsibilities, functions, relationships, and authorities, as prescribed herein.

§ 396.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff (CJCS); the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense (OIG, DoD); the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

§ 396.3 Responsibilities and functions.

The *DoD Coordinator for Drug Enforcement Policy and Support*, as the principal staff assistant and advisor to the Secretary of Defense for drug control policy, requirements, priorities, systems, resources, and programs, shall:

(a) Develop policies, conduct analysis, provide advice, make recommendations, and issue guidance on DoD drug contol plans and programs.

(b) Develop systems and standards for the administration and management of approved DoD drug control plans and programs.

(c) Promulgate plans, programs, actions, and taskings pertaining to the DoD drug control program consistent with the National Drug Control Strategy and DoD drug control policies and objectives.

(d) Review, evaluate, coordinate, and monitor DoD drug control plans and programs to ensure adherence to approved policies and standards.

(e) Promote coordination, cooperation, and mutual understanding within the Department of Defense, within Congress, and between the Department of Defense and other Federal Agencies, State and local governments, and the civilian community.

(f) Serve on boards, committees, and other groups pertaining to assigned functional areas and represent the Secretary of Defense on Drug control matters outside the Department.

(g) Serve as the DoD point of contact for the Office of the Director of National Drug Control Policy and other Federal and State agencies as appropriate.

(h) Participate in, and oversee and monitor planning, programming, and budgeting for the DoD counter-drug mission in coordination with OSD officials; the CJCS; and appropriate DoD Components.

(i) Coordinate and monitor DoD support of civilian drug-law enforcement.

(j) Coordinate and monitor interagency detection and monitoring of maritime and aerial transit of illegal drugs into the United States.

(k) Coordinate and monitor, in conjunction with the Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)), National Guard support to State drug-law enforcement operations, and to the Department of Defense, as required.

(l) Coordinate and monitor, in conjunction with the Assistant Secretary of Defense (Command, Control, Communications and Intelligence) (ASD(C3I)), DoD intelligence and communications support of drug-law enforcement operations.

(m) Execute such other responsibilities as the Secretary of Defense may prescribe.

§ 396.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the DoD Coordinator for Drug Enforcement Policy and Support shall:

(1) Coordinate and exchange information with other officials in the Department of Defense exercising collateral or related functions.

(2) Coordinate and exchange information with other appropriate Federal and State agencies having related functions.

(3) Use existing facilities and services of the Department of Defense or other Federal Agencies, whenever practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the DoD Coordinator for Drug Enforcement Policy and Support on all matters related to the functions in § 396.3.

§ 396.5 Authorities.

The DoD Coordinator for Drug Enforcement Policy and Support is hereby delegated authority to:

(a) Issue DoD Instructions, DoD Publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M that implement policies approved by the Secretary of Defense in the functions assigned to the DoD Coordinator for Drug Enforcement Policy and Support. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to Unified and Specified

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[22] See footnote 1 to § 384.3(j).

[23] *Ibid.*

Commands shall be issued through the CJCS.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5, as necessary, in carrying out assigned functions.

(c) Communicate directly with the heads of DoD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated with, and transmitted through, the CJCS.

(d) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

Dated: February 7, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-3316 Filed 2-12-90; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3676-8]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final amendment to the final rule.

SUMMARY: Today's notice amends EPA's August 12, 1988 rule (40 CFR part 82) implementing the Montreal Protocol on Substances That Deplete the Ozone Layer, a treaty to limit the production and consumption of chlorofluorocarbons and halons. This amendment conforms EPA's rule with one of the agreements reached by the Parties to the Montreal Protocol concerning the implementation of the Protocol. This amendment implements the Parties' interpretation of "industrial rationalization", a term in the control article of the Protocol that defines the conditions under which a transfer of production can occur between Parties. According to the Parties' interpretation, a Party can increase its production of the chemicals restricted under the Montreal Protocol by specified amounts only if there is a documented, corresponding decrease in production by another Party. Production may also increase if it is exported to Parties operating under Article 5 of the Protocol. Due to unresolved data issues, today's notice continues to reserve appendix E under which Article 5 countries would be listed. This Notice does update the current list of Parties to the Protocol (appendix B).

The Agency proposed this amendment on July 12, 1989 (54 FR 29353). At that time EPA suspended § 82.11 of 40 CFR part 82 that allowed the United States limited increases in its production of controlled substances for exports to Parties.

EPA also proposed three other amendments on July 12, 1989. These amendments proposed expanding the definition of exports to include used and recycled controlled substances, granting of additional allowances to any person who uses controlled substances as a feedstock for other substances, and a new recordkeeping requirement mandating procedures to maintain records of spills or other releases. The Agency will promulgate these amendments at a later date after it has reviewed more carefully the comments submitted during the public comment period.

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: David Lee, Regulatory and Analysis Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M St., SW., Washington, DC 20460, (202) 475-7497.

SUPPLEMENTARY INFORMATION: On August 12, 1989, EPA promulgated a final rule to limit the production and consumption of certain clorofluorocarbons (CFCs) and brominated compounds (halons) to reduce the risks of stratospheric ozone depletion. The rule requires a near-term freeze at 1986 levels of production and consumption (defined as production plus imports minus exports) of CFC-11, -12, -113, -114, and -115 based on their relative ozone depletion weights, followed by a phased reduction to 80 percent and 50 percent of 1986 levels beginning in mid-1993 and mid-1998, respectively. It also limits production and consumption of Halon 1211, 1301, and 2402 to 1986 levels beginning in 1992. Under specified circumstances, limited increases in production (but not consumption) above these levels are permitted.

This rule was promulgated under section 157(b) of the Clean Air Act and constituted the United States' implementation of the Montreal Protocol, which the United States ratified on April 21, 1988. The final rule's control measures took effect when the Protocol entered into force on January 1, 1989.

The rule implements the Protocol's requirements to control production and consumption of the CFCs and halons specified above by allocating production and consumption allowances to firms that produced and imported these chemicals in 1986, based on their 1986 levels of these activities.

Today the Agency amends several sections of this final rule. These amendments are based on agreements concerning implementation of the Montreal Protocol reached by nations that are Parties to the Protocol at their first meeting in Helsinki, Finland, during the week of May 1, 1989.

Today's amendments concern the Parties' interpretation of Article 2 of the Montreal Protocol. Article 2 allows increases in production of both groups of controlled substances by as much as 10 percent, and 15 percent for CFCs after July 1, 1998, if that production is used to satisfy "the basic domestic needs" of developing countries or "for the purposes of industrial rationalization." Industrial rationalization is defined by the Protocol as "the transfer of all or a portion of the calculated level of production from one party to another, for the purposes of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures."

In its final rule, EPA interpreted the term "industrial rationalization" to mean trade in controlled substances between Parties. The Agency believed that the trading provisions of the Protocol created a "bubble" of controlled substance production. If one Party increased its production by 10 or 15 percent, it would have to export that production to other Parties or decrease its imports from Parties in order to comply with its consumption limits. The Party that imported the increased production would, in turn, have to decrease its own production, or export it to another Party. Since, under the Montreal Protocol, Parties' consumption limits are held constant while their production may rise somewhat, any increase in production by one Party would have to be offset by a decrease in production by another Party or Parties. Therefore, the Agency believed that exporting to Protocol Parties was tantamount to a transfer of production, and would meet conditions of industrial rationalization. Consequently, EPA promulgated a final rule that allowed companies to increase production up to the 10 and 15 percent limits specified in the Protocol if the exports were made to Parties.

At the Helsinki meeting, the Parties determined that the term "industrial rationalization" means a documented transfer of production rights, requiring a Party desiring to increase its production

"for the purposes of industrial rationalization" to obtain the agreement of another Party to decrease its production by the same amount. To comply with the Parties' interpretation of industrial rationalization, and to ensure internationally consistent implementation of the terms of the Montreal Protocol, EPA is amending its final rule to require any person seeking to increase its production for the purposes of industrial rationalization to obtain and document the agreement of another Party to offset that increase.

At the same time, this amendment modifies § 82.11 to allow companies to increase their production up to the 10 or 15 percent limit to satisfy the basic domestic needs of countries operating under Article 5 of the Protocol. Under Article 5 of the Protocol, Parties that are developing countries and whose annual calculated level of consumption of controlled substances is less than 0.3 kilograms per capita *on the date of entry into force for it* are entitled to postpone their compliance with the control measures set forth in paragraphs 1 through 4 of Article 2 by 10 years after the date specified in those paragraphs. According to the Protocol, no developing country Party has submitted data on its consumption of controlled substances as of the date the Protocol entered into force for it (i.e., January 1, 1989 or later), as such information is not required. Indeed, many Parties, including most developing country Parties, have not yet complied with Article 7 of the Protocol that requires that countries report their levels of production and consumption of controlled substances in 1986 within three months of becoming Parties. As a result, there is little or no basis for determining whether any developing country Party consumed controlled substances at an annual calculated level of less than 0.3 kilograms per capita on the date the Protocol entered into force for it, and thus whether any developing country Party may avail itself of the special treatment afforded by Article 5.

The Secretariat has decided that under these circumstances, it cannot make and will not make a determination of which Parties should be considered to be operating under Article 5 until it submits data demonstrating that its consumption of controlled substances as of the date the Protocol entered into force for it was less than 0.3 kilograms per capita. The Secretariat explained that a different approach to identification of Article 5 Parties would risk allowing higher production and consumption of controlled substances than the Protocol would otherwise allow, or make an incorrect assumption as to a Party's desire to operate under Article 5, or both. The Secretariat has requested this data from all Parties that wish to be considered Article 5 countries so that the purpose of Article 5 can be realized to the fullest extent possible.

The United States does not wish to issue a list of likely Article 5 countries at this time. Industry action based on such a list may risk the U.S. compliance with the Montreal Protocol. Instead the United States will continue to work with UNEP to obtain the necessary data from Article 5 country Parties to determine their status under the Protocol.

In its proposal, EPA listed countries believed to be Article 5 countries as of July 1, 1989. However, this proposed list was erroneously based on data obtained from UNEP. In today's Notice, the Agency can only continue to reserve this appendix until a determination of the Article 5 countries can be made based on the relevant data.

Comments on the Proposed Amendment

During its public comment period, EPA received comments concerning this amendment from only two companies (Du Pont and Allied-Signal), both chemical producers. Allied-Signal's comments primarily addressed increases in production for exports to Article 5 countries while Du Pont's concerned the conditions of "industrial rationalization".

Allied-Signal requested that EPA publish a list of nonsignatory countries whose per capita consumption of controlled substances is less than 0.3 kg per year, so that producing companies could target their efforts to encourage such countries to join the Montreal Protocol. Although the Agency agrees that the requested list would serve a useful purpose, the Agency is unable to publish a list of all developing countries whose per capita consumption of controlled substances is less than 0.3 kilograms at this time. Such information is difficult to obtain and must be verified by UNEP. As mentioned, UNEP has not obtained data from any country concerning their per capita consumption of controlled substances, and cannot make a determination of which would qualify as an Article 5 country.

Allied-Signal also recommended that EPA allow companies to increase their production for exports to any developing country that meets the criterion of Article 5 and once it has ratified the Protocol. The Agency notes, however, that Article 16 of the Montreal Protocol (Entry Into Force) states that after the Protocol's entry into force, "any State or regional economic integration organization shall become a Party to [the Protocol] on the ninetieth day following the deposit of its instruments of ratification, acceptance, approval or accession." The Protocol also specifies that production may be increased to supply the "basic domestic needs of *Parties* operating under Article 5" (emphasis added). Since a country is not a Party to the Protocol until 90 days after it deposits its instrument of ratification, EPA cannot grant additional production allowances for exports that occur in the 90-day period between the date of a country ratification and the date on which the country becomes a Party.

In another comment, Allied-Signal and Du Pont requested EPA to grant additional production allowance for exports to Article 5 countries that occurred after the first control period began (July 1, 1989) but prior to promulgation of this amendment. EPA agrees that firms that have exported to Article 5 Parties during this control period should be permitted to increase production under the terms of the Protocol. However, as explained above, EPA cannot identify Article 5 Parties at this time. Once Article 5 countries have been identified and listed in appendix E, EPA will consider all past exports to Article 5 Parties as requests to increase production under the limits stipulated in Article 2 of the Protocol.

Du Pont expressed concern that requests for increases in production for both the purposes of industrial rationalization and for exports to Article 5 countries were limited by the same cap of 10 or 15 percent. Du Pont argued that increases in the production for the industrial rationalization should be limited to one production cap, if at all, and that increases in production for the purposes of exports to Article 5 countries should be limited by another 10 or 15 percent cap. Du Pont argued that since the industrial rationalization conditions were intended to maximize economic efficiency while exports to Article 5 countries were intended to assist developing countries, two separate goals, separate limits should apply. However, the Agency must strictly adhere to the terms of Article 2 of the Montreal Protocol. The Montreal Protocol states in paragraphs 2, 3 and 4 of Article 2 that production may exceed the specified level by no more than 10 [or 15] percent based on the 1986 level. Such "increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties." The language of the Protocol thus clearly applies a single cap on production

increases for both purposes, and it is the accepted consensus of the Parties that total increased production for a Party can never exceed its baseline production by more than 10 to 15 percent.

Du Pont also expressed concern that, as proposed, the amendment required a document from a diplomatic representative for a trade of production rights both to and from another country. The company suggested that such a document should be required only if the United States is increasing its production through a trade, and that EPA does not need such a document to approve a decrease in production when a company trades away its production rights. In response, the Agency agrees that such documentation should only be required when the United States accepts production rights from another country. Acknowledgment that the trading country intends to decrease its production is important for compliance purposes to prove to Parties that the United States could not exceed its production limits in accordance with the Protocol. However, when a company chooses to trade production rights to another country. The United States does not need to know if the recipient country increases its production. It is only important that the United States decrease its production. EPA can readily monitor that company's reduction in production through quarterly production reports and plant inspections. For this reason, the Agency has eliminated the proposed requirement that the domestic company obtain a document from the recipient country's U.S. embassy agreeing to accept the increase in production.

For trades of production allowances to other countries, Du Pont argued that a document from the trading country's embassy in the United States, as required by the proposed amendment, may not be readily obtained. Du Pont believed that the embassy may be unfamiliar with this requirement and its related environmental issues. Under such conditions, the embassy may be slow in producing the necessary document. The company believed that other organizations more knowledgeable of the Montreal Protocol are more appropriate to provide the needed documentation requested by the regulation. EPA disagrees with this suggested change. The Protocol is a treaty negotiated by the Parties. As an international treaty, the Montreal Protocol falls within the purview of that country's diplomatic corp. Foreign embassies in the United States are the appropriate entities for this documentation since they represent the Parties within the United States.

In the July 12 notice, the Agency requested comments on whether there is a need to consider, when reviewing a transfer of production rights to another Party, other factors such as the transfer's potential impact on the domestic economy, trade balances and the environment. EPA was concerned that during this phase-down period of controlled substances, the quickly changing market for these chemicals may pose disadvantages to local economies as plants are closed, and will adversely affect user groups that may become more dependent on foreign imports. One French firm, ATOCHEM, Groups Elf Aquitaine, recently purchased two of the domestic producers, Racon and Pennwalt. The French parent company could desire that its American companies transfer their production to France, and then use the increased production for exports to the United States. Such a transaction would affect employment in those areas where the closed plants were located and disadvantage domestic user industries dependent on those supplies.

The Agency received comments from Du Pont on this issue. Du Pont argued that EPA should not consider the economy or trade implications in approving rationalization agreements. Such action would add unnecessary complications to the approval process. The company believed that the economic and trade effects would be minimal since the rationalization agreements are capped at 10 or 15 percent of a Party's production allowances.

The United States Department of Commerce, the United States Trade Representative and the Department of State commented that the government should review these other factors when reviewing a trade of production rights to another country. Comments cited the potential for such trades to impact adversely local employment due to plant closing, and domestic user groups due to increased dependency on foreign imports. The EPA believes, under some circumstances, it is important to consider these factors. Therefore, the Agency will reserve the right to include these factors in its review of requests to transfer production to other Parties. EPA will consult with the United States Trade Representative, the Department of Commerce and the State Department in consideration of these factors.

Final Amendment

Today EPA modifies two sections of the final regulation. The Agency amends §82.9(c) under which a person may obtain authorization to convert potential production allowances to actual production allowances or reduce his available production allowances to the extent he provides a documented transfer of production. To document a transfer from a Party, a person must obtain and submit to EPA a written statement from the Party's embassy in the United States that the Party agrees to reduce its production by the calculated level of the production to be transferred. The Agency has eliminated the proposed requirement that a person must obtain a written statement from the Party's embassy in the United States acknowledging that the Party has agreed to receive any transfer of production rights. For transfers to a Party for the purposes of industrial rationalization, the Agency will review the transfer request and approve the transfer provided that the company has sufficient allowances to trade. EPA may, in consultation with the United States Trade Representative, the Department of Commerce, and the State Department, consider in its review of the transfer request possible adverse economic, trade or environmental effects. All transfer requests must contain the name and address of the person submitting the request and his contact, the name and address of the Party involved in the transfer and its contacts, the amount of allowable authorization to convert requested or production transferred, and the control periods to which the transfer applies.

In addition, the Agency amends § 82.11 to state that authorizations to convert potential production allowances will also be granted upon proof of exports to Parties operating under Article 5 of the Protocol.

The Agency also updates appendix B "Parties to the Montreal Protocol.

Additional Information

1. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

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

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

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

EPA determined that its August 12, 1988 final rule to protect stratospheric ozone met with the definition of a major rule, and therefore prepared a regulatory impact analysis (RIA). Since these amendments do not impose any significant burdens as defined by E.O. 12291, the RIA prepared for the final rule fulfills the executive order's requirement for these proposals.

2. Paperwork Reduction Act

Changes to the information requirements as amended in today's notice have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information Collection Request document has been prepared by EPA (ICR No. 1432.03) and a copy may be obtained by writing Clara Levesque, Information Policy Branch; EPA; 401 M St. SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2468.

Public reporting burden for this collection of information is estimated to increase an average of 3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060–0170), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

3. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of the agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). EPA prepared an initial RFA in support of its final rule, and no additional RFA need be prepared for these amendments.

List of Subjects in 40 CFR Part 82

Stratospheric ozone.

Dated: February 1, 1990.

William K. Reilly,

Administrator.

PART 82—PROTECTION OF STRATOSPHERIC OZONE

For reasons set forth in the preamble, the Agency proposes to amend 40 CFR part 82 as follows:

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7157(b).

2. Section 82.9 is amended by revising paragraph (c) to read as follows:

§ 82.9 [Amended]

* * * * *

(c) A person may convert potential production allowances, either granted to him under paragraphs (a) and (b) of this section or obtained by him under § 82.12 (transfer of allowances), to production allowances only to the extent authorized by the Administrator under § 82.11 (Exports to Article 5 Parties) or under paragraph (c)(1) of this section. A person may obtain authorization to convert potential production allowances to production allowances by requesting issuance of a notice under § 82.11, by completing a transfer of authorization under § 82.12, or in accordance with paragraph (c)(1) of this section.

(1) A nation listed in appendix B to this part (Parties to the Montreal Protocol) must agree either to transfer to the person at a specified time some amount of the calculated level of production that the nation is permitted under the Montreal Protocol or to receive from the person at a specified time some amount of the calculated level of production that the person is permitted under this part. For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a document stating that the nation agrees to reduce its allowable calculated level of production by the amount being transferred to the recipient for the control period(s) to which the transfer applies. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The amount of allowable calculated level of production being transferred;

(v) The control period(s) to which the transfer applies;

(2) After receiving a transfer request that meets the requirements of paragraph (c)(1) of this section, the Administrator may, at his discretion, consider the following factors in deciding whether to approve such a transfer:

(i) Possible creation of economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

(iv) A sufficient balance of unexpended production allowances.

(3) The Administrator will issue the person a notice granting authorization to convert or deducting production allowances equivalent to the calculated level of production transferred, and specifying the control periods to which the transfer applies, provided that the request meets the requirement of paragraph (c)(1) of this section and, if necessary, paragraph (c)(2) of this section. The change in production allowances will be effective on the date that the notice is issued.

* * * * *

3. Amend § 82.11 by revising the introductory text to read as follows:

§ 82.11 Exports to parties.

In accordance with the provisions of this section, any person may obtain authorization to convert potential production allowances to production allowances by exporting controlled substances to nations listed in appendix E (Article 5 Parties). Authorization obtained under this section will be valid only during the control period in which the controlled substance departed the United States or its territories. A request for authorization under this section will be considered a request for consumption allowances under § 82.10 as well.

* * * * *

4. Appendix B to part 82 is revised to read as follows:

Appendix B to Part 82

Parties to the Montreal Protocol: Australia, Austria, Belgium, Burkina Faso, Cameroon, Canada, Denmark, Egypt, Finland, Fiji (Jan. 21), France, German Democratic Republic, Federal Republic of Germany, Ghana, Greece, Guatemala (Feb 5), Hungary, Iceland, Ireland, Italy, Japan, Jordan, Kenya, Liechtenstein, Luxembourg, Malaysia, Maldives, Malta, Mexico, Netherlands, New Zealand, Nigeria, Norway, Panama, Portugal, Singapore, Spain, Sri Lanka (March 15), Sweden, Switzerland, Syrian Arab Republic (March 12), Thailand, Trinidad & Tobago, Tunisia, Uganda, USSR, United Arab Emirates (March 22) United Kingdom, United States, Venezuela.

Dates indicate the effective dates when a country becmes Party to the Protocol.

[FR Doc. 90-3252 Filed 2-12-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 20

Employee Responsibilities and Conduct

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of availability of appendix C.

SUMMARY: This notice announces the availability of appendix C to 43 CFR part 20. This appendix lists positions within the Department of the Interior for which Confidential Statements of Employment and Financial Interests (DI-212) are required to be filed. Appendix C has been updated as of December 1, 1989 and has been printed as an agency document. This appendix will not be published in the **Federal Register** but will be available to the public upon request.

EFFECTIVE DATE: December 1, 1989.

ADDRESS: Copies of appendix C may be obtained from the Deputy Ethics Counselor for each bureau or office within the Department of the Interior. You may address your request to the Deputy Ethics Counselor (also insert the name of the specific bureau or office), 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Gabriele J. Paone or Mr. Mason Tsai, Departmental Ethics and Audit Coordination Staff, U.S. Department of the Interior, Washington, DC 20240, telephone number: (202) 343-5916.

SUPPLEMENTARY INFORMATION: The Department of the Interior has received approval from the U.S. Office of Government Ethics to publish appendix C to 43 CFR part 20 as an agency document. The availability of this document is hereby announced in the **Federal Register**. The initial notice of this annual process was provided with the publication of 43 CFR part 20 as a proposed rule on October 6, 1980 (45 FR 66370). This arrangement meets administrative requirements which affect only Department of the Interior employees and at the same time defrays the cost of publishing the appendix C listing in the **Federal Register**.

Appendix C lists Department of the Interior positions, in addition to GS (or GM)-15's for which a Confidential Statement of Employment and Financial Interests (Form DI-212) is required to be filed by 5 CFR part 735. Positions identified in appendix C are effective for the February 1, 1990 filing deadline. The appendix C listings of positions have been approved by the U.S. Office of Government Ethics.

List of Subjects in 43 CFR Part 20

Conflicts of interest, Government employees.

Authority: Appendix C to part 20 of title 43 of the Code of Federal Regulations is published under Executive Order 12674, 30 FR 6459, 3 CFR 1964-65 Comp., as amended (18 U.S.C. 201 Note); 5 CFR 735.104; and 5 U.S.C. 301.

Each appendix C listing of positions was compiled by its respective bureau and office ethics counselor. Consolidation of bureau and office listings into one appendix C document was done by the Departmental Ethics and Audit Coordination Staff.

Dated: February 5, 1990.

Charles E. Kay,

Designated Agency Ethics Official and Principal Deputy Assistant Secretary—Policy, Budget and Administration.

[FR Doc. 90-3272 Filed 2-12-90; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

43 CFR Public Land Order 6766

[OR-943-09-4214-10; GP9-220; OR-18883, OR-19025, OR-19029, OR-19032, OR-19077]

Partial Revocation of the Executive Orders Dated July 2, 1910, and February 17, 1915, and Opening of Lands Subject to Section 24 of the Federal Power Act; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Executive orders insofar as they affect 1,914.01 acres of public lands withdrawn for the Bureau of Land Management's Powersite Reserve Nos. 26, 63, 66, and 480. This action will open 533.55 acres to surface entry. This action will also open 952.77 acres within Power Project No. 2030 to surface entry, subject to the provisions of section 24 of the Federal Power Act. The lands not being opened are either acquired lands or within an overlapping Bureau of Reclamation (BOR) withdrawal. The revocation and opening are needed to permit conveyance of the lands to the State of Oregon. The lands have been and continue to be open to mineral leasing. The lands have been and continue to be open to mining, except for the acquired lands; the lands within Power Project No. 2030; and the lands within the BOR withdrawal.

EFFECTIVE DATE: March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Energy Regulatory Commission in DVOR-584, it is ordered as follows:

1. The Executive Order dated July 2, 1910, which established Powersite Reserve No. 26, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

T. 11 S., R. 12 E.,
- Sec. 22, that portion of lot 4 located westerly of the centerline of the Deschutes River;
- Sec. 26, W½SW¼;
- Sec. 27, lots 4 and 5, SE¼NW¼, NW¼SE¼, and those portions of the SW¼NE¼ and NE¼NW¼ located westerly of the centerline of the Deschutes River;
- Sec. 34, lots 2, 3, and 4, and W½SE¼;
- Sec. 35, W½NW¼ and NW¼SW¼.

T. 12 S., R. 12 E.,
- Sec. 3, lots 1, 2, 3, 6, 7, and 8, and E½SW¼;
- Sec. 10, lots 2, 3, 4, 6, 11, and 14;
- Sec. 15, lots 3 and 4.

The areas described aggregate approximately 1,234.84 acres in Jefferson County.

2. The Executive Order dated July 2, 1910, which established Powersite Reserve Nos. 63 and 66, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

Powersite Reserve No. 63

T. 11 S., R. 12 E.,
- Sec. 35, SW¼SW¼.

T. 12 S., R. 12 E.,
- Sec. 2, lot 4, and those portions of lots 8 and 9 located westerly of the centerline of Crooked River;
- Sec. 3, lots 9 and 10;
- Sec. 10, lots 1, 8, and 9;
- Sec. 14, NW¼.

The areas described aggregate approximately 460.40 acres in Jefferson County.

Willamette Meridian

Powersite Reserve No. 66

T. 11 S., R. 12 E.,
- Sec. 22, lot 4 and SW¼SE¼;
- Sec. 27, those portions of lot 3, W½NE¼, and that portion of the NE¼NW¼

located easterly of the centerline of the Deschutes River.

The area described contains approximately 178.77 acres in Jefferson County.

3. The Executive Order dated February 17, 1915, which established Powersite Reserve No. 480, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 11 S., R. 12 E.,
Sec. 34, SE¼SW¼.

The area described contains 40 acres in Jefferson County.

4. The following described acquired lands are not subject to operation of the public land laws, including the mining laws:

Willamette Meridian

T. 12 S., R. 12 E.,
Sec. 2, those portions of lots 8 and 9 located westerly of the centerline of the Crooked River;
Sec. 10, lots 12 and 13, and E½ of lot 5;
Sec. 11, that portion of the W½NW¼ located westerly of the centerline of the Crooked River;
Sec. 15, lot 5.

5. The NW¼ of Sec. 14, T. 12 S., R. 12 E., remains closed to operation of the public land laws generally, including the mining laws by the Deschutes Reclamation Project withdrawal.

6. At 8:30 a.m., on March 15, 1990 the lands described in paragraphs 1, 2, and 3, except as provided in paragraphs 4, 5, and 7, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, any segregations of record, and the requirements of applicable law. All valid applicatons received at or prior to 8:30 a.m., on March 15, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

7. At 8:30 a.m., on March 15, 1990, those portions of the following described lands that lie within the boundary of Power Project No. 2030 will be opened to conveyance to the State of Oregon, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920:

Willamette Meridian

T. 11 S., R. 12 E.,
Sec. 22, lot 4;
Sec. 26, W½SW¼;
Sec. 27, lots 3, 4, and 5, W½NE¼, E½NW¼, and NW¼SE¼;
Sec. 34, lots 2, 3, and 4, SE¼SW¼, and W½SE¼;
Sec. 35, W½W½.
T. 12 S., R. 12 E.,
Sec. 2, lot 4;
Sec. 3, lots 1, 2, 3, 6, 8, 9, and 10, and SW¼;
Sec. 9, SE¼SE¼;
Sec. 10, lots 1, 2, 3, 4, 6, 8, 9, 11, and 14;
Sec. 15, lots 3 and 4.

The areas described aggregate approximately 952.77 acres in Jefferson County.

Dated: February 7, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-3303 Filed 2-12-90; 8:45 am]

BILLING CODE 4310-33-M

43 CFR Public Land and Order 6767

[CO-930-00-4214-10; (C-39289)]

Transfer of Public Land for Cheney Reservoir Disposal Site, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order permanently transfers 360 acres of public land to the Department of Energy in accordance with the terms of the Uranium Mill Tailings Remedial Action Amendments Act of 1988.

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-236-1752.

By virtue of the authority vested in the Secretary of the Interior by section 106 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7916), as amended by the Uranium Mill Tailings Remedial Action Amendments Act of 1988, Pub. L. 100-616, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby permanently transferred to the Department of Energy and, as a result of this transfer, the land is no longer subject to the operation of the general land laws, including the mining and mineral leasing laws, for the Cheney Reservoir Disposal Site:

Ute Principal Meridian

T. 3. S., R. 2 E.,
Sec. 11, SE¼SW¼, S½SE¼;
Sec. 14, NE¼, E½NW¼.

The area described aggregates 360 of public land in Mesa County.

2. The transfer of the above-described land to the Department of Energy vests in that Department the full management jurisdiction, responsibility, and liability for such land and all activities conducted thereon, except as provided in paragraph 3.

3. The Secretary of the Interior shall retain the authority to administer any existing claims, rights, and interests in this land established before the effective date of the transfer.

Dated: February 7, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-3302 Filed 2-12-90; 8:45 am]

BILLING CODE 4310-JB-M

43 CFR Public Land Order 6768

[AZ-930-00-4214-10; AR-011033, A-12965]

Partial Revocation of Secretarial Order Dated April 23, 1943, and Public Land Order No. 1626; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes one Secretarial order and one public land order insofar as they affect 162.32 acres of land withdrawn for the Bureau of Reclamation's Snowflake Project and a Forest Service recreation area, respectively. The land is part of a proposed Forest Service exchange and is no longer needed for reclamation site or recreation area purposes. This action will open the land to surface entry and mineral leasing. The land will remain segregated from mining entry due to the filing and serialization of the land exchange proposal.

EFFECTIVE DATE: March 15, 1990.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16565, Phoenix, Arizona 85011, 602-241-5509.

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

1. The Secretarial Order dated April 23, 1943, and Public Land Order No. 1626 which withdrew land for the Bureau of Reclamation's Snowflake Project and a Forest Service recreation area, respectively, are hereby revoked insofar as they affect the following described land:

Gila & Salt River Meridian

T. 9 N., R. 22 E.,
Sec. 15, S½SW¼NW¼ and NW¼SW¼;
Sec. 16, Lots 1, 19 (formerly portion of Lot 2), 22 (formerly portion of Lots 8 & 9), and 23 (formerly portion of Lot 10).

The area described contains 162.32 acres in Navajo County.

2. At 10:00 a.m., on March 15, 1990, the land described in paragraph 1 will be opened to such forms of exchange as may by law be made of National Forest System land under the authority of the General Exchange Act of March 20, 1922

(42 Stat. 465, as amended) and section 206 of the Federal Land Policy and Management Act of 1976. The land will also be opened to the operation of the mineral leasing laws.

Dated: February 7, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-3304 Filed 2-12-90; 8:45 am]

BILLING CODE 4310-32-M

Proposed Rules

Federal Register
Vol. 55, No. 30
Tuesday, February 13, 1990

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 079CE, Notice No. 23-ACE-50]

Special Conditions; Swearingen Model SA-30 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Swearingen Engineering and Technology, Inc., Model SA-30 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features include engine location, swept wings and stabilizer, performance characteristics, and protection for the electronic engine control system from lightning and high energy radiated electromagnetic fields, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards which the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: Comments must be received on or before June 13, 1990.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 079CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 079CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 079CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the rules docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On October 8, 1986, Swearingen Engineering and Technology, Inc., 1234 99th Street, San Antonio, Texas 78214, made application for normal category type certification of its Model SA-30 airplane, a six-to-eight place, all metal, low-wing, T-tail, twin turbofan engine powered monoplane with fully enclosed retractable landing gear. The SA-30 is capable of Mach .78+ performance, and has engines mounted aft on the fuselage using electronic engine controls.

Type Certification Basis

Type certification basis of the Model SA-30 airplane is: FAR 23, effective February 1, 1965, through Amendment 23-33, dated August 11, 1986; FAR 36, effective December 1, 1969, through Amendment 36-12 dated August 1, 1981 (or amendment effective on date of testing); SFAR 27 dated February 1, 1974, through Amendment 27-5 dated January 1, 1984; exemptions, if any; and any special conditions that may result from this notice.

Discussion

Swearingen plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards These features include electronic engine control systems, engine location, and certain performance characteristics necessary for this type of airplane which were not envisaged by the existing regulations.

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

Electronic Engine Control System

Engines for the Model SA-30 airplane incorporate full authority, electronic engine controls utilizing computer-based digital control technology. Such electronic control systems can be susceptible to malfunction as a result of lightning, both direct strike and secondary electrical/magnetic effects. These systems may also be adversely effected by high energy radiated electromagnetic fields (HERF). Applicable existing regulations did not envisage the installation of electronic systems, such as the electronic engine control system; thus, this notice proposes special conditions to ensure the protection of such systems on the Model SA-30 airplane from adverse effects of lightning and HERF. Although the electronic engine control system is the only currently identified system on this airplane which must be protected from lightning and HERF, future evaluations may identify additional systems that may require this protection. If the currently proposed special condition was issued for the electronic

fuel control system and then additional electronic systems were identified at a later date, it would be necessary to amend these special conditions at that time. To avoid a delay of the type certification project that could result from a future amendment of these special conditions, these proposed requirements have been developed to make them applicable to other such electronic systems which must be protected from exposure to lightning and HERF.

Protection From Lightning

The regulations incorporated by reference include standards for protection from lightning damage to the structure of the airplane (§ 23.867) and from lightning ignition of fuel vapor (§ 23.954). However, these standards do not provide the level of safety for the electronic system that is inherently provided by traditional designs which utilize mechanical means to connect the engine to the flight deck.

The Model SA–30 airplane with the twin turbofan engines is being designed with the propulsion systems using electrical interfaces for critical functions such as crew inputs to engines. These systems can be susceptible to disruption to both the command/response signals and the operational mode as a result of direct lightning strike attachment or electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a special condition is being issued which requires that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

Protection of Systems From High Energy Radiated Electromagnetic Fields

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of solid state components and digital electronics, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HERF incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation which was not envisaged when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

At present, aircraft certification requirements, as well as the industry standards for protection from the adverse effects of HERF, are inadequate in view of the aforementioned technological advances. In addition, some significant safety events have been reported of incidents and accidents involving military aircraft equipped with advanced electronic systems when they were exposed to electromagnetic radiation.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the aircraft. Effective measures against the effects of exposure to HERF must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical functions; (2) the reduced electromagnetic shielding afforded airplane systems by advanced technology airframe materials; (3) the adverse service experience of military airplanes which use these technologies; and (4) the increase in the number and power of radio frequency emitters and expected future increases.

Cognizant of the need for aircraft certification standards to cope with the developments in technology and environment in 1986, the FAA initiated a high priority program (1) to determine and define the electromagnetic energy levels; (2) to develop and describe guidance material for design, test, and analysis; and (3) to prescribe and promulgate regulatory standards. The FAA sought and received the participation of international airworthiness authorities and industry to develop internationally recognized standards for certification.

At this time, the FAA and other airworthiness authorities have established on agreed level of HERF environment that the airplane is expected to be exposed to in service. While the HERF requirements are being finalized, the FAA has adopted special conditions for the certification of aircraft that employ electrical and electronic systems that perform critical functions. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. This special condition requires that the airplane be evaluated under these levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HERF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HERF environment, defined below, or

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–500 KH_z	80	80
500–2000	80	80
2–30 MH_z	200	200
30–100	33	33
100–200	33	33
200–400	150	33
400–1000	8.3K	2K
1–2 GH_z	9K	1.5K
2–4	17K	1.2K
4–6	14.5K	800
6–8	4K	666
8–12	9K	2K
12–20	4K	509
20–40	4K	1K

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions withstand a peak of electromagnetic field strength of 100 volts per meter in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HERF requirements, no credit is given for signal attenuation due to installation.

In view of the revised HERF envelope, the requirement for the fixed value test has been changed to 100 v/m from the previously used value of 200 v/m. The applicant opting for the fixed value laboratory test, in lieu of the HERF envelope, will be subject to post certification reassessment based on the finalized rule requirements. The applicants should be cautioned that choosing 100 v/m may make it difficult, under post certification reassessment requirements, to qualify the installations without design upgrade. If the system should not meet the post certification reassessment requirements, additional

protection provisons and/or testing may be required.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the aircraft. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HERF requirements. The primary electronic flight display and the full authority digital engine control system are examples of systems that perform critical functions. A system may perform both critical and non-critical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indication. The HERF requirements only apply to critical functions.

Compliance with HERF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HERF environmental condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HERF is generally insufficient since all elements of the redundant system are likely to be exposed to the fields concurrently.

The modulation should be selected as the signal most likely to disrupt the operation of the system under test based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80% depth of modulation in the frequency range from 10 KHz to 400 MHz and 1 KHz square wave with greater than 90% depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal caused deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance is attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable and will need to be independently assessed for each application for approval by the FAA.

Engine Fire Extinguishing System

The proposed airplane design includes engines mounted aft on the fuselage; therefore, the early visual detection of engine fires is precluded. This may lead to a fire spreading and damaging other portions of the airplane before the flight crew detects and reacts to such fire. Applicable existing regulations do not require fire extinguishing systems for engines. Aft mounted engine installations, along with the need to protect such installed engines from fires were not envisaged in the development of part 23; therefore, a special condition for a fire extinguishing system for the engines of the SA–30 is required. This notice proposes special conditions for an engine fire extinguishing system.

Cockpit Evacuation of Noxious/Toxic Fumes

Small airplanes have typically been unpressurized where noxious/toxic fumes could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be readily depressurized to evacuate noxious/toxic fumes without creating an unsafe condition. The Swearingen Model SA–30 will not have noxious/toxic fume evacuation provisions because of higher differential pressures and longer times needed to depressurize and ventilate the cockpit. Because of the need to maintain an acceptable environment at the maximum operating altitudes of this airplane, this notice proposes special conditions to require the capability to evacuate noxious/toxic fumes from the cockpit and to require the ventilation air for normal operations to be free of harmful or hazardous concentrations of gases and vapors.

Vibration and Buffeting

The Swearingen Model SA–30 will be operated at high altitudes where stall-match buffet encounters (small speed margin between stall and transonic flow buffet) are likely to occur, which is not presently addressed in part 23. A special condition is proposed that will require buffet onset tests and the inclusion of information in the Airplane Flight Manual (AFM) to provide guidance to the flight crew. This information will enable the flight crew to plan flight operations that will maximize the maneuvering capability during high altitude cruise flight and preclude intentional operations exceeding the boundary of perceptible buffet. Buffeting is considered to be a warning to the pilot that the airplane is approaching an undesirable and eventually dangerous flight regime, i.e., stall buffeting, high speed buffeting or maneuvering (load factor) buffeting. In straight flight, therefore, such buffet warning should not occur at any normal operating speed up to the maximum operating limit speed, V_{MO}/M_{MO}.

High Speed Characteristics and Maximum Operating Limit Speed

The Swearingen Model SA–30 will be operated at high altitude and high speeds and the proposed operating envelope includes areas in which Mach effects, which has not been considered in part 23, may be significant. The anticipated low drag of the airplane and the proposed operating envelope are representative of the conditions not envisioned by the existing part 23 regulations. These conditions may degrade the ability fo the flight crew to promptly recover from inadvertent excursions beyond maximum operating speeds. The ability to pull a positive load factor is needed to assure, during recovery from upset, that the airplane speed does not continue to increase to a value where recovery may not be achieveable by the average pilot or flight crew.

Additionally, to allow the aircraft designer to conservatively design to higher speeds than may be operationally required for the airplane, the concept of V_{DF}/M_{DF}, the highest demonstrated flight speed for the type design, is appropriate for this airplane. This permits V_D/M_D, the design dive speed, to be higher than the speed actually required to be demonstrated in flight. Accordingly, special conditions are proposed to allow determination of a maximum demonstrated flight speed and to relate the determination of V_{MO}/M_{MO} to this speed, V_{DF}/M_{DF}.

Static Directional and Lateral Stability

In keeping with the concept of V_{mo}/M_{mo} being a maximum operational speed limit, rather than a limiting speed for the demonstration of satisfactory flight characteristics, it is appropriate to extend the speed for demonstration of lateral/directional stability characteristics from the V_{MO}/M_{MO} of part 23 to the maximum speed for stability characteristics, V_{FC}/M_{FC} for this airplane. A special condition to do this is proposed.

Stability Augmentation Devices

Many swept wing, high altitude airplanes employ stability augmentation

devices (usually a yaw damper) to show compliance with the dynamic stability lateral-directional flight characteristics. The proposed special condition describes in broad terms the acceptable level of degradation of the various flight characteristics of an airplane following the failure or malfunction of the stability augmentation device that is used in showing compliance with the applicable flight characteristics requirements. In all probability, in the event of such a failure or malfunction, compliance with the flight requirements will not be met at certain speeds, altitudes and accelerations, within the approved flight envelope. At the same time, compliance might be met within a flight envelope that is somewhat restricted in comparison to that approved with the device in the operative condition. Such a restricted flight envelope is permitted provided it is practical for operations. In such a situation, it might be hazardous to operate the airplane outside the restricted envelope. Since it is possible for a failure or malfunction to occur that would not be readily apparent to the pilot, the proposal would require a warning system to alert the pilot to a failure or malfunction in order that he can initiate corrective procedures. The warning system would be independent of the flight controls in order that the corrective action would be under the full control of the pilot. In addition, a visual warning device that requires the attention of the pilot within the cockpit would not be acceptable by itself since the attention of the pilot might be diverted by flight duties at the time of the failure or malfunction.

If the SA–30 has stability augmentation devices, special conditions are proposed to provide appropriate airworthiness standards.

Out of Trim Characteristics

High speed airplanes have experienced a number of upset incidents involving out-of-trim conditions. This is particularly true for swept-wing airplanes and airplanes with a trimmable stabilizer. Service experience has shown that out-of-trim conditions can occur in flight for various reasons and that the control and maneuvering characteristics of the airplane may be critical in recovering from upsets. Accordingly, the existing part 23 regulations do not address high speed out-of-trim conditions. Special conditions are proposed that test the out-of-trim flight characteristics by requiring the longitudinal trim control be displaced from the trimmed position by the amount resulting from the three second movement of the trim system at this normal rate with no aerodynamic load, or the maximum mistrim that the autopilot can sustain in level flight in the high speed cruise condition, whichever is greater. The proposal would require the maneuvering characteristics, including stick force per g, be explored throughout a specified maneuver load factor speed envelope. The dive recovery characteristics of the aircraft in the out-of-trim condition specified would be investigated to determine that safe recovery can be made from the demonstrated flight dive speed, V_{DF}/M_{DF}.

Performance

The Swearingen Model SA–30 has a main wing with 30 degrees of leading-edge sweepback that employs leading-edge slats and double-slotted Fowler flaps. The airplane has a T-tail with trimmable horizontal stabilizer and 36 degrees of leading-edge sweepback. There are two medium bypass ratio turbofan engines mounted on the aft fuselage.

Previous certification and operational experience with airplanes of like design in the transport category reveal certain unique characteristics compared to conventional aircraft certificated under FAR 23. Further, the average pilot, expected to be the operator of this class of airplane, is not likely to be familiar with the unique characteristics associated with swept-wing design and temperature sensitive turbofan engines. These characteristics have caused significant safety problems in the past when pilots attempted takeoffs and landings, particularly with a large variation in temperature and altitude, using procedures and instincts developed with conventional airplanes.

One of the major distinguishing features of a swept-wing design not considered in current part 23 is a characteristically flatter lift curve without a sharp "stall" break near the maximum coefficient of lift, as in a conventional wing. The "stall" separation point my occur at a much higher angle of attack than the point of maximum lift and the angle of attack for maximum lift can be only recognized by precise test measurements or specific detection systems. This phenomena is not apparent to a pilot accustomed to operating a conventional airplane where increasing angle of attack produces increased lift to the point where the wing stalls. In a swept-wing design, if the pilot does not operate in accordance with established standards developed through a dedicated test program, increasing angle of attack may produce very little lift yet increases drag markedly to the point where flight is impossible. These adverse conditions may be further compounded by the characteristics of turboject engines, including specific RPM, temperature and pressure limits that make its variation in thrust output with changes in temperature and altitude more complex and difficult to predict. In recognition of these characteristics, Special Civil Air Regulation No. SR–422, and follow-on regulations, established weight-altitude-temperature (WAT) limitations and procedures for scheduling takeoff and landing for turbine powered transport category airplanes, so the pilot could achieve reliable and repeatable results under all expected conditions of operation. This entails specific tests such as minimum unstick speed, V_{MU}, to ensure that rotation and flyout speeds are correct and that the airplane will not lift-off in ground effect and then be unable to accelerate and continue climbout. In conjuction with the development of takeoff and landing procedures, it was also necessary to establish required climb gradients and data for flight path determination under all approved weights, altitudes and temperatures. This enables the pilot to determine, before takeoff, that a safe takeoff, departure, and landing at destination can be achieved.

Based upon the knowledge and experience gained with similar high speed, high efficiency, turbojet airplanes with complex high lift devices for takeoff and landing, special conditions are proposed for the performance requirements of takeoff, takeoff speeds, accelerate-stop distance, takeoff path, takeoff distance, takeoff run, and takeoff flight path.

Climb

To maintain a level of safety that is consistent with the requirements of the proposed special conditions for takeoff, takeoff speeds, takeoff path, takeoff distance, and takeoff run, it is appropriate to propose associate requirements which specify climb gradients, airplane configurations, and consideration of atmospheric conditions that will be encountered. Special conditions are proposed for climb with one engine inoperative, landing climb and general climb conditions.

Landing

Landing distance determined for the same parameters, plus the effects of wind, is consistent with takeoff information for the range of weights, altitudes, and temperatures approved for operation. Further, it is necessary to consider time delays to provide for in-service variation in the activation of deceleration devices, such as spoilers

and brakes. Special conditions are also proposed to cover these items.

Minimum Control Speed

The Swearingen Model SA–30, with its swept-wing design and twin trubofan engines, will be operated in an environment and in a manner requiring defined minimum control speeds both in the air and on takeoff to ensure safe operations. A necessary requisite to sequentially establishing proper controllability from the start of takeoff until reaching the decision speed (V_1) proposed under special condition 11 is identification of V_{MCG}, the minimum control speed on the ground. In the past, this process has been considered an inherent part of determining V_1 decision speed and has been administered by established policy in Advisory Circular AC 23–8A. It is proposed as a special condition to be consistent in establishing all standards that are necessary for the certification basis of the Model SA–30 by the public process.

Performance

General performance special conditions are proposed to require that procedures for takeoff, accelerate-stop and landing be those established for operation in service, be executable by pilots of average skill and include reasonably expected time delays.

Minimum Crew

The Swearingen Model SA–30 operates at high altitude and speed and must be flown to a precise speed schedule to achieve flight manual takeoff and landing distances. It employs complex high lift devices not envisioned in the part 23 requirements that must be operated on a speed schedule. Therefore, it is appropriate to specify workload considerations. Special conditions are proposed to specify the items to be considered in workload determination.

Airplane Flight Manual (AFM) Information

To be consistent with the performance special conditions, it is also necessary to require the maximum takeoff and landing weights, takeoff distances and associated atmospheric conditions be made available to the pilot in the AFM. Special conditions are proposed to add maximum takeoff weights, maximum landing weights, and minimum takeoff distances as limitations in the AFM. Additionally, special conditions are proposed to add takeoff flight path and procedures, necessary to achieve the performance in the limitations section, as information in the AFM.

Conclusion

In view of the design features discussed for the SA–30 Model airplane, the following special conditions are proposed. This action is not a rule of general applicability and affects only the model/series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transporation, and Safety.

Citation

The authority citation for these Special Conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the Swearingen Model SA–30 airplane:

1. Protection from Lightning and High Energy Radiated Electromagnetic Fields

Each system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to ligthning and high energy radiated electromagentic fields external to the airplane.

2. Engine Fire Extinguishing System

(a) Fire extinguishing systems must be installed and compliance shown with the following:

(1) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids for which a fire originating in these sections can be controllable, a fire extinguisher system must serve each engine compartment.

(2) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual "one shot" system may be used.

(3) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(b) Fire extinguishing agents must meet the following requirements:

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system;

(2) Have thermal stability over the termperature range likely to be experienced in the compartment in which they are stored; and

(3) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid from entering any personnel compartment even though a defect may exist in the extinguishing system.

(c) Fire extinguishing agent containers must meet the following requirements:

(1) Have a pressure relief to prevent bursting of the container by excessive internal pressures;

(2) The discharge end of each discharge line from a pressure relief connection must be located so the discharge of the fire extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter;

(3) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning;

(4) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from falling below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge; and

(5) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

(d) Fire extinguisher system materials must meet the following requirements:

(1) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard; and

(2) Each system component in an engine compartment must be fireproof.

3. Cockpit Evacuation of Noxious/Toxic Fumes

In the absence of specific requirements for evacuating noxious/toxic fumes from the cockpit the following applies:

If the accumulating of hazardous quantities of noxious/toxic fumes in the cockpit area is reasonably probable, the evacuation of such fumes must be readily accomplished starting with full cockpit pressurization and without depressurizing beyond safe limits.

The ventilating air in the flight crew and passenger compartments must be free of harmful or hazardous concentrations of gases and vapors in normal operations and in the event of a reasonably probable failure or malfunctioning of the ventilation heating, pressurization, or other system and equipment.

4. Vibration and Buffeting

In lieu of compliance with § 23.251, the following apply:

(a) The airplane must be designed to withstand any vibration and buffeting that might occur in any likely operating condition. This must be shown by calculations, resonance tests, or other tests found necessary by the Administrator.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration, under any appropriate speed and power conditions up to at least the minimum value of V_D allowed in § 23.335. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with paragraph 6. In addition, it must be shown by analysis or tests that the airplane is free from such vibration that would prevent safe flight under the conditions in § 23.629(f).

(c) Except as provided in paragraph d, there may be no buffeting condition, in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the crew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO}/M_{MO}, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach Number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

5. Operating Procedures

In addition to the requirements of § 23.1585, the buffet onset envelopes determined under paragraph 4 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

6. Maximum Operating Limit Speed

In lieu of compliance with § 23.1505(c), the following applies: The maximum operating limit speed (V_{MO}/M_{MO} airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C and so that it is sufficiently below V_D/M_D or V_{DF}/M_{DF}, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or V_{DF}/M_{DF} may not be less than that determined under § 23.335(b) or found necessary during the flight tests conducted under paragraph 7 below.

7. High Speed Characteristics

In lieu of compliance with § 23.253, the following apply:

(a) Speed increase and recovery characteristics. The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO}, without:

(i) Exceptional piloting strength or skill;

(ii) Exceeding V_D/M_D, V_{DF}/M_{DF}, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to V_{DF}/M_{DF}. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

(b) Maximum speed for stability characteristics, V_{FC}/M_{FC}. V_{FC}/M_{FC} is the maximum speed at which the requirements of § 23.175(b)(1)(iii), paragraph 8 and paragraph 10 below, must be met with flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF} except that, for altitudes where Mach number is the limiting factor, MV_{FC} need not exceed the Mach number at which effective speed warning occurs.

8. Static Directional and Lateral Sobility

In lieu of compliance with § 23.177, the following apply:

(a) The static directional stability (as shown by the tendency to recover from a skid with the rudder free) must be positive for any landing gear and flap position, and for any symmetrical power condition at speeds from 1.2 V_{S1} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate).

(b) The static lateral stability (as shown by the tendency to raise the low wing in a sideslip with the aileron controls free and for any landing gear position and flap position, and for any symmetrical power conditions) may not be negative at any airspeed (except speeds higher than V_{FE} or V_{LE}, when appropriate) in the following airspeed ranges:

(1) From 1.2 V_{S1} to V_{MO}/M_{MO}.

(2) From V_{MO}/M_{MO} to V_{FC}/M_{FC} unless the Administrator finds that the divergence is:

(i) Gradual;

(ii) Easily recognizable by the pilot; and

(iii) Easily controllable by the pilot.

(c) In straight, steady, sideslips (unaccelerated forward slips) the aileron and rudder control movements and forces must be substantially proportional to the angle of the sideslip. The factor of proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or when a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a yaw indicator, there must be enough bank accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

9. Stability Augmentation and Automatic and Power Operated Systems

In the absense of specific requirements for stability augmentation devices, the Swearingen Model SA–30 must comply with the following:

If the functioning of stability augmentation or other automatic, or power-operated, system is necessary to show compliance with the flight characteristics requirements of this Part, such system must comply with the following:

(a) A warning which is clearly distinguishable to the pilot under expected flight conditions without requiring his attention must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system which could result in an unsafe condition if the pilot were not aware of the failure. Warning systems must not activate the control systems.

(b) The design of the stability augmentation system, or of any other automatic or power-operated system, must permit initial counteraction of failures without requiring exceptional pilot skill or strength. Counteraction may be accomplished by either the deactivation of the system, or a failed portion thereof, or by overriding the failure by movement of the flight controls in the normal sense.

(c) It must be shown that after any single failure of the stability augmentation system or any other automatic or power-operated system—

(1) The airplane is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations that is critical for the type of failure being considered;

(2) The controllability and maneuverability requirements of this part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and airplane configurations) that is described in the Airplane Flight Manual; and

(3) The trim, stability, and stall characteristics are not impaired below a level needed to permit continued safe flight and landing.

10. Out-of-Trim Characteristics

In the absence of specific requirements for out-of-trim characteristics, the Swearingen Model SA–30 must comply with the following:

(a) From an initial condition with the airplane trimmed at cruise speeds up to V_{MO}/M_{MO}, the airplane must have satisfactory maneuvering stability and controllability with the degree of out-of-trim in both the airplane nose-up and nose-down directions, which results from the greater of:

(1) A three-second movement of the longitudinal trim system at its normal rate for the particular flight condition with no aerodynamic load (or an equivalent degree of trim for airplanes that do not have a power-

operated trim system), except as limited by stops in the trim system, including those required by § 23.655(b) for adjustable stabilizers; or

(2) The maximum mistrim that can be sustained by the autopilot while maintaining level flight in the high speed cruising condition.

(b) In the out-of-trim condition specified in paragraph (a) of this section, when the normal acceleration is varied from +1 g to the positive and negative values specified in paragraph (c) of this section:

(1) The stick force vs. g curve must have a positive slope at any speed up to and including V_{FC}/M_{FC}; and

(2) At speeds between V_{FC}/M_{FC} and V_{DF}/M_{DF}, the direction of the primary longitudinal control force may not reverse.

(c) Except as provided in paragraphs d and e of this section, compliance with the provisions of paragraph (a) of this section must be demonstrated in flight over the acceleration range:

(1) −1 g to +2.5 g; or

(2) 0 g to 2.0 g, and extrapolating by an acceptable method to −1 g and +2.5 g.

(d) If the procedure set forth in paragraph (c)(2) of this section is used to demonstrate compliance and marginal conditions exist during flight test with regard to reversal of primary longitudinal control force, flight tests must be accomplished from the normal acceleration at which a marginal condition is found to exist to the applicable limit specified in paragraph (b)(1) of this section.

(e) During flight tests required by paragraph (a) of this section, the limit maneuvering load factors, prescribed in §§ 23.333(b) and 23.337, need not be exceeded. Also, the maneuvering load factors associated with probable inadvertent excursions beyond the boundaries of the buffet onset envelopes determined under paragraph 4(e), need not be exceeded. In addition, the entry speeds for flight test demonstrations at normal acceleration values less than 1 g must be limited to the extent necessary to accomplish a recovery without exceeding V_{DF}/M_{DF}.

(f) In the out-of-trim condition specified in paragraph (a) of this section, it must be possible from an overspeed condition at V_{DF}/M_{DF} to produce at least 1.5 g for recovery by applying not more than 125 pounds of longitudinal control force using either the primary longitudinal control alone or the primary longitudinal control and the longitudinal trim system. If the longitudinal trim is used to assist in producing the required load factor, it must be shown at V_{DF}/M_{DF} that the longitudinal trim can be actuated in the airplane nose-up direction with the primary surface loaded to correspond to the least of the following airplane nose-up control forces:

(1) The maximum control forces expected in service, as specified in §§ 23.301 and 23.397.

(2) The control force required to produce 1.5 g.

(3) The control force corresponding to buffeting or other phenomena of such intensity that it is a strong deterrent to further application of primary longitudinal control force.

11. Takeoff

In lieu of complying with § 23.51, the following apply:

(a) The takeoff speeds described in paragraph 12, the accelerate-stop distance described in paragraph 13, the takeoff path described in paragraph 14, and the takeoff distance and takeoff run described in paragraph 15 below must be determined:

(1) At each weight, altitude, and ambient temperature within the operational limits selected by the applicant; and

(2) In the selected configuration for takeoff.

(b) No takeoff made to determine the data required by this section may require exceptional piloting skill or alertness.

(c) The takeoff data must be based on a smooth, dry, hard-surfaced runway.

(d) The takeoff data must include, within the established operational limits of the airplane, the following operational correction factors:

(1) Not more than 50 percent of nominal wind components along the takeoff path opposite to the direction of takeoff, and not less than 150 percent of nominal wind components along the takeoff path in the direction of takeoff.

(2) Effective runway gradients.

12. Takeoff Speeds

In lieu of compliance with § 23.53, the following apply:

(a) V_1 must be established in relation to V_{EF} as follows:

(1) V_{EF} is the calibrated airspeed at which the critical engine is assumed to fail. V_{EF} must be selected by the applicant, but may not be less than V_{MCG} determined under paragraph 21 below.

(2) V_1, in terms of calibrated airspeed, is the takeoff decision speed selected by the applicant; however, V_1 may not be less than V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine failed and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop test.

(b) V_2 min, in terms of calibrated airspeed, may not be less than:

(1) 1.2 V_{S1}

(2) 1.10 times V_{MC} established under § 23.149.

(c) V_2, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by paragraph 16(b) below, but may not be less than:

(1) V_2 min; and

(2) V_R plus the speed increment attained (in accordance with paragraph 13) before reaching a height of 35 feet above the takeoff surface.

(d) V_{MU} is the calibrated airspeed at and above which the airplane can safety lift off the ground and continues the takeoff. V_{MU} speed must be selected by the applicant throughout the range of thrust-to-weight ratios to be certified. These speeds may be established from free-air data if these data are verified by ground takeoff tests.

(e) V_R, in terms of calibrated airspeed, must be selected in accordance with the conditions of subparagraphs (1) through (4) of this paragraph:

(1) V_R may not be less than:

(i) V_1;

(ii) 105 percent of V_{MC};

(iii) The speed (determined in accordance with paragraph 14(c)(2)) that allows reaching V_2 before reaching a height of 35 feet above the takeoff surface; or

(iv) A speed that, if the airplane is rotated at its maximum practicable rate, will result in a V_{LOF} of not less than 110 percent of V_{MU} in the all-engines-operating condition and not less than 105 percent of V_{MU} determined at the thrust-to-weight ratio corresponding to the one-engine-inoperative condition.

(2) For any given set of conditions (such as weight, configuration, and temperature), a single valve of V_R, obtained in accordance with this paragraph, must be used to show compliance with both the one-engine-inoperative and the all-engines-operating takeoff provisions.

(3) It must be shown that the one-engine-inoperative takeoff distance, using a rotation speed of 5 knots less than V_R, established in accordance with subparagraphs (1) and (2) of this paragraph, does not exceed the corresponding one-engine-inoperative takeoff distance using the established V_R. The takeoff distances must be determined in accordance with paragraph 15(a)(1).

(4) Reasonably expected variations in service from the established takeoff procedures for the operation of the airplane (such as over-rotation of the airplane and out-of-trim conditions) may not result in unsafe flight characteristics or in marked increases in the scheduled takeoff distances established in accordance with paragraph 15.

(f) V_{LOF} is the calibrated airspeed at which the airplane first becomes airborne.

13. Accelerate-Stop Distance

In the absence of specific accelerate-stop distance requirements, the following apply:

(a) The accelerate-stop distance is the greater of the following distances:

(1) The sum of the distance necessary to:

(i) Accelerate the airplane from a standing start to V_{EF} with all engines operating;

(ii) Accelerate the airplane from V_{EF} to V_1 and continue the acceleration for 2.0 seconds after V_1 is reached, assuming the critical engine fails at V_{EF}; and

(iii) Come to a full stop from the point reached at the end of the acceleration period prescribed in paragraph (a)(1)(ii) of this section, assuming that the pilot does not apply any means of retarding the airplane until that point is reached and that the critical engine is still inoperative.

(2) The sum of the distance necessary to:

(i) Accelerate the airplane from a standing start to V_1 and continue the acceleration for 2.0 seconds after V_1 is reached with all engines operating, and

(ii) Come to a full stop from the point reached at the end of the acceleration period prescribed in paragraph (a)(2)(i) of this section, assuming that the pilot does not apply any means of retarding the airplane until that point is reached and that all engines are still operating.

(b) Means other than wheel brakes may be used to determine the acelerate-stop distance if that means:

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

(c) The landing gear must remain extended throughout the accelerate-stop distance.

(d) If the accelerate-stop distance includes a stop-way with surface characteristics substantially different from those of a smooth hard-surfaced runway, the takeoff data must include operational correction factors for the accelerate-stop distance. The correction factors must account for the particular surface characteristics of the stop-way and the variations in these characteristics with seasonal weather conditions (such as temperature, rain, snow, and ice) within the established operational limits.

14. Takeoff Path

In the absence of specific takeoff path requirements, the following apply:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface, or at which the transition from the takeoff to the en route configuration is completed and a speed is reached at which compliance with paragraph 17(c) is shown, whichever point is higher. In addition:

(1) The takeoff path must be based on procedures prescribed in paragraph 22.

(2) The airplane must be accelerated on the ground to V_{EF}, at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching V_{EF}, the airplane must be accelerated to V_2.

(b) During the acceleration to speed V_2, the nose gear may be raised off the ground at a speed not less than V_R. However, landing gear retraction may not be begun until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this section:

(1) The slope of the airborne part of the takeoff path must be positive at each point;

(2) The airplane must reach V_2 before it is 35 feet above the takeoff surface and must continue at a speed as close as practical to, but not less than, V_2 until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb may not be less than 1.2 percent;

(4) Except for gear retraction, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path must be determined by a continuous demonstrated takeoff or by synthesis from segments. If the takeoff path is determined by the segmental method:

(1) The segments must be clearly defined and must be related to the distinct changes in the configuration, speed, and power or thrust;

(2) The weight of the airplane, the configuration, and the power or thrust must be constant throughout each segment and must correspond to the most critical condition prevailing in the segment;

(3) The flight path must be based on the airplane's performance without ground effect; and

(4) The takeoff path data must be checked by continuous demonstrated takeoffs, up to the point at which the airplane is out of ground effect and its speed is stabilized, to ensure that the path is conservative relative to the continuous path. The airplane is considered to be out of the ground effect when it reaches a height equal to its wing span.

15. Takeoff Distance and Takeoff Run

In the absence of specific takeoff distance and takeoff run requirements, the following apply:

(a) Takeoff distance is the greater of:

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined under paragraph 14; or

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with paragraph 14.

(b) If the takeoff distance includes a clear way, the takeoff run is the greater of:

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined under paragraph 14.

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with paragraph 14.

16. Takeoff Flight Path

In the absence of specific takeoff flight path requirements, the following apply:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with paragraph 15.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths (determined in accordance with paragraph 14 and with paragraph (a) of this section) reduced at each point by a gradient of climb equal to:

(1) 0.8 percent.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

17. Climb: One Engine Inoperative

In lieu of compliance with § 23.67, the following apply:

(a) Takeoff; landing gear extended. In the critical takeoff configuration existing along the flight path (between the points at which the airplane reaches V_{LOF} and at which the landing gear is fully retracted) and in the configuration used in paragraph 14 without ground effect, unless there is a more critical power operating condition existing later along the flight path before the point at which the landing gear is fully retracted, steady gradient of climb must be positive at V_{LOF} and with:

(1) The critical engine inoperative and the remaining engines at the power or thrust available when retraction of the landing gear is begun in accordance with paragraph 14, and

(2) The weight equal to the weight existing when retraction of the landing gear is begun, determined under paragraph 14.

(b) Takeoff; landing gear retracted. In the takeoff configuration existing at the point of the flight path at which the landing gear is fully retracted and in the configuration used in paragraph 14, without ground effect, the steady gradient of climb may not be less than 2.4 percent at V_2 and with:

(1) The critical engine inoperative, the remaining engines at the takeoff power or thrust available at the time the landing gear is fully retracted, determined under paragraph 14 unless there is a more critical power operating condition existing later along the flight patch but before the point where the airplane reaches a height of 400 feet above the takeoff surface; and

(2) The weight equal to the weight existing when the airplane's landing gear is fully retracted, determined under paragraph 14.

(c) Final takeoff. In the en route configuration at the end of the takeoff patch, determined in accordance with paragraph 14, the steady gradient of climb may not be less than 1.2 percent at not less than 1.25 V_S and with:

(1) The critical engine inoperative and the remaining engines at the available maximum continuous power or thrust; and

(2) The weight equal to the weight existing at the end of the takeoff path, determined under paragraph 14.

(d) Approach. In the approach configuration corresponding to the normal all-engines-operating procedure in which V_S for this configuration does not exceed 110 percent of the V_S for the related landing configuration, the steady gradient of climb may not be less than 2.1 percent with:

(1) The critical engine inoperative, the remaining engine at the available takeoff power or thrust;

(2) The maximum landing weight; and

(3) A climb speed established in connection with normal landing procedures, but not exceeding 1.5 V_S.

18. Balked Landing

In lieu of compliance with § 23.77, the following apply:

In the landing configuration, the steady gradient of climb may not be less than 3.2 percent, with:

(a) The engines at the power or thrust that is available eight seconds after initiation of movement of the power or thrust controls from the minimum flight idle to the takeoff position; and

(b) A climb speed of not mroe than 1.3 V_S.

19. Climb: General

In the absence of specific general climb requirements, the following applies:

Compliance with the requirements of paragraphs 17 and 18 must be shown at each weight, altitude, and ambient temperature within the operational limits established for the airplane and with the most unfavorable center of gravity for each configuration.

20. Landing

In lieu of compliance with § 23.75, the following apply:

(a) The horizontal distance necessary to land and to come to a complete stop from a point 50 feet above the landing surface must be determined (for each weight, altitude, temperature and wind within the operational limits established by the applicant for the airplane) as follows:

(1) The airplane must be in the landing configuration.

(2) A steady gliding approach, with a calibrated airspeed of not less than 1.3 V_S, must be maintained down to the 50-foot height.

(3) Changes in configuration, power or thrust, and speed, must be made in accordance with the established procedures for service operation.

(4) The landing must be made without excessive vertical acceleration, tendency to bound, nose over, ground loop or porpoise.

(5) The landings may not require exceptional piloting skill or alertness.

(6) It must be shown that a safe transition to the balked landing conditions of special condition 18 can be made from the conditions that exist at the 50-foot height.

(b) The landing distance must be determined on a level, smooth, dry, hard-surfaced runway. In addition:

(1) The pressures on the wheel braking systems may not exceed those specified by the brake manufacturer;

(2) The brakes may not be used so as to cause excessive wear of brakes or tires; and

(3) Means other than wheel brakes may be used if that means:

(i) Is safe and reliable;

(ii) Is used so that consistent results can be expected in service; and

(iii) Is such that exceptional skill is not required to control the airplane.

(c) The landing distance data must include correction factors for not more than 50 percent of the nominal wind components along the landing path opposite to the direction of landing and not less than 150 percent of the nominal wind components along the landing path in the direction of landing.

(d) If any device is used that depends on the operation of any engine, and if the landing distance would be noticeably increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of compensating means will result in a landing distance not more than that with each engine operating.

21. Minimum Control Speed

In addition to the requirements of § 23.149, the following apply:

(a) In establishing the minimum control speed required by this special condition, the method used to stimulate critical engine failure must represent the most critical mode of powerplant failure with respect to controllability expected in service.

(b) V_{MCG}, the minimum control speed on the ground, is the calibrated airspeed during the takeoff run (when the critical engine is suddenly made inoperative) at which it is possible to recover control of the airplane with the use of primary aerodynamic controls alone (without the use of nose-wheel steering) to enable the takeoff to be safely continued using normal piloting skill and rudder control forces not exceeding 150 pounds. In the determination of V_{MCG}, assuming that the patch of the airplane accelerating with all engines operating is along the center line of the runway, the airplane's path from the point at which the critical engine is made inoperative to the point at which recovery to a direction parallel to the center line is completed may not deviate more than 30 feet laterally from the center line at any point. V_{MCG} must be established with:

(1) The airplane in each takeoff configuration or, at the option of the applicant, in the most critical takeoff configuration;

(2) Maximum available takeoff power or thrust on the operating engines;

(3) The most unfavorable center of gravity;

(4) The airplane trimmed for takeoff; and

(5) The most unfavorable weight in the range of takeoff weights.

22. Performance: General

In addition to the requirements of § 23.45, the following apply:

(a) Unless otherwise prescribed, in determining the accelerate-stop distances, takeoff flight paths, takeoff distances, and landing distances, changes in the airplane's configuration, speed, power, and thrust, must be made in accordance with procedures established by the applicant for operation in service.

(b) Procedures for the execution of balked landings and missed approaches associated with the conditions prescribed in paragraphs 17 and 18 must be established.

(c) The procedures established under paragraphs (a) and (b) of this section must:

(1) Be able to be consistently executed in service by crews of average skill;

(2) Use methods or devices that are safe and reliable; and

(3) Include allowance for any time delays, in the execution of the procedures, that may reasonably be expected in service.

23. Minimum Flight Crew

In lieu of compliance with § 23.1523, the following apply:

The minimum flight crew must be established so that it is sufficient for safe operation considering:

(a) The workload on individual crewmembers and each crewmember workload determination must consider the following:

(1) Flight path control,

(2) Collision avoidance,

(3) Navigation,

(4) Communications,

(5) Operation and monitoring of all essential airplane systems,

(6) Command decisions, and

(7) The accessibility and ease of operation of necessary controls by the appropriate crewmember during all normal and emergency operations when at the crewmember flight station.

(b) The accessibility and ease of operation of necessary controls by the appropriate crewmember; and

(c) The kinds of operation authorized under § 23.1525.

24. Operating Limitations

In addition to the requirements of § 23.1583, the following apply:

(a) Additional operating limitations must be established as follows:

(1) The maximum takeoff weights must be established as the weights at which compliance is shown with the applicable provisions of the part (including the takeoff climb provisions of paragraph 17 (a) through (c) for altitudes and ambient temperatures).

(2) The maximum landing weights must be established as the weights at which compliance is shown with the applicable provisions of this part (including the landing and takeoff climb provisions of paragraphs 17 and 18 for altitudes and ambient temperatures).

(3) The minimum takeoff distances must be established as the distances at which compliance is shown with the applicable provisions of this part (including the provisions of paragraphs 13 and 15 for weights, altitudes, temperatures, wind components, and runway gradients).

(b) The extremes for variable factors (such as altitude, temperature, wind, and runway gradients) are those at which compliance with the applicable provisions of this part is shown.

25. Performance Information

In lieu of compliance with subparagraphs § 23.1587 (a)(5), (a)(6), (a)(7), (a)(8), (c)(4) and (c)(5), the following apply:

(a) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this part (including paragraphs 16 and 20 for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable) within the operational limits of the airplane, and must contain the following:

(1) The conditions under which the performance information was obtained, including the speeds associated with the performance information;

(2) Procedures established under paragraph 22 that are related to the limitations and information required by paragraph 24 and by this paragraph. These procedures must be in the form of guidance material, including any relevant limitations of information; and

(3) An explanation of significant or unusual flight or ground handling characteristics of the airplane.

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

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-3378 Filed 2-12-90; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Fees for Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commission periodically reviews the fees contained in its regulations in order to adjust fees to reflect current costs data. The staff has recently reviewed the Commission's actual costs for Rule Enforcement and Financial Reviews for approved contract markets and has determined that the formula for fees for this service should be changed so that the fee for each exchange is 100% of the actual three-year average annual cost of reviewing the exchange. In addition, the Commission is proposing to assess the National Futures Association (NFA) a rule enforcement and financial review fee to recover its costs associated with oversight and rule enforcement reviews of the NFA.

DATES: Comments must be received before March 15, 1990.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street Washington, DC 20581. Comments should refer to FY 1990 Service Fees.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Special Assistant to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone number 202-254-6090.

SUPPLEMENTARY INFORMATION: The Futures Trading Act of 1982 (Pub. L. 97-444, 96 Stat. 2294, 2326, January 11, 1983) amended section 26 of the Futures Trading Act of 1978 (7 U.S.C. 16a) to add specific authority for the Commission:

> To promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act: *Provided*, That the fees for any specified service or activity or function shall not exceed the actual cost thereof to the Commission.

The Conference Report accompanying the legislation [H.R. Rep. No. 964, 97th Cong. 2d Sess. 57 (1982)] states that "the conferees intend that the fee schedule addressed by the Conference substitute be strictly limited to Commission activities directly related to" eight enumerated Commission functions including "contract market and registered futures association rule enforcement reviews and financial reviews".

On December 4, 1987, the Commission published a final rule which provides that the annual fee for rule enforcement and financial reviews for each exchange should be calculated by computing the average annual cost of reviewing that exchange over the preceding three fiscal years, then multiplying that amount by 65% and rounding to the nearest multiple of $100. [See 52 FR 46070). The Commission now proposes to change the formula to allow the United States Government to recover the full costs of performing rule enforcement and financial reviews of the exchanges.

The Commission has also determined that the National Futures Association should be changed for oversight and financial rule enforcement reviews performed by the Commission. The Commission has not previously assessed the National Futures Association such a fee. However, NFA has now assumed a number of programs and has had the opportunity to develop rules and procedures and to operate them effectively. As the NFA had increased its activity in these areas, the Commission has had to increase its oversight and rule enforcement review activity over them. The Commission is therefore proposing to assess the same fee to NFA and at the same rate as it does other self-regulatory organizations; however, the first year (1990), the Commission would assess NFA at 50% of the actual three year costs, 75% the second year (1991) and 100% in 1992 and subsequent years.

I. Computation of Fees

In accordance with the Futures Trading Act of 1982 (7 U.S.C. 16a), the Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of conducting rule enforcement and financial reviews the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on each project under the BAC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A-76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1987—101%; FY 1988—100%; FY 1989—100%.

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1987, FY 1988 and FY 1989 are averaged. This results in a calculation of the average annual cost for each project over the three-year period, which is the basis for the fee. Under the proposed rule, the FY 1990 fee for Registered Futures Association and Exchange Rule Enforcement and Financial Reviews would be as follows:

Exchange	Actual average costs FY 1987-FY 1989	Proposed FY 1990 fee
Chicago Board of Trade	$238,539	$238,539
Chicago Mercantile Exchange	232,381	232,381
Commodity Exchange, Inc	106,186	106,186
Coffee, Sugar & Cocoa Exchange	102,743	102,743
New York Merchantile Exchange	91,747	91,747
New York Cotton Exchange	62,859	62,859
Kansas City Board of Trade	46,492	46,492
New York Futures Exchange	59,293	59,293
Minneapolis Grain Exchange	48,263	48,263
Philadelphia Board of Trade	5,620	5,620
Amex Commodities Corp	43	43
National Futures Association	306,621	153,311
Total	1,300,787	1,147,477

[1] For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

As in the calculation of the FY 1988 and FY 1989 fees, the proposed FY 1990 fee for the Cihcago Board of Trade includes the fees for the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange.

VI. Regulatory Flexibility Act

The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered "small entities" by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on February 7, 1990, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-3347 Filed 2-12-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 82N-0274]

Federal Performance Standard for Diagnostic X-Ray Systems and Their Major Components; Reopening of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the proposed rule that amended the Federal performance standard for diagnostic X-ray systems and their major components (the performance standard) (October 17, 1989; 54 FR 42674; corrected January 16, 1990; 55 FR 1472).

DATES: FDA is reopening the comment period until March 15, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Samuel Fleisher, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 17, 1989 (54 FR 42674), corrected January 16, 1990 (55 FR 1472), FDA proposed technical amendments to the Federal performance standard for diagnostic X-ray systems and their major components. The X-Ray Imaging Products Section of the National Electrical Manufacturers Association (NEMA) requested a 30-day extension to the comment period. This request was based on the fact that the convention of the Radiological Society of North America and several religious and national holidays occurred during the comment period, consequently reducing the time available for review of the proposal. The proposal gave interested persons an opportunity to submit written comments by January 16, 1990.

In addition, the Technical and Government Relations Committee of NEMA's X-ray section met from January 23 to 25, 1990, after the comment period had ended to review FDA's proposed changes to the X-ray performance standard and to develop NEMA's comments on the proposed performance standard.

FDA proposes to reopen the comment period to assure that any amendments finally adopted do clarify and simplify the performance standard, reduce significantly the regulatory burden on affected manufacturers without compromising the public health, and generally improve the effectiveness of FDA's regulation of diagnostic X-ray equipment. The agency believes that NEMA's comments will help realize these goals.

Interested persons may, on or before March 15, 1990, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-3339 Filed 2-12-90; 8:45 am]

BILLING CODE 41600-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AB42

Revision of Coal Product Valuation Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its coal product valuation regulations to remove the exclusion from royalty value for amounts representing production-related taxes and fees. If adopted, Federal coal lessees no longer would be permitted to deduct or exclude the costs of Federal Black Lung excise taxes, abandoned mine lands (AML) fees, and State and local severance taxes from the value for royalty purposes.

The MMS proposes the removal of the exclusions to mitigate their negative fiscal impacts on State and federal treasuries, and because, after further review of the assumptions supporting their adoption, MMS now believes that these components of the price of coal cannot be sufficiently differentiated from its other constituent elements to reverse the historic practice of valuation on gross proceeds.

DATES: Written comments must be received on or before April 16, 1990.

ADDRESSES: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Herbert B. Wincentsen and Rodney J. Noah of the Royalty Valuation and Standards Division of the Royalty Management Program, MMS, Lakewood, Colorado; Kenneth R. Vogel of the Office of Policy and Planning, MMS; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Background

On January 13, 1989 (54 FR 1492), MMS issued comprehensive coal product value regulations establishing the value for royalty purposes of coal production from all Federal and Indian

coal leases. These regulations, effective March 1, 1989, established procedures for valuing coal under cents-per-ton leases (see 30 CFR 206.256) and ad valorem leases (see 30 CFR 206.257). MMS also adopted regulations providing for certain washing allowances (30 CFR 206.258 and 206.259) and transportation allowances (30 CFR 206.261 and 206.262). The regulations also recognized that royalty valuation, in some instances, may be determined by the specific terms of a lease which would govern whenever there was a conflict with the specific terms of the regulations. (30 CFR 206.250(b)).

Regulations establishing a methodology for determining the value of production for ad valorem leases are necessary because the applicable provision of the Mineral Leasing Act (MLA) requires a royalty payment "of not less than 12½ per centum of the value of coal as defined by regulation * * *." Lower percentages of value may apply to leases for coal produced by underground mining methods. (30 U.S.C. 207(a)).

After the Federal Coal Leasing Amendment Act amended the MLA to require ad valorem royalty payments, the Department of the Interior adopted regulations providing that for coal production sold pursuant to an arm's-length contract, the value for royalty purposes would be the "gross value" of the coal. (30 CFR 203.200(f) and (g) (1987). This construction was consistent with the decisions of the Interior Board of Land Appeals (IBLA) which had construed the term "gross value" to include reimbursements to the seller by the purchaser for production-related taxes. *Knife River Coal Company*, 29 IBLA 26 (1977) (severance taxes), and *Knife River Coal Company*, 43 IBLA 104 (1979) (AML fees). The Knife River cases followed a line of IBLA cases applicable to oil and gas leases construing the term gross proceeds to comprise all the consideration accruing to the seller from the sale of production, including reimbursements. *Wheless Drilling Company*, 13 IBLA 21 (1973).

The coal product value regulations issued in January 1989 were the culmination of an extensive regulatory process including multiple proposed rules, hearings, and meetings with industry and affected States and Indian tribes. The rules also were the subject of considerable study and review by the Secretary's Royalty Management Advisory Committee. (See 54 FR 1492.) One of the most controversial issues that was addressed during the rulemaking process was whether reimbursements for severance taxes, AML fees, and Black Lung excise taxes should be included as part of the value of coal production and, therefore, subject to royalty. Industry commenters generally supported an exclusion from value for these production-related taxes and fees. Most western coal producing States and Indian lessors supported the inclusion of these amounts in the value of production. The preamble to the final rule explains in detail the positions of interested parties. (See 54 FR 1511–1513.) See also the discussion in section II of this preamble, *infra*.

In the final rule, MMS generally continued the historical practice of basing the value for coal sold pursuant to an arm's-length contract on the "gross proceeds" accruing to the lessee from the sale. 30 CFR 206.257(b)(1). The same approach was taken in the oil and gas product value regulations adopted in 1988. (53 FR 1184, January 15, 1988; 53 FR 1230, January 15, 1988.)) See 30 CFR 206.102(b)(1)(i), 206.152(b)(1)(i) and 206.153(b)(1)(i) (1988).

In the final oil and gas regulations, MMS defined the term gross proceeds consistently with historical practice, as including the total consideration accruing to the lessee from the sale of production, including severance taxes and other reimbursements. (30 CFR 206.101 and 206.151). In the final coal rules, MMS similarly defined the term gross proceeds as including all consideration accruing to the lessee, including reimbursements. (30 CFR 206.251). However, MMS concluded at the time it issued the final rule that the portions of the coal sales price corresponding to the severance tax, AML fee, and Black Lung tax that are part of gross proceeds are not part of the value of coal for royalty purposes. Thus, 30 CFR 206.257(b)(5) provides that the value of coal for royalty purposes does not include amounts of severance taxes, AML fees, and Black Lung taxes. This exclusion was to apply only to Federal leases—Indian leases were expressly exempted.

MMS adopted the exclusive of production-related taxes and fees reasoning that these taxes and fees do not add to the value of coal even though taxes and fees increase its cost. In addition, MMS offered several justifications for excluding severance taxes from the royalty value of coal. First, coal was regarded as having its own separate and distinct royalty valuation history as opposed to other leasable minerals, including oil and natural gas. Second, the coal market was determined to have sufficiently different charactistics to allow the Secretary to use different standards when valuing coal than when valuing oil or gas. In particular, MMS concluded that "the perception today by both coal producers and coal purchasers" is that "[production] taxes are not part of the market value of coal." (See 54 FR 1512). Third, the exclusion of these fees and taxes was thought to potentially increase production of Federal coal by decreasing its sales price. It was hoped that this decrease in sales price would promote three secondary effects: (1) Decreasing dependence on imported foreign oil, (2) decreasing the extent of the fiscal effects from the decrease in value due to the exclusion of taxes, and (3) expanding the market for Federal coal.

Shortly after the final coal product value rules were published in the **Federal Register** on January 13, 1989, Secretary Lujan was confirmed as Secretary of the Interior. Among the first issues the new Secretary considered was whether, as requested by some western States, Indians and the Congress, to reconsider the exclusion of production-related taxes, and either to suspend or rescind the rules before their March 1 effective date. The Secretary decided that the rules should go into effect as scheduled, but committed to fully and completely review the issue over the ensuing months. On April 21, 1989, the Department published notice in the **Federal Register** (54 FR 16105) of a public meeting on May 4, 1989, to take further comments on the question of the effect of the exclusions. The Secretary also directed MMS to review and study the fiscal impacts of the exclusions on the States and Indians, and to determine whether the rule change had the predicted effect of stimulating Federal coal production.

As noted above, the exclusions in 30 CFR 206.257(b)(5) (1989) were to apply only to Federal leases. MMS stated in the preamble to the final rule that "[t]hese specific exclusions do not apply to Indian leases." (See 54 FR 1511). Shortly after the rules became effective, two of the largest Indian coal lessees took the position that their lease terms tied royalty valuation to the value definition for Federal coal. Therefore, they maintained that MMS, by regulation, could not deprive them of the exclusion because of the primacy of the lease terms. MMS's Royalty Management Program disputed the two lessees' interpretation of their royalty obligation and the matter is now on appeal before the MMS Director pursuant to 30 CFR part 290.

On August 29, 1989, Governor Garrey L. Carruthers of New Mexico formally petitioned the Secretary to "[s]uspend

§ 206.257(b)(5) of the Coal Product Valuation Rule." In addition, the Governor urged that the Department "reinstate the historic formula for determining coal royalties." Also, at the July 18, 1989, meeting of the Western Governors' Association, the Governors resolved that:

> 1. The Department of [the] Interior should adopt regulations for coal product valuation that are based on gross proceeds which reflect the actual costs of doing business. The gross proceeds approach to valuation is a logical and reasonable concept upon which to determine coal value and it is consonant with past government valuation procedures. *The western governors conclude that regulations adopted by the Department of the Interior on January 13, 1989 do not meet this objective.*
>
> 2. *Western governors recommend that the regulations currently under evaluation by the Secretary be rescinded immediately and the historic formula for determining royalties be reinstated. Western governors further recommend that the Secretary subsequently restart the process for drafting new regulations.* (emphasis in original.)

MMS has now completed its review of the impact of the exclusions and is able to respond to the petitions of the western governors. Copies of the review are available from Dennis Whitcomb at the address found in the **ADDRESSES** section. The Department considers the communications from Governor Carruthers and the Western Governors' Association to be petitions for amendment or repeal of rules under the Administrative Procedure Act, 5 U.S.C. 553(e), and is now proposing that 30 CFR part 206 be amended to remove 206.257(b)(5). This proposal also would remove any basis for the exclusion claimed by certain Indian coal lessees discussed above.

MMS is seeking comments from interested parties on the production and fiscal impact of the current regulations as well as any new arguments forming a reasoned basis for retaining or eliminating the exclusion of one or any combination of fees and taxes.

II. Proposed Rule

On January 13, 1989, MMS published as final rulemaking the Revision of Coal Product Valuation Regulations and Related Topics. This rulemaking was intended to amend and clarify the regulations on the valuation of coal for royalty purposes. The rules took effect on March 1, 1989.

Those regulations effected a major change in valuation precepts by permitting companies operating on Federal coal leases to exclude the costs of Federal Black Lung excise taxes, AML fees, and severance taxes before calculating royalty due. The rulemaking generated considerable controversy regarding these exclusions, and this controversy continued after the rule was adopted. Representatives of the coal mining and electric utility industries argued that it was inequitable to levy a royalty on Government-mandated production fees. They argued that while the fees increase the price consumers must pay, they do not increase the coal's value. A majority of comments from the western coal producing States opposed the exclusion of these taxes and fees. They argued that these exclusions would result in decreased Federal and State revenues and that there was not sufficient reason to exclude these taxes and fees from value. Other public and industry commenters argued for the exclusion of fees and taxes in order to promote the competitiveness of Federal coal. Comments from Indian tribal representatives opposed the application of the exclusions to coal produced from Indian lands because it would reduce Indian revenues. They added that these taxes and fees are mining costs and, therefore, should not be excluded from royalty value. The Indians also opposed awarding the exclusions to Federal coal alone arguing that this would make Indian coal less competitive. (See 54 FR 1511–1513).

After reanalyzing the comments, MMS concluded that it made four basic assumptions in the January 13, 1989, rulemaking which influenced the decision to exclude production taxes and fees from value for Federal leases: (1) The taxes and fees were considered not to be part of value, (2) the market for coal was judged to be different than the market for oil and gas, (3) the valuation rules were believed to be revenue neutral for Indian lessors, and (4) coal production was postulated to increase as a result of the rule.

However, upon further review of the assumptions supporting the decision to exclude production taxes and fees from value, MMS now believes that these components of the price of coal cannot be sufficiently differentiated from its other constituent elements to reverse the historical position which the Department has maintained that value should be defined as no less than gross proceeds. A discussion of the issues involved and the decision of MMS to propose an amendment to the previously adopted coal product value regulations is presented below.

1. Value is No Less than Gross Proceeds

The January 13, 1989, rulemaking, as did all royalty product value rulemakings before it, used the concept of market value as being at least the minimum basis for collecting royalties. Any concept of value other than market valuation should have a strong justification for its use. See 54 FR 1493 for justification for the use of market value. Those who argued that the "value" of coal is less than the total amount paid for it based their argument on two postulates: First, that taxes and fees do not add to the value of the coal, only to its cost; and second, that it is not fair for MMS, in its role as royalty manager of the real property of the Federal Government and Indian tribes, to allow royalty value to be impacted by the taxes enacted by various Governments in their sovereign roles as regulators or tax collectors. It is important to remember that when the Government imposes taxes, it does so with an entirely different set of powers than it exercises when it collects rents or royalties.

> The mere fact that the Government imposing the tax also enjoys rents and royalties as the lessor of the mineral lands does not undermine the Government's authority to impose the tax. The royalty payments from the mineral leases are paid to the Tribe in its role as partner in petitioners' commercial venture. The severance tax, in contrast, is petitioners' contribution "to the general cost of providing governmental services." *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130, 138 (1981).

The value definition argument was expressed in the January 13, 1989, rulemaking as "the perception today by both coal producers and coal purchasers of the market for coal * * * [is that production] taxes are not part of the market value of the coal." (See 54 FR 1512). Coal is typically sold in arrangements whereby the purchaser, in addition to a base price, agrees to reimburse the producer for the costs associated with severence and other production taxes (and royalties). The argument proceeds on the premise that the value must be the base price, and that the reimbursements are payments in addition to "value." According to the Western Fuels Association:

> The value of a product does not increase because a tax or fee is added to it, only its cost increases. As a matter of fact, the inclusion of these items could well cause its value to decline. (54 FR 1512.)

If value is defined as less than what a willing buyer pays to the seller, as a gross sum, there are many possibilities for exclusions. For example, a parallel argument would be: The value of coal does not include the cost incurred in complying with governmentally imposed health, safety and environmental standards; the coal produces no more heat, thus these costs are not part of value. See 54 FR 1494 for an explanation for the rejection of Btu-based valuation.

If exclusions may be based on the fact that coal is priced as a base price plus various reimbursements, the system will have been converted from ad valorem royalty to profit sharing. [If the Federal Government issued a coal profit sharing lease, the profit share rate would probably be greater than 12½ percent—for example, Outer Continental Shelf Net Profit Share leases are required to have a share of "no less than 30 percent" compared with ad valorem leases which must have "a fixed royalty rate of not less than 12½ per centum."] (30 CFR 260.11).

Payment of these production taxes and fees are generally the legal responsibility of the operator. They are costs of production as are labor, rent (including royalty), equipment, and insurance. For example, the Abandoned Mine Land Reclamation fee is imposed on operators and is not owed by any royalty owner or purchaser of coal. In fact, if the operator contracted with a royalty owner or purchaser of coal to pay its share, and the royalty owner or purchaser of coal failed to pay on time, the operator would still be liable for the fee, with interest. (30 U.S.C. 1232(e)). Thus the operator of the lease, and not the Federal Government, is responsible for the payment of the fee.

The Black Lung excise tax is also imposed on the producer of the coal. The producer is "the person in whom is vested ownership of the coal under State law immediately after the coal is severed from the ground, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties." (26 CFR 48.4121–1(a)(1)). The Internal Revenue Service regulations give the following example:

> A, a limited partnership, is the owner of land on which a coal mine is located. A leases the land to XYZ Company and XYZ Company extracts the coal from the mine and sells it. Under state law, XYZ is the owner of the coal immediately after the coal is severed from the ground. XYZ is the producer and must pay the excise tax. This is true even though the lease agreement required XYZ to pay a royalty to A.

See 26 CFR 48.4121–1(a)(2). This example clearly places the obligation to pay the tax on the operator, not the lessor.

The system that States and tribes use to collect taxes on the production of minerals in their various jurisdictions is complex. The treatment of mining operators and royalty owners may vary depending upon when the tax is applied. If the tax is on gross proceeds, the operator will usually pay the tax even if the proceeds are the result of a reimbursement payment by a purchaser. Such a tax is thus best thought of as a cost of production. Although some States may apply the tax after production, clarity of the regulatory scheme suggests that Federal royalty valuation policy should not defer to the form which the tax takes in the several States. MMS thus believes that it is preferable to treat all severance taxes as costs of production, even though some may be levied after production. No State imposes a sverance tax without production.

The definition of severance tax (30 CFR 206.251) also has become a cause for some confusion, and this is an additional reason MMS believes that it is preferable to include all production tax payments in value. Several comments were received after the promulgation of the rule concerning the definition of severance tax. Commenters argued that the definition of severance tax went further than commenters were led to believe was being considered during the rulemaking process.

The other argument given for defining value to exclude these taxes and fees was well expressed by a comment submitted by Utah Power & Light Company: "The states and Federal Government can manipulate its [sic] royalty revenue by increasing or decreasing taxes and fees, proving they do not contribute to the value of coal." (See 54 FR 1512). This argument can be divided into two parts. First, the argument suggests that any time a governmental action influences the price of coal, the change cannot be considered part of value. That argument goes too far because it could logically include every Government regulation from minimum wage to the Clean Air Act requirement of using scrubbers, to health and safety regulations. The second part of the argument presumes that the incidence of these particular fees and taxes is such that they are entirely passed on to purchasers of coal. Assuming for discussion that this is the case (as it appears to be at present), the only definitive conclusion that can be drawn is that coal demand is highly inelastic—thus changes in price have little effect on demand. See also part 4., infra.

2. Coal Value Is Determined in the Market Like Oil and Gas

Coal, gas, and oil are all marketed differently. Coal is not a homogeneous commodity. For instance, the Edison Electric Institute commented that: "Coal is not a commodity like oil. The market for Western coal is user specific and custom-produced according to quantity and quality." (See 54 FR 1513). However, the mere fact that coal is not fungible does not present a reason for the exclusion of production fees and taxes from value for royalty.

In the long run, the demand for coal, like the demand for oil and gas, is determined by its total price and the total price of its substitutes. Coal demand will thus increase, in gross and at specific mines, to the extent its price falls relative to its substitutes, whether they are other coals or other fuels. It is total price (including taxes, fees, and royalties) that determines the quantity demanded; excluding portions of that total price from coal, but not from oil and gas, would provide a relative subsidy to coal.

3. Fiscal Effects

In directing MMS to review the exclusions, one area the Secretary was interested in was the production and fiscal impacts of the rules. MMS's finding regarding the revenue impact was similar to that anticipated during the prior rulemaking. During the 6-month period of the MMS study, royalty revenues were estimated to have been $16.6 million less than they would have been, 50 percent of which is a direct revenue reduction for the six principal Federal coal-producing States of Colorado, Montana, North Dakota, New Mexico, Utah, and Wyoming. See 30 U.S.C. 191. Thus, the fiscal impact on the State treasuries is considerable. Despite the decrease in Federal royalty collections, the negative impact to the Federal Treasury may be partially offset by increased corporate income taxes resulting from lower business deductions. MMS estimated that approximately one-quarter of the gross reduction in royalty revenues (or approximately $4 million over the 6-month study period) could be recovered by increases in the Federal Corporate Income Tax.

The production-related taxes and fees exclusions in 30 CFR 206.257(b)(5) unexpectedly have had at least a temporary adverse impact on Indian royalty revenues, as explained in section I of this preamble, supra. From March 1989 through August 1989, these exclusions have resulted in estimated reductions of royalty revenues of approximately $2 million for the Navajo Nation and the Hopi Tribe. Despite the expressed intent of the rules to exempt Indian coal from the provision excluding Black Lung excise taxes, AML fees, and severance taxes from coal value, some lessees of Indian coal contend that their lease terms specifically require their coal to be valued on the same basis as Federal coal is valued. They, therefore, argue that the same tax exclusions

extended to Federal leases should be allowed for their leases. These lessees have reduced the royalties paid to the Navajo and Hopi Tribes accordingly. The lessees' obligation to make these payments is currently in the administrative appeals process. See section I of this preamble, supra. MMS believes that the provisions of 206.257(b)(5) do not apply to these leases. However, the potential litigation has caused some uncertainty regarding whether MMS's interpretation will prevail in all instances.

4. Production Did Not Increase Significantly Due to the Rule

MMS found that total production of coal in western States has been increasing during the 1980's. While production of coal in the West, both on Federal and non-Federal lands continued to increase in 1989, it did so consistent with that trend. MMS thus believes that any change in production over the first 6 months of this rule cannot be clearly attributed to the exclusion of taxes and fees from value for royalty purposes. MMS also believes that expected changes in the Clean Air Act, and general economic growth are more likely to be more dominant factors in the future. MMS recognizes that a longer review period may be preferable, but any study of the medium term future is expected to find that these other factors would intervene, which would most likely complicate any analysis of effects from royalty valuation policy.

MMS has benefited from an extensive study of the Colorado market prepared by the Colorado Department of Natural Resources. That study concluded that the royalty valuation rules decreased the price of Colorado coal by $0.25 per ton which, along with the State's actions in reducing its severance tax and in instituting a tax credit (which reduced the price by $1.25 per ton) helped increase the production of Colorado coal by 11 percent in the first three quarters of 1989 and by 9 percent in the first three quarters of 1988 from the nadir of recent production in 1987. While locally encouraging, MMS believes that there is little evidence that the royalty rule played any significant part in this increase. Local incentives appear to be the principle cause of this increase.

MMS's study discovered that most utility regulators believed that all the benefits of the royalty reduction would be passed along to consumers. Assuming that the incidence of coal royalty is on the consumer of electricity, the MMS analysis also concluded that, although savings to electricity consumers resulting from the exclusions may be substantial in aggregate, the effect on individual rate payers is likely to be quite small (on the order of $0.20 per month per commercial and residential ratepayer). As the savings for both commercial and residential consumers of electricity is expected to be so small as a proportion of their total electricity expenditures, any variation in coal production due to increased demand for electricity stemming from the reduced price is likely to be negligible.

Conclusion

After having considered the production and fiscal impacts, MMS has decided to propose rescinding these exclusions because: (a) Past departmental valuation practice appears to be more consistent with defining value to comprise, as a minimum, all elements of gross proceeds paid for produced coal, including production fees and taxes; (b) adverse fiscal effects are apparent with respect to the Federal and especially certain State treasuries, due to the relative loss in royalty revenues, and there may be an unexpected adverse fiscal impact on Indian revenue collections; (c) the study of the impact of the new rules, while of limited scope and duration, did not provide sufficient evidence of production increase; and (d) the proposed change would make coal valuation more consistent with royalty valuation for other leasable minerals. MMS also is proposing to remove the definition of "severance tax" in 30 CFR 206.251.

III. Request for Comments

The public is invited to participate in this proposed rulemaking by submitting data, views, or arguments with respect to this Notice. MMS seeks additional information or evidence regarding the impact of the exclusions on coal production. All comments must be received by 4:30 p.m. of the day specified in the **DATES** section at the appropriate address indicated in the **ADDRESSES** section of this Notice.

IV. Procedural Matters

Executive Order 12291

The Department has hereby determined that this document is not a major rule and does not require analysis under Executive Order 12291. This proposed rulemaking is to modify the Department's definition of the value of coal for royalty purposes under the coal product valuation regulations that were issued on January 13, 1989.

Executive Order 12630

Because this rule will not affect the use of value of private property, the Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Regulatory Flexibility Act

Because this rule simplifies existing regulations, administrative requirements regarding royalty reporting would be reduced for small business entities as a result of implementation of this rule. Therefore, the Department has determined that this rulemaking will not have a significant economic effect on any small business entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*).

Paperwork Reduction Act of 1980

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0074.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Minerals royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: January 26, 1990.

David C. O'Neal,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is proposed to be amended as follows:

TITLE 30—MINERALS RESOURCES

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1131 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§ 206.25 [Amended]

2. Section 206.251 of subpart E is amended to remove the definition of severance tax.

§ 206.257 [Amended]

3. Section 206.257 of subpart E is amended to remove paragraph (b)(5) and to redesignate (b)(6) as paragraph (b)(5); paragraphs (b)(1), (c)(1), (c)(3), and (g) are revised to read as follows:

§ 206.257 Valuation standards for ad valorem leases.

* * * * *

(b)(1) The value of coal that is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(2), (b)(3), and (b)(5) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit.

* * * * *

(c)(1) The value of coal from leases subject to this section and which is not sold pursuant to an arm's-length contract shall be determined in accordance with this section.

* * * * *

(3) When the value of coal is determined pursuant to paragraph (c)(2) of this section, that value determination shall be consistent with the provisions contained in paragraph (b)(5) of this section.

* * * * *

(g) Notwithstanding any other provisions of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for the disposition of produced coal less applicable provisions of paragraph (b)(5) of this section and less applicable allowances determined pursuant to §§ 206.258 through 206.262, and § 206.265 of this subpart.

* * * * *

[FR Doc. 90-3310 Filed 2-12-90; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-90-01]

Special Local Regulations: Friendship Festival '90 Air Show, Niagara River and Buffalo Harbor, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations for the Friendship Festival '90 Air Show. This event will be held over the Niagara River and Buffalo Harbor on 30 June 1990 from 3 p.m. (e.d.s.t.) until 4:30 p.m. (e.d.s.t.) and on 1 July 1990 from 1 p.m. (e.d.s.t.) until 5 p.m. (e.d.s.t.). The regulations are needed to provide for the safety of life and property on navigable waters during the event.

DATES: Comments must be received on or before March 30, 1990.

ADDRESSES: Comments should be mailed to Commander (osr), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Office of Search and Rescue, room 2007A, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199 (216) 522-4420.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD 09-90-01] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period well be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Office of Search and Rescue and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Friendship Festival '90 Air Show will be conducted over the Niagara River and Buffalo Harbor on 30 June 1990 and on 1 July 1990. This event will have approximately 30, domestic and foreign, private and military aircraft performing low flying aircraft demonstrations and high performance aircraft aerobatics, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station Buffalo, NY).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 would be amended to add a temporary § 100.35–0901 to read as follows:

§ 100.35–0901 Friendship Festival '90 Air Show, Niagara River and Buffalo Harbor, Buffalo, NY.

(a) *Regulated Area.* The Niagara River and Buffalo Harbor from the Black Rock Canal Breakwall, at the Peace Bridge, westward along the south side of the bridge to the International Border; southward along the International Border to the Abandoned Light House, then eastward to the north end of the North Breakwater; southeast along the North Breakwater, and from the North Breakwater South End Light (LLNR 2660) to Black Rock Canal Lighted Buoy 1 (LLNR 2725), to Black Rock Canal Lighted Buoy 3 (LLNR 2735), to the south end of the Black Rock Canal Breakwall; then northward along the Black Rock Canal Breakwall to the Peace Bridge.

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorage from 3 p.m. (e.d.s.t.) until 4:30 p.m. (e.d.s.t.) on 30 June 1990 and from 1 p.m. (e.d.s.t.) until 5 p.m. (e.d.s.t.) on 1 July 1990. (2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above sentence shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(4) This section is effective from 3 p.m. (e.d.s.t.) on 30 June 1990 until 5 p.m. (e.d.s.t.) on 1 July 1990.

Dated: January 31, 1990.

R.A. Appelbaum,

RADM, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 90–3306 Filed 2–12–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS–400042; FRL–3687–8]

Antimony Tris (Iso-Octyl Mercaptoacetate); Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to delete antimony tris (iso-octyl mercaptoacetate), ATOM, from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986. The decision is based on human health concerns for antimony and antimony compounds because ATOM degrades in the environment to yield antimony and antimony trioxide. Results from two bioassays on antimony and antimony trioxide indicate carcinogenicity in female rats by inhalation and are sufficient to reasonably anticipate that antimony and antimony compounds may cause cancer in humans. Studies also provide strong evidence of developmental and reproductive effects following exposure to antimony compounds. In addition there is moderate to high acute toxicity to aquatic organisms and high aquatic chronic toxicity to fish and daphnids from exposure to the antimony ion. There is no evidence to indicate that the effects associated with exposure to ATOM differ significantly from the effects of antimony compounds as a category.

FOR FURTHER INFORMATION CONTACT: Robert J. Israel, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, In Washington, DC and Alaska, 202–479–2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The denial is issued under section 313 (d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99–499, "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition the Agency to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by issuing an explanation of why the petition is denied.

II. Description of Petition

On September 5, 1989, EPA received a petition from Synthetics Products Company (SPC) to delete ATOM from the list of toxic chemicals subject to annual release reporting under section 313 of EPCRA. ATOM is included within the category listing of antimony (Sb) compounds. The petition was based on SPC's contention that ATOM does not meet the criteria for human health and environmental effects under section 313(d)(2), and is not converted in actual use to chemical species that would meet the criteria. The statutory deadline for EPA's response is March 3, 1990.

III. EPA's Review of Antimony Tris (Iso-Octyl Mercaptoacetate)

A. Chemistry Profile

ATOM is a pale-yellow liquid. It can be synthesized by initially heating antimony trioxide to 130 °C with iso-octyl alcohol and mercaptoacetic acid. The resultant water byproduct formed is removed under reduced pressure which subsequently drives the reaction to completion. The pertinent physical properties for ATOM are:

Structural Formula: $Sb(SCH_2CO_2C_8H_{21})_3$

Molecular Weight: 731 g/mol

CAS Number: 27288–44–4

Boiling Point: 350 °C (decomposes)

Density: 1.16 g/cm^3

Water Solubility: 281 mg/L at pH 7

Vapor Pressure: 5×10^{-5} torr at 25 °C

Log P: 4.43

ATOM is only sparingly soluble in water but undergoes hydrolysis under relatively mild conditions to yield antimony trioxide, iso-octyl alcohol, and mercaptoacetic acid. At neutral pH, a half-life of 1 day is expected and this rate will accelerate under acidic and alkaline conditions with a half-life on the order of 3 hours expected at pH=1.

ATOM is inherently unstable photochemically. It is expected to degrade upon exposure to sunlight or incandescent light with a half-life of 1 day. The main photo-degradation products would be antimony metal and antimony trioxide. The photolytic mechanism is thought to be auto-oxidation-reduction wherein antimony cations are reduced to the metal and the mercaptides are oxidized to the corresponding sulfoxides or sulfones.

B. Toxicity Evaluation

Although there are very few data on ATOM itself, there is sufficient evidence to establish that ATOM may be reasonably anticipated to cause cancer, developmental or reproductive effects, and significant adverse effects on the environment. It has been determined that ATOM will hydrolyze and photolyze quite rapidly producing degradation products such as antimony metal and antimony oxide; these compounds are the major analogs upon which most of the health concerns are based. There is no evidence to indicate that the effects associated with exposure to ATOM differ significantly from the effects of antimony compounds as a category.

1. *Absorption, bioavailability, and metabolism.* ATOM is expected to be very poorly absorbed through the skin because of its high molecular weight (731). In the gastrointestinal tract, ATOM is expected to hydrolyze ultimately to antimony (III) ion via acidic hydrolysis. As a lipid-soluble liquid, some absorption of ATOM is likely to occur in the lung. In terms of metabolism, the ester moieties of ATOM may undergo enzymatic hydrolysis in the intestine, lung, and/or blood.

2. *Carcinogenicity.* Antimony trioxide and antimony ore (mineral aggregates that are antimony-extractable; e.g. stibnite, antimony sulfides) are carcinogenic in female rats by inhalation. The available bioassays are sufficient to reasonably anticipate that antimony and antimony compounds (i.e. the chemicals themselves or their degradation products containing antimony) may potentially cause cancer in humans. Using a weight of evidence determination, antimony has been classified by EPA as a Group B2, probable human carcinogen, based on sufficient animal data.

In the two separate animal bioassays, antimony and/or antimony trioxide produced tumors in female rats. A significant increase in the number of lung tumors was found in female rats exposed to air containing 4.2 mg/m^3 of antimony trioxide 6 hours/day, 5 days/week, for 1 year. In another study, female rats exposed via inhalation to a daily time-weighted average of either 45 mg/m^3 of antimony trioxide or 40 mg/m^3 of antimony ore for 6 hours/day, 5 days/week for 1 year, developed lung neoplasms. Male rats were tested in this study and did not develop lung neoplasms.

In both studies, the tumors were of multiple origin and included schirrous carcinomas, squamous-cell carcinomas, bronchioalveolar adenomas, and bronchioalveolar carcinomas. Conclusively, antimony ore and antimony trioxide are carcinogenic in animal bioassays. Based on the concordance of results between the two studies, it is reasonable to anticipate that these compounds may cause carcinogenesis in humans.

3. *Reproductive and developmental toxicity.* There are clear indications of reproductive and developmental toxicity effects upon exposure to antimony metal, antimony trioxide, and some antimony sulfides. Also, there are possible developmental neurotoxicity effects following exposure to antimony trichloride. Reproductive toxicity was observed in female rats after inhalation of antimony trioxide, in rats after a single injection of metallic antimony dust, and in women working in antimony metallurgical plants. Developmental toxicity has been observed in these same studies, as well as in pregnant rats exposed to antimony trichloride in drinking water. The drinking water study also showed evidence of potential developmental neurotoxicity. These studies are not sufficient for quantitative risk assessment but do provide strong evidence of these effects.

As evidence of reproductive toxicity, a rat study revealed a significant reduction in female fertility after inhalation exposure of 250 mg/m^3 of antimony trioxide and after a single intra-peritoneal injection of 50 mg/kg antimony metal dust 3 to 5 days prior to mating. Histologic analysis of rats from both the inhalation and acute studies revealed ovarian and uterine changes; the results revealed ovarian follicles lacking ova or containing uncharacteristic ova, and cortical hyperemia of the ovaries and follicular cysts. Additionally, many of the rats had metaplasia of the uterus or tubular metaplasia.

In a comparison of the reproductive history of women working in an antimony metallurgical plant, one group exposed to antimony trioxide, metallic antimony, and antimony pentasulfides was subsequently compared to a similar, unexposed group of women. The exposed group had a higher incidence of spontaneous abortion, premature births, and gynecologic problems including menstrual disorders and inflammatory diseases. Antimony was present in the blood and urine of the exposed women as well as in the placental tissue, amniotic fluid, umbilical cord blood, and breast milk. The high rate of premature deliveries by females working in an antimony plant was also found in another study. Developmentally, children born to the exposed group of women in the comparison study above weighed significantly less than children of unexposed workers at 1 year of age even though the children of both groups weighed the same at birth.

Evidence of developmental toxicity is the reduction in litter size in the inhalation and acute rat studies cited for reproductive toxicity above. Other studies yielded further evidence of developmental and maternal toxicity wherein pregnant rats were exposed to antimony trichloride via drinking water; the pups were exposed after weaning until postnatal day 60. Maternal toxicity in rats (reduced body weight gain) was evident after exposure to doses as low as 1 mg/L and developmental toxicity (significant reduction in postnatal weight gain from days 10 through 60) was evident after exposure to 10 mg/L. Further, in the same study, potential for developmental neurotoxicity in rats was evidenced upon exposure to 1 mg/L which resulted in significant reduction of pressor response to 1-noradrenaline and hypotensive response to 1-isoprenaline in day-60 pups; exposure to 10 mg/L of antimony trichloride resulted in a significant reduction in hypotensive response to acetylcholine on day 60.

4. *Environmental effects.* ATOM can reasonably be expected to cause acute toxicity to aquatic organisms. This conclusion is based on toxicological data for antimony ion. Aquatic chronic toxicity values were between 100 and 10,000 ppb for antimony ion. Aquatic chronic toxicity was observed for antimony ion with chronic toxicity values below 10 ppb for fish and daphnids. Antimony bioaccumulates in freshwater and marine invertebrates (BCF=16,000). ATOM is not persistent because it degrades in the environment.

Further, antimony metal does not bioaccumulate in fish but does persist indefinitely.

In the terrestrial environment, toxicity concerns are low. It is anticipated that antimony may be released from ATOM by hydrolysis or photolysis; biomethylation may occur and remobilize antimony from sediments. Also, soluble antimony will occur as either antimony oxide or antimony oxychloride. Antimony occurs naturally in the environment as a mineral component and usually does not exceed 1 ppm in abundance. Some accumulation in plants probably occurs in soils contaminated by industrial emissions or sludges but there is no evidence of plant toxicity.

IV. Explanation for Denial

A. General Policy

EPA has broad discretion in determining whether to grant or deny petitions under section 313 of EPCRA. When granting a petition, EPA has an obligation to show how the granting of the petition fulfills the statutory criteria EPA is to use in section 313(d) when modifying the list of toxic chemicals. When denying a petiton, EPA must issue an explanation of why the petition is denied.

B. Reasons for Denial

EPA is denying the petition submitted by SPC to delete antimony tris (iso-octyl mercaptoacetate) from the EPCRA section 313 list of toxic chemicals. The decision to deny the petition is based on human health concerns for antimony and antimony compounds because ATOM degrades in the environment to yield antimony and antimony trioxide. Results from two bioassays on antimony and antimony trioxide indicate carcinogenicity in female rats by inhalation and are sufficient to reasonably anticipate that antimony and antimony compounds may cause cancer in humans. Studies also provide strong evidence of developmental and reproductive effects following exposure to antimony compounds. In addition, there is moderate to high acute toxicity to aquatic organisms and high aquatic chronic toxicity to fish and daphnids. There is no evidence to indicate that the effects associated with exposure to ATOM differ significantly from the effects of antimony compounds as a category. Thus EPA believes that ATOM may reasonably be anticipated to cause cancer, developmental effects in humans and significant adverse effects on the environment of sufficient seriousness to warrant continued reporting under section 313. The effects noted for these chemicals are in accordance with the criteria in section 313(d)(2)(B) of EPCRA.

V. Administrative Record

The record supporting this decision is contained in docket control number OPTS–400042. All documents, including an index of the docket are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Room NE–G004, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: February 3, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90–3367 Filed 2–12–90; 8:45 am]

BILLING CODE 6560–50–D

Notices

Federal Register
Vol. 55, No. 30
Tuesday, February 13, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Final Determination; Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determination of 1990 Extra Long Staple Cotton Program.

SUMMARY: The purpose of this notice is to affirm the determinations made by the Secretary of Agriculture which are required to be made in order to implement the 1990 extra long staple (ELS) cotton price support and production adjustment program. These determinations are made in accordance with the Agricultural Act of 1949, as amended, (the "1949 Act").

EFFECTIVE DATE: December 1, 1989.

ADDRESSES: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, rm. 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "non major" since these program provisions are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination is available on request from the aforementioned individual.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title—Cotton Production Stabilization, Number 10.052 and Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation ("CCC") is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore neither an enviromental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

On October 2, 1989, (54 FR 40470), a notice of proposed determination was published requesting public comment on the 1990 ELS Cotton Program. Three respondents submitted comments, including one producer association, one ELS cotton producer and one ELS cotton merchant. Two respondents submitted comments relating to issues for which comments were not requested. Two respondents commented on the ARP level; one supported continuation of the 5-percent ARP and the other recommended an ARP level of no less than 10 percent. The 5-percent ARP option was selected in order for U.S. ELS cotton producers to maintain ELS cotton production at a level which will support the growing demands of the export market while minimizing the possibility of overproduction.

One respondent recommended that the ELS loan discount and premium formula be revised so that it is like the one used for upland cotton. The respondent further recommended that micronaire discounts for high grades of ELS cotton be widened by at least 25 to 40 percent and that micronaire discounts for low grades be decreased by at least 50 to 70 percent. The respondent also recommended removing the premium for staple 46 ELS cotton. These recommendations will not be adopted. It has been determination that such changes would not significantly improve the operation of the ELS program.

Determinations

1. *ELS Designated Counties.* In accordance with section 103(h)1 of the 1949 Act, it has been determined that counties designated as suitable for growing ELS cotton during marketing year 1989 will be redesignated for marketing year 1990, and that additional counties, as deemed appropriate by CCC, may be designated prior to the final date for enrolling in the 1990 ELS cotton program. Counties designated during marketing year 1989 were as follows:

Arizona: Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, and Yuma.

California: Fresno, Imperial, Kern, Kings, and Riverside.

Florida: Alachua, Hamilton, Jefferson, Madison, Marion, Suwanee, and Union.

Georgia: Berrien and Cook.

Mississippi: Bolivar, Coahoma, Panola, Quitman, and Tunica.

New Mexico: Chaves, Dona Ana, Eddy, Hidalgo, Luna, Otero, and Sierra.

Texas: Andrews, Bee, Bexar, Brewster, Culberson, Dimmit, El Paso, Frio, Gaines, Hudspeth, Jeff Davis, Kinney, La Salle, Loving, Medina, Pecos, Presidio, Reeves, Refugio, Uvalde, Ward, and Zavala.

2. *Loan Level.* In accordance with section 103(h)(2) of the 1949 Act, it has been determined that the loan level for 1990-crop ELS cotton will be 81.77 cents per pound.

3. *Target Price.* In accordance with section 103(h)(3)(B) of the 1949 Act, it has been determined that the established "target" price for 1990-crop ELS cotton will be 98.1 cents per pound.

4. *Acreage Reduction Program (ARP).* In accordance with section 103(h)(8)(A) of the 1949 Act, it has been determined that the acreage reduction requirement for the 1990 crop ELS cotton will be 5 percent. Accordingly, producers will be required to reduce their 1990 ELS cotton

plantings for harvest by at least 5 percent from the ELS cotton acreage base established for a farm in order to be eligible for ELS cotton price support loans and deficiency payments.

5. *ELS Seed Cotton Loan Program.* In accordance with section 103(h)(17) of the 1949 Act, it has been determined that recourse loans will be made available for 1990 ELS seed cotton.

Authority: 7 U.S.C. 1444(h).

Signed at Washington, DC on January 9, 1990.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90-3383 Filed 2-12-90; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

[Docket No. 90517-0008]

Request for Comments on the Initial Content of the National Trade Data Bank To Be Established as Required by the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to subtitle E, part I of title V of the Omnibus Trade and Competitiveness Act of 1988, 15 U.S.C. 4901–4913 (the Act), the Department of Commerce is establishing a National Trade Data Bank (NTDB) and is proposing the initial content.

The Act states that the purpose of the NTDB is to provide reasonable access, including electronic access to data "useful * * * to policy makers and analysts concerned with international economics and trade * * *" and "* * * data * * * of the greatest interest to the United States business firms that are engaged in export-related activities and to Federal and State agencies that promote exports * * *."

The purpose of this notice is to inform the public and seek comments on the initial content of the NTDB. This is the second notice issued on the NTDB; the first notice appeared in the Federal Register (Docket No. 90517–9117) (54 FR 34204–34208), August 18, 1989, and dealt with the "structure" of the NTDB. (A summary of the responses to the first notice is provided below.)

DATE: Comments on this notice from the public should be received no later than Monday, April 16, 1990.

ADDRESS: Written comments should be addressed to: John E. Cremeans, Director, Office of Business Analysis, Room H4878, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John E. Cremeans, telephone (202) 377–1405.

SUPPLMENTARY INFORMATION: Subtitle E, part I of title V of the Omnibus Trade and Competitiveness Act of 1988 directs the Department of Commerce to establish and manage a National Trade Data Bank consisting of two parts: (1) an "International Economic Data System" (IEDS) and (2) an "Export Promotion Data System" (EPDS). The Act calls for the Secretary of Commerce, with the assistance of other Federal agencies to assemble, in one location, those economic, demographic, social, and other statistics of the United States and other countries that are of use to policymakers and analysts concerned with international economics and trade. The NTDB will also include information of greatest interest to U.S. businesses engaged in export-related activities and to Federal and State agencies that promote exports. The NTDB is to be operational within two years of the enactment of the Act (i.e., August 23, 1990).

Public Meeting

A public meeting will be held at 10:30 a.m. on Wednesday, March 7, 1990 in room 4830, U.S. Department of Commerce, the Herbert C. Hoover Building, 14th & Pennsylvania Avenue, NW., Washington DC 20230. At that meeting, officials of the Department will answer questions from the public on the initial content of the NTDB. Note that comments and suggestions on the content of the NTDB must be submitted in writing as described below in order to be certain of consideration for the final content of the NTDB.

Response to the August 1989 Federal Register Notice

Twenty-two letters and several telephone calls were received in response to the Federal Register notice of August 18, 1989 on plans for the National Trade Data Bank. All responses were supportive of the NTDB and the dissemination plan, although some questioned specific features of that plan. Most respondents emphasized their particular concern for, or interest in, data or features that were already addressed in the plans for the NTDB.

Several respondents questioned the usefulness or fairness of the proposed Authorized Distributor Service and none expressed support for it. In the light of the apparent lack of enthusiasm for this service, the Department will drop this feature from its plans for the NTDB.

Interagency Trade Data Advisory Committee

The Act establishes the Interagency Trade Data Advisory Committee (ITDAC) to be chaired by the Secretary of Commerce.

The members of the ITDAC are:

The United States Trade Representative,
The Secretary of Agriculture,
The Secretary of Defense,
The Secretary of Commerce,
The Secretary of Labor,
The Secretary of Treasury,
The Secretary of State,
The Director of the Office of Management and Budget,
The Director of the Central Intelligence Agency,
The Chairman of the Federal Reserve Board,
The Chairman of the International Trade Commission,
The President of the Export-Import Bank.

The President of the Overseas Private Investment Corporation, or their representatives, and such other members as may be appointed by the President from full-time officers or employees of the Federal Government.

Under this last provision, the Administrator of the Small Business Administration was appointed to the ITDAC. Components of the Department of Commerce, i.e., the Bureau of the Census; the Bureau of Economic Analysis and the International Trade Administration, are informally represented at meetings of the ITDAC.

This notice on the data content of the NTDB was reviewed by the ITDAC and the Committee was asked for its advice in correspondence and in a formal meeting. The first draft of the notice was circulated to the member agencies on December 12, 1989. Comments were received and changes made to the draft. The second draft was circulated on December 20, 1989 and discussed at the ITDAC meeting on January 5, 1990.

Data Content of the National Trade Data Bank

The language of the Act provides clear guidance on the general types of information to be included in the NTDB:

International Economic Data System: The IEDS

> . . . shall include current and historical information determined by the Secretary to be useful to policymakers and analysts concerned with international economics and trade and which shall include data complied or obtained by appropriate executive agencies. Such information shall not identify parties to transactions. Such information may include data for the United States and

countries with which the United States has important economic relations including

(1) data on imports and exports, including—

(A) aggregate import and export data for the United States and for each foreign country;

(B) industry-specific import and export data for each foreign country;

(C) product and service specific import and export data for the United States;

(D) market penetration information; and

(E) foreign destinations for exports of the United States;

(2) data on international service transactions;

(3) information on international capital markets, including—

(A) interest rates; and

(B) average exchange rates;

(4) information on foreign direct investment in the United States economy;

(5) international labor market information, including—

(A) wage rates for major industries;

(B) international unemployment rates; and

(C) trends in international labor productivity;

(6) information on foreign government policies affecting trade, including—

(A) trade barriers; and

(B) export financing policies;

(7) import and export data for the United States on a State-by-State basis aggregated at the product level including—

(A) data concerning the country shipping the import, the State of first destination, and the original port of entry for import of goods and, to the extent possible, services; and

(B) data concerning the State of the exporter, the port of departure, and the country of first destination for export of goods and, to the extent possible, services; and

(8) any other economic and trade data collected by the Federal Government that the Secretary determines to be useful in carrying out the purposes of this subtitle.

Export Promotion Data System: The EPDS

. . . shall include data and information collected by the Federal Government on the industrial sectors and markets of foreign countries which are determined by the Secretary (after consultation required by Section 5404 of the Act) to be of greatest interest to United States business firms that are engaged in export-related activities and to Federal and State agencies that promote exports while providing for the confidentiality of proprietary business information, and shall be designed to use the most effective means for disseminating data and information electronically through the Department, or Department-designated offices, or through other available data bases in an accurate and timely manner. Such data system shall monitor, organize, and disseminate selected information on:

(1) specific business opportunities in foreign countries;

(2) specific industrial sectors within foreign countries with high export potential such as:

(A) size of the market;

(B) distribution of products;

(C) competition;

(D) significant applicable laws, regulations, specifications, and standards;

(E) appropriate government officials; and

(F) trade associations and other contact points; and

(3) foreign countries generally, such as—

(A) the general economic conditions;

(B) common business practices;

(C) significant tariff and trade barriers; and

(D) other significant laws and regulations regarding imports, licensing, and the protection of intellectual property;

(4) export financing information, including the availability through public sources of funds for United States exporters and foreign competitors;

(5) transactions involving barter and countertrade; and

(6) any other similar information, that the Secretary determines to be useful in carrying out the purposes of this subtitle.

Proposed NTDB Initial Content

The Department of Commerce and the other ITDAC agencies have worked hard to select data for the initial content of the NTDB. The Department's NTDB Planning Committee established a Data Content Subcommittee in October 1988 and work on the content of the NTDB has been continuous since. The starting point was the suggested outline of data requirements in the Act as quoted above. Specific source agencies and categories of data were identified and ITDAC members were asked to comment and to suggest additions. The outline of initial content shown in Table 1 of this notice is the result of that effort. Table 1 is current through December 1989.

Comments are requested on the proposed data content for the NTDB as listed in Table 1 of this **Federal Register** notice. These data are considered initial because not all of the general information cited in the Act is available at this time. The NTDB is a dynamic system that will grow as needs change and additional data become available.

Table 1 presents the proposed initial contents of the NTDB. Each numeric data base and textual source that comprises the initial contents of the NTDB is listed by supplier organization. Each column of the table provides summary information about the data base or text report as it exists now; it is our intent that current users and others knowledgeable in the field of international trade information can easily identify the current source with this information. The information includes:

Title—The title of the textual report or the common name used to identify a numeric data base.

Description—A summary that provides the contents and dimensions of the source.

Coverage—The year of publication of the text reports or the span of years of the numeric data bases. (N.B.—Numeric data base coverage in the NTDB may vary by individual series and not extend as far back in years as the original data available from the supplier organization.)

Periodicity—The frequency of publication of text reports and the most frequent numeric observation in an individual series. The latter is also *generally* the updating frequency of the numeric data base.

—Current Electronic Availability—The electronic medium the information is currently available on. Abbreviated entities in this column include NTIS (Commerce's National Technical Information Service) and EBB (Commerce's Economic Bulletin Board).

Current Print Availability—The current source or citation of printed versions of the information.

CD–ROM Capacity

As was explained in the August 1989 **Federal Register** notice on the NTDB, the principal means of dissemination of the NTDB will be monthly CD–ROM disks. The capacity of such disks is approximately 550 megabytes, equivalent to about 1500 floppy disks. It is anticipated that all the data *identified as monthly, quarterly, annual, or occasional* in Table 1 will be placed on the NTDB CD–ROM. (Data items *updated* more frequently than monthly, e.g., the Trade Opportunities Program (TOPS), will be made available through an electronic bulletin board service.) However, the capacity of one CD–ROM will be the upper limit for the initial NTDB. If the capacity of one CD–ROM is not sufficient, or, if additional data categories or entities later determined to be necessary for the NTDB cause the capacity of one CD–ROM to be exceeded, the Department will consider disseminating the NTDB data in annual and monthly disks; i.e., annual reports, time series, etc., will be disseminated on a separate CD–ROM once each year and all other data as indicated above will be disseminated on the monthly CD–ROM. Some reports, e.g., from the Census Bureau's Foreign Trade Division, have not been included because they are derivable from other data included in the NTDB. This approach will provide greater flexibility and will permit more data to be put in the NTDB.

Possible Data Conversion Problems

All of the data described in Table 1 are currently available in electronic or print form. (The Act does not authorize

new data collection by the Federal Government—see Section 5411, Collection of Data.) However, all of the data must be converted to NTDB formats and some of it must be summarized or otherwise converted to special forms for dissemination through the NTDB. If the source agencies or the Department are unable to prepare specific data entities in time for the first monthly NTDB CD-ROM, they will be added as later CD-ROMs are issued.

Resource Constraints

The Department of Commerce is doing everything possible, within the limits of the Department's budget, to put the system into operation by the August 1990 date established in the Act.

The NTDB is an advanced and complex information distribution system requiring time and substantial development and data conversion costs to the Department of Commerce and other Federal Agencies supplying data. Nothing in this notice should be construed to guarantee that the NTDB will be complete with all described features or data items in August 1990. The NTDB is expected to evolve and improve after its initial release; data content described in this notice and other data not now available will be added as resource availability permits.

Request for Comments

The Department of Commerce invites the public to comment on the proposed initial content of the National Trade Data Bank within 60 days of this notice. The Department solicits comments by the public on any one or group of data series or on the content as a whole. Written comments received will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, U.S. Department of Commerce, Room 6628, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230.

The public is reminded that the NTDB is an evolving system which will improve over time as more data and software become available.

Recommendations received may be incorporated into the planning and development of the "content" of the NTDB. At its option, the Department may elect to distribute recommendations (without attribution) as part of an NTDB Developer's Toolkit in order to provide further guidance to software writers designing programs to enhance the value of information in the NTDB.

Additional Federal Register notices about the National Trade Data Bank may be issued as plans are further developed covering modifications to its content, data distribution, structure, proposed user charges, software, and other developments. Persons interested in receiving these and other public correspondence concerning the NTDB directly may have their name added to the NTDB mailing list by contacting John E. Cremeans at the address noted above.

Dated: February 7, 1990.

Mark W. Plant,

Deputy Under Secretary for Economic Affairs, U.S. Department of Commerce.

TABLE 1.—SUMMARY OF INITIAL NATIONAL TRADE DATA BANK

Title	Description	Coverage	Periodicity	Current electronic availability	Current print availability
Board of Governors of the Federal Reserve System					
Foreign Spot Exchange Rates	Spot exchange rates for 30 foreign countries based on averages of certified noon buying rates in New York for cable transfers. Units are either foreign currency per U.S. dollar or U.S. cents per unit of foreign currency.	1971–1989	Monthly	Tape	*Federal Reserve Bulletin* Table 3.28
Weighted Average Exchange Value of the Dollar.	Weighted average exchange value index (March 1973=100) of the U.S. dollar against currencies of 1 foreign industrial countries. Weights are based on the 1972–76 average world trade of each country compared to the total of all ten countries. Series revised as of August 1978.	1971–1989	Monthly	Tape	*Federal Reserve Bulletin*, Table 3.28.
Foreign Three-Month Interest Rates.	Interest rates for 3-month interbank loans for the foreign G–10 countries except for Canada, Finance Company Paper; Belgium, 3-month treasury bills; and Japan, Gensaki rate. Rates are averages of daily figures expressed on an annual basis.	1971–1989	Monthly	Tape	*Federal Reserve Bulletin*, Table 3.27.
U.S. 3-Month CD Interest Rate.	U.S. 3-month Certificate of Deposit (CD) interest rates (percent per annum). The rate on CDs is a simple average of dealer rates on negotiable CDs nationally traded in the secondary market.	1964–1989	Monthly	Tape	Federal Reserve Bulletin, Table 1.35.
Stock Price Indices for the G–10 Countries.	Stock price indices for the G–10 countries by week and updated monthly. Construction and sources of indices vary across countries.	1976–1989	Weekly	Tape	"Selected Interest and Exchange Rates," Chart 10.
Central Intelligence Agency					
The World Factbook	Provides geographic, economic, and demographic information about countries and geographic areas of the world.	1989	Annual	Tape (NTIS), diskette.	NTIS.

TABLE 1.—SUMMARY OF INITIAL NATIONAL TRADE DATA BANK—Continued

Title	Description	Coverage	Periodicity	Current electronic availability	Current print availability
Handbook on Economic Statistics.	A reference aid that provides statistics for selected non-Communist countries and all of the Communist countries. In general, the data in the Handbook are for 1960, 1970, 1975, 1980, and for the period 1984–88. Data are adjusted for comparability purposes and are obtained from public sources, including international organizations.	1960–1988	Annual	Tape, diskette	NTIS (GPO—Stock Number 041–015–00165–5).
Department of Agriculture, Foreign Agricultural Services					
Foreign Production Supply & Distribution of Agriculture Commodities.	Estimates and forecasts by commodity specialists for: beginning stocks, production, imports, exports, domestic use, and ending stocks, for many commoties by country. These data will be available for the current and previous year.	1988–1989	Annual	Tape (NTIS)	NTIS Accession Number: P388–149570.
Agricultural Export Briefs	Marketing opportunities for agricultural products released daily for major agricultural commodities. Products sought by foreign buyers perpared by agricultural Information and Marketing Services, Foreign Agricultural Services, USDA.	1989	Daily	Private distribution.	No.
Department of Commerce, Bureau of the Census					
Merchandise Trade—Exports	Merchandise trade data for exports by 10-digit Schedule B commodity codes. Shippers Export Declarations are summarized by 10-digit and 2-digit harmonized commodity codes by destination country. FAS value and quantity are given for: Current month, year-to-date this month, year-to-date this month last year, and the total for last year.	1989–1990	Monthly	Tapes, CD-ROM.	No.
Merchandise Trade—Imports	Merchandise trade data for imports by 10-digit HTS commodity codes. U.S. Customs Import Entry records are summarized by 10-digit and 2-digit harmonized commodity codes and country of origin. CIF value, customs value, and quantity are provided for current month, year-to-date this month, year-to-date this month last year, and the total for last year.	1989–1990	Monthly	Tapes, CD-ROM.	No.
Population Characteristics & Projections.	Annual Census Bureau mid-year population estimates for 208 countries from 1950 to 1985, annual projections to 1990, and 5-year estimates beginning in 1995 to 2050. Historical population by marital status, age, and sex; and economically active population by age and sex.	1950–2050	Annual	Tape	International Data Base, Tables 1, 47, and 69.
Exports from Manufacturing Establishments.	Estimated shipments and employment related to manufactured exports for states by industry group [3-digit Standard Industrial Classification (SIC) level].	1987–1989	Annual	No	Bureau of the Census, Customer Service (# AR–86–1).
Trade & Employment	Quarterly report of data that measures changes in U.S. imports and domestic exports and related domestic employment by commodity classification base on the 1972–77 Standard Industrial Classification (SIC) at the 3-digit level.	1982–1988	Quarterly	No	Bureau of the Census (GPO # TM–2–29).
Department of Commerce, Bureau of Economic Analysis					
National Income & Product Accounts, Quarterly Series.	U.S. National Economic Accounts including gross national product (GNP), GNP price measures, goods and services comprising GNP, national income, personal income, corporate profits, and specialized measures..	1946–1989	Quarterly	Tape, diskette, EBB.	*Survey of Current Business,* Tables 1.1–8.1.
National Income & Product Accounts, Annual Series.	U.S. National Economic Accounts by industry including gross national product and various measures of employment.	1947–1988	Annual	Tape, diskette, EBB.	*Survey of Current Business,* Tables 6.1, 6.2, 6.6, 6.7, 6.9–6.11.
Fixed Reproducible Tangible Wealth Estimates.	Annual estimates of fixed reproducible tangible wealth, gross and net stocks in current-cost and constant-cost valuations.	1925–1988	Annual	Tape	August issue of *Survey of Current Business,* Tables 1–20.
U.S. Merchandise Trade (Balance of Payments Basis).	U.S. merchandise exports and imports by end-use commodity categories, on a balance of payments basis.	1978–1989	Quarterly	Diskette	*Survey of Current Business.*

TABLE 1.—SUMMARY OF INITIAL NATIONAL TRADE DATA BANK—Continued

Title	Description	Coverage	Periodicity	Current electronic availability	Current print availability
International Investment Position of the United States.	International investment position of the United States at year-end including detail of U.S. ownership of foreign assets and foreign ownership of U.S. assets, by type of asset.	1970–1988	Annual	Diskette	*Survey of Current Business.*
U.S. International Transactions (Balance of Payments).	U.S. international transactions (balance of payments) and major balances, by types of transactions and by major world areas.	1960–1989	Quarterly	Diskette	*Survey of Current Business.*
Operations of U.S. Affiliates of Foreign Companies.	U.S. affiliates of foreign companies: Data on financing and operation including income statements, balance sheets, employment and employee compensation, merchandise trade, sales of goods and services, and selected data by State.	1987	Annual	Diskette	*Foreign Direct Investment by U.S.: 1987 Benchmark Survey Preliminary Results.*
Foreign Direct Investment in the U.S.: Position, Capital, Income.	Foreign direct investment position in the United States: Data on capital and income transactions of U.S. affiliates with foreign parent companies.	1987–1988	Annual	Diskette	August issue of *Survey of Current Business.*
U.S. Businesses Acquired & Established by Foreign Direct Investors.	New Foreign direct investment in the United States, covering (1) existing U.S. business enterprises in which foreign investors acquired at least 10 percent ownership interest and (2) new U.S. business enterprises established by foreign direct investors or their U.S. affiliates.	1987–1988	Annual	Diskette	May issue of *Survey of Current Business.*
Operations of U.S. Parent Companies & Their Foreign Affiliates.	U.S. Parent companies and their foreign affiliates: Data on the financing and operation, including income statements, balance sheets, employment and employee compensation, merchandise trade, and sales of goods and services.	1986–1987	Annual	Diskette	"Operations of U.S. Parent Companies & Their Foreign Affiliates".
U.S. Direct Investment Abroad: Position, Capital, Income.	U.S. direct investment position abroad: Data on capital and income transactions with foreign parent companies.	1987–1988	Annual	Diskette	August issue of *Survey of Current Business.*
International Services	U.S. blanace of payments transactions in services and on sales of services by foreign affiliates of U.S. companies and by U.S. affiliates of foreign companies. This series is currently under development.	1987–1988	Annual	Diskette	*Survey of Current Business.*
U.S. Expenditures for Pollution Abatement & Control (PAC).	U.S. expenditures for PAC in current and constant dollars and selected fixed-weighted price indexes. Annual data are by type (e.g., air, water) and by expenditure category (e.g., sector).	1972–1987	Annual	No	*Survey of Current Business,* Table 6, "PAC Article," June 1989.
Department of Commerce, International Trade Administration (TIA & IEP)					
Understanding U.S. Foreign Trade Data.	Comprehensive publication providing an introduction to merchandise trade data for the occasional user of aggregate trade data and a more technical description for users of more complex trade data series.	1985	Occasional	No	DOC/International Trade Administration.
U.S. Industrial Outlook	Business reference book provides forecasts for over 350 U.S. industries, generally, by SIC categories. year ahead and industry-by-industry reviews.	1989	Annual	Tape, EBB	GPO.
International Countertrade: A Guide for Managers & Executives.	Provides information on counter-trade practices in selected foreign markets. (An update of the report is planned for FY 1990.).	1984	As required	Diskette	DOC/International Trade Administration.
EC 1992: A Commerce Dept. Analysis of EC Directives, Vols. I & II.	A joint US DOC-industry trade Associations' analysis of EC directives and regulations on 1992 to assess their impact on U.S. Market access to the European Community.	1989	Occasional	No	DOC/International Trade Administration.
Business America	The Department of Commerce's bi-weekly publication that provides developments in international trade for the purpose of helping American companies sell their products overseas. Each issue has trade leads, marketing advice, export tips, descriptions of U.S. trade programs, general status of trade negotiations, country trade outlook, and worldwide trade opportunities.	1989	Bi-weekly	Diskette	DOC/International Trade Administration.

TABLE 1.—SUMMARY OF INITIAL NATIONAL TRADE DATA BANK—Continued

Title	Description	Coverage	Periodicity	Current electronic availability	Current print availability
Department of Commerce, International Trade Administration (US&FCS)					
International Market Research	Market Research covering individual countries, industries, and industry subsectors offering potential for U.S. exports. Material is provided by in-country market research firms or embassy research personnel. Reports are 2-to-90 pages long and provide information on market size, competitors, end-users, distribution channels, market access, best prospect products, economic factors and trends, business practices, and other data.	1987–1989	Periodically	Tape, diskette	DOC/International Trade Administration.
Foreign Traders Index	Names of foreign companies, organizations, government entities, banks, associations, and institutes in selected countries served by the U.S. & Foreign Commerical Service which have some interest in importing goods or services from the U.S. Entries cover the entities' name, address, telephone, cable, key contact, products, business interest, bank reference, year established, size, number of employees, and other data.	1985–1989	Periodically	Tape	DOC/Internatonal Trade Administration.
A Basic Guide to Exporting	The publication provides information needed to export. It provides a thorough introduction to exporting and serves as a reference to obtain information on particular topics.	1986	As required	Diskette	DOC/International Trade Administration.
Trade Opportunity Program	Sales opportunities and leads from U.S. embassies abroad for specific products, projects, government tenders, representation, joint ventures, and barter arrangements being sought by foreign companies, governments, or organizations from U.S. suppliers. Records include name, address, contact, SIC code, description of the opportunity, and other pertinent data.	1989	Daily	EBB	*Journal of Commerce.*
Department of Energy					
International Energy Database	Current data and trends for production, consumption, stocks, prices, imports, and exports of primary energy commodities in more than 190 countries and jurisdictions.	1980–1988	Annual	Tape	International Energy Annual, 1988.
Department of Labor, Bureau of Labor Statistics					
International Labor Statistics	Labor force, employment, unemployment rates, indexes of manufacturing productivity, labor costs, consumer price indexes, work stoppage statistics and related measures for 10–15 countries.	1958–1988	Monthly	Tape	*Monthly Labor Review*, Tables 48–50.
International Productivity	International labor productivity indexes by country.	1958–1988	Annual	Tape	No.
International Price Indexes	Import and export price indexes by SITC, BEA end-use and SIC-based code; special export price comparison (U.S., West Germany, Japan) and international service price indexes (selected categories); exchange rate indexes by SITC code.	1970–1989	Monthly	Tape	*Monthly Labor Review*, Tables 38–43.
Export-Import Bank of the United States					
Export-Import Bank of the United States.	A quarterly report that provides information on Bank programs by country and industry.	1990	Quarterly	Diskette	*Export-Import Bank of the United States.*
National Center for Standards and Certification Information					
National Center for Standards and Certification Information.	The report describes the Center's program of providing information on U.S., foreign, and international voluntary standards, regulations, and rules of certification for non-agricultural products.	1989	As required	Diskette	*National Center for Standards and Certification.*

TABLE 1.—SUMMARY OF INITIAL NATIONAL TRADE DATA BANK—Continued

Title	Description	Coverage	Periodicity	Current electronic availability	Current print availability
Overseas Private Investment Corporation					
OPIC Program Summaries	The report provides an overview of OPIC's programs of insuring U.S. investment projects abroad and financing investment projects through direct loans and loan guarantees.	1989	As required	Diskette	*Executive Summary* and *Overseas Private Investment Corporation.*
Annual Report	The Corporation's report to Congress providing information on financial conditions, projects funded by investor country, the insurance amount, and other program information.	1988	Annually	No	*1988 Annual Report.*
Fiscal Development Report	Congressional report required by Section 240A of the Foreign Assistance Act of 1961, as amended. It assesses the economic and social impact in third world countries of projects supported during fiscal year. A preview of initiatives is provided.	1988	Annually	No	*Fiscal 1988 Development Report.*
Small Business Administration					
Small Business and Export Information System.	Information will include exporter data by state and country, export potential by 25 import markets by country, listings of SBA export assistance program and regional office contacts, and export financing and loan information including 7(a) loan guarantees.	1990	As required	No	Various.
Trade Representative's Office					
Trade Projections Report to the Congress.	Joint publication of United States Trade Representative and Secretary of Treasury required under the 1988 Trade Act (Section 1641) containing a review and analysis of economic developments in major U.S. trading partner countries..	1989	Annual	No	Office of the United States Trade Representative.
National Trade Estimate Report on Foreign Trade Barriers.	Congressional report required by Section 1304 of the Omnibus Trade and Competitiveness Act of 1988. It provides significant foreign tariffs and trade barriers to and distortions of trade. Provides and inventory of trade barriers affecting goods, services, investment, and intellectual property rights of major U.S. trading partners.	1989	Annual	No	Office of the United States Trade Representatives.

[FR Doc. 90–3285 Filed 2–12–90; 8:45 am]
BILLING CODE 3510–EA–M

International Trade Administration

[C–223–601]

Certain Cut Flowers From Costa Rica; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica. We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the period January 1, 1988 through December 31, 1988. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 36838) the final results of the first administrative review of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica (52 FR 1356; January 13, 1987). On January 11, 1989, the Department published a notice of "Opportunity to Request Administrative Review" of this case. On January 30, 1989, the petitioner, the Floral Trade Council, requested an administrative review of the suspension agreement. We initiated the review on March 8, 1989 (54 FR 9868). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et. seq.* of the Omnibus Trade and Competitiveness Act of 1988.

All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of miniature (spray) carnations, standard carnations and pompon chrysanthemums from Costa Rica. During the review period, such merchandise was classifiable under items 192.17 and 192.21 of the *Tariff Schedules of the United States*. This merchandise is currently classifiable under HTS items 0603.10.30 and 0603.10.70.

The review covers 31 producers and exporters of the subject merchandise. These 31 producers and exporters, along with the government of Costa Rica (GOCR) and the Association of Costa Rican Flower Growers (ACOFLOR), are the signatories to the suspension agreement (see Appendix A of this notice for a listing of the 31 signatory producers and exporters). The review covers the period Janaury 1, 1988 through December 31, 1988, and six programs.

Analysis of Programs

(1) Tax Credit Certificates

Certificados de Abono Tributario (CAT) are bearer instruments issued by the Central Bank of Costa Rica. The value of the CAT is equal to 15 percent of the f.o.b. value of a firm's shipments of non-traditional exports. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CAT program for shipments of the subject merchandise to the United States. Effective the date of the agreement (January 13, 1987), any unused certificates received on prior shipments of the subject merchandise to the United States were to be returned to the Central Bank of Costa Rica. We determined during the aministrative review that none of the signatory producers and exporters received or possessed unused CATs during the review period. Therefore, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

(2) Certificates for Increasing Exports (CIEX)

This program provides grants to agricultural and agro-industrial producers who increase exports from one year to the next. In August 1984, the program was discontinued. However, the GOCR later appropriated additional monies to pay those companies that were eligible for, but had not yet received, benefits for increasing their exports in 1983. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CIEX program. During the administrative review, we determined that none of the signatory producers and exporters received benefits under this program. We preliminarily determine that the signatories were in compliance with the portion of the agreement covering this program.

(3) Income Tax Exemptions for Export Earnings

Firms in Costa Rica are eligible for a tax exemption for export earnings. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any income tax exemptions for income derived from exports of the subject merchandise to the United States. We preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

(4) Exporter Credit for Sales Tax and Consumption Tax on Certain Domestic Purchases

Exporting firms in Costa Rica are eligible for a rebate of sales taxes and selective excise taxes (*i.e.*, indirect taxes) paid on certain domestically-purchased articles. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any rebates of sales taxes and selective excise taxes on domestic purchases not physically incorporated into any exports. During the administrative review, we determined that none of the signatory producers and exporters applied for or received any rebates of these taxes during the review period on domestic purchases not physically incorporated into exports. Therefore, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

(5) Exporter Exemptions for Taxes and Duties on Imports

Costa Rican firms with export contracts may be exempted from paying duties and taxes on imported raw materials, intermediate products and capital goods used to produce exported finished products. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any exemption from taxes, surcharges and duties (*i.e.*, indirect taxes) on non-physically incorporated imports. We determined that no exporter or producer received such exemptions on any item for which it was not verified through compliance procedures administered by the Costa Rican Treasury, the Centro para la Promocion de las Exportaciones y de las Inversiones (the government agency responsible for granting exemptions), and ACOFLOR that the item in question has not been or will not be used for the production of merchandise exported to the United States and subject to the suspension agreement. Therefore, we preliminarily determine that the signatories are in compliance with the portion of the agreement covering this program.

(6) Accelerated Depreciation

Exporting firms in Costa Rica may use accelerated depreciation for new equipment if they are approved for that benefit by specific provisions of their export contract and if they export over 50 percent of their sales (by value). The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from making use of accelerated depreciation in the calculation of income taxes. No firm claimed or used accelerated depreciation on its tax forms filed in 1988. Therefore, we preliminarily determine that the signatories have complied with the terms of the suspension agreement.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement for the period January 1, 1988 through December 31, 1988.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject cut flowers into the United States. Our information indicates that the 31 signatory companies accounted for substantially all of the imports into the United States of this merchandise during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in

any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 2, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

Appendix A—List of Signatory Producers and Exporters

1. American Flower Corporation, S.A.
2. Flores del Cerro
3. Agroflor de Paraiso, S.A.
4. Hermelink y Garces, S.A.
5. Tico Flor, S.A.
6. Cooexflo R.L.
7. Compania Agricola Flex, S.A.
8. Flor Bella, S.A.
9. Exporflor de Cartago, S.A.
10. Lianpa, S.A.
11. Floricultura de Costa Rica, S.A.
12. Vivero El Zamorano, S.A.
13. Flores de Iztaru, S.A.
14. Inversiones Costa Flor, S.A.
15. Coopeflor
16. Euroflores, S.A.
17. Flores y Follajes del Tirol, S.A.
18. Flores del Volcan CRP, S.A.
19. Goreza, S.A.
20. Llano Claro, S.A.
21. Ornamentales Cargil, S.A.
22. Floricultura La Colina, S.A.
23. Flores Intercontinentales, S.A.
24. Fincas Nabori, S.A.
25. Flores de Coris, S.A.
26. Florex, S.A.
27. C.R.B. Internacional, S.A.
28. Flores del Caribe, S.A.
29. Zurqui Flor de Costa Rica, S.A.
30. Rio Tapezco Ltda.
31. Jardin Botanico LDL de Costa Rica, S.A.

[FR Doc. 90-3273 Filed 2-12-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-601]

Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On December 12, 1989, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on miniature carnations from Colombia. We have now completed that review and determine that the signatories to the suspension agreement have complied with the terms of the suspension agreement during the period January 1, 1987 through December 31, 1987.

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 51050) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on miniature carnations from Colombia (52 FR 1353; January 13, 1987). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of miniature carnations from Colombia. During the period of review, such merchandise was classifiable under item 192.1700 of the *Tariff Schedules of the United States Annotated.* This merchandise is currently classifiable under item 0603.1030 of *Harmonized Tariff Schedule* ("HTS"). The HTS item number is provided for convenience and Customs purposes. The written desciption remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987 and nine programs: (1) Tax Rebate Certificate ("CERT"); (2) Resolutions 59 and 22; (3) Resolution 40; (4) duty and tax exemptions under Plan Vallejo; (5) Resolution 10; (6) Fund for Agricultural Financing ("FFA"); (7) Fund for Industrial Financing ("FFI"); (8) Capital Formation Fund ("FCE"); and (9) Fund for National Economic Development ("FONADE").

Analysis of Comments Received

We have interested parties an opportunity to comment on the preliminary results. We received one comment from the respondents, Associacion Colombiana de Exportadores del Flores ("Asocolflores"), the Association of Floral Importers of Florida ("A.F.I.F."), Agrodex Ltda., Claveles Colombianos Ltda., Flores del Bosque, and Horticultura de la Sabana, agreeing with the Department's preliminary results.

Final Results of Review

As a result of our review, we determine that the signatories to the suspension agreement complied with the terms of the suspension agreement during the period January 1, 1987 through December 31, 1987.

The agreement can remain in force only as long as shipments covered by it account for at least 85 percent of exports of the subject merchandise to the United States.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-3274 Filed 2-12-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-003]

Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On December 12, 1989, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on roses and other cut flowers from Columbia. We have now completed that review and determine that the signatories to the suspension agreement have complied with the terms of the suspension agreement during the period January 1, 1986 through December 31, 1987.

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Paul McGarr, Officeof Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 51052) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on roses and other cut flowers from Colombia (48 FR 2158; January 18, 1983). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of roses and other cut flowers from Colombia. During the review period, such merchandise was classifiable under item numbers 192.1810 through 192.2192 of the *Tariff Schedules of the United States Annotated.* This merchandise is currently classifiable under item numbers 0603.10.60, 0603.10.70, 0603.10.80 and 0603.90.00 of the *Harmonized Tariff Schedule* ("HTS"). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1986 through December 31, 1987 and ten programs: (1) Tax Rebate Certificate ("CERT"); (2) Resolutions 59 and 22; (3) air freight rates; (4) Resolution 40; (5) duty and tax exemptions under Plan Vallejo; (6) Resolution 10; (7) Fund for Agricultural Financing ("FFA"); (8) Fund for Industrial Financing ("FFI"); (9) Capital Formation Fund ("FCE"); and (10) Fund for National Economic Development ("FONADE").

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received one comment from the respondents, Asociacion Colombiana de Exportadores del Flores ("Asocolflores"), the Association of Floral Importers of Florida ("A.F.I.F."), Rosalandia Ltda., Flores de la Sabana, S.A., Agricola Benilda Ltda., Santana Flowers Ltda., Invesiones Targa, S.A., and Flores del Rio, S.A., agreeing with the Department's preliminary results.

Final Results of Review

As a result of our review, we determine that the signatories to the suspension agreement complied with the terms of the suspension agreement during the period January 1, 1986 through December 31, 1987.

The agreement can remain in force only as long as shipments covered by it account for at least 85 percent of exports of the subject merchandise to the United States.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-3275 Filed 2-12-90; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Applications

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 90-00002." A summary of the application follows.

Summary of the Application:

Applicant: Non-Ferrous Founders' Society ("NFFS"), 455 State Street, Suite 100, Des Plaines, Illinois 60016, Contact: James L. Mallory, Executive Director, Telephone: (708) 299-0950.

Application No.: 90-00002.

Date Deemed Submitted: January 31, 1990. Members (in addition to applicant): 'A' Brass Foundry; A&B Foundry, Inc.; Acme Brass & Aluminum Foundry; Acra-Cast Foundries, Inc.; Active Brass Foundry; Advance Bronze, Inc.; Albco Foundry & Machine, Inc.; Alumalloy Metalcasting Company; American Bronze Corporation; American Crucible Products Co.; Armstrong Mold Corporation; Arth Brass & Aluminum Castings, Inc.; Atlas Founders, Inc.; Aurora Industries, Inc.; Bailsco Blades & Castings, Inc.; Barry Bronze Bearing Company; Beckett Bronze Company; Bergen Point Brass Foundry; Berntsen Brass & Aluminum, Inc.; Brass Foundry Company; Bridesburg Foundry Company; Brontel/Bearing Bronze Company; The Bronze Craft Corporation; Brost Foundry Company; Bushings, Inc.; Caldwell & Ward Brass Company; California Casting Inc.; Cannon Bronze Corporation; Century Brass Works, Inc.; Chicago Aluminum Castings Company, Inc.; D.W. Clark & Company; The Cleveland Aluminum Casting Co.; Colonial Foundries, Inc.; Colonial Metals; Continental Aluminum & Bronze Foundry; Crescent Brass Manufacturing Corp.; Crown Foundry Div./W. Phila. Bronze; Cyprus Warrenton Refining Company; Danville Brass & Aluminum; Dent Manufacturing, Inc.; EBW (Enerprise Brass Works); Ensley Tool Company; Erie Bronze and Aluminum Company; Falcon Foundry Company; Faunt Foundry Company; Federal Bronze Products; The Federal Metal Company; Fitz Brass & Aluminum Foundry, Inc.; Flury Foundry Company; Frontier Foundries, Inc.; G-M Brass & Aluminum Foundries, Inc.; Gettysburg Foundry Specialties Co.; H&H Casting, Inc.; Hi-Star Casting Company, Inc.; Illini Foundry Co.; Imperial Cantrell Mfg.; Jefferson Bronze & Aluminum Company; Johnson Brass & Machine Foundry, Inc.; James Jones Company; Karbo Bronze Foundries Enterprises, Inc.; King Bronze Foundry Company; Kloppenborg Foundry & Fan Co.; The Knapp Corporation; H. Kramer & Company; Kunkle Foundry Company Inc.; L. D. Max Aluminum, Inc.; Lacy-Pennsylvania Bronze & Company; Lake Shore Foundry, Inc.; Lasalle Foundry & Machine Company; R. Lavin & Sons, Inc.; Lee Brass Company; Leitelt Brothers, Inc.; Los Angeles Brass Products Inc.; Martin Brass Foundry; Meloon Foundries, Inc.; Louis Meskan Foundry; Metal Dynamics Corporation; Midwest Bronze & Aluminum; J. Walter Miller Company; Model Pattern and Foundry Company; Morgan Bronze Products, Inc.; The Multi-Cast Corporation; New England Union Co., Inc.; Non-Ferrous Cast Alloys, Inc.; Non-

Ferrous Casting Co.; Oakes Foundry, Inc.; Oberdorfer Foundries, Inc.; Phillips Foundry, Inc.; Pontiac Foundry, Inc.; Precision Enterprises; R&D Pattern and Foundry Co., Inc.; Racine Aluminum & Brass Foundry, Inc.; Radial Casting Corporation; Richmond Industries; Robison Aluminum Works; Roth Brothers Smelting Company; Sall-Eclipse, Inc.; Schill Corporation; I. Schumann & Company; Sheidow Bronze Corporation; Sipi Metals Corporation; Southern Aluminum & Brass Foundry, Inc.; Southern Casting Company; Superior Brass & Aluminum Casting Co.; SW Centrifugal, Inc.; Robert E. Taylor and Son, Inc.; Tri-State Aluminum Casting Company, Inc.; Trialco, Inc.; Tru-Cast, Inc.; Unexcelled Casting Corporation; Universal Electric Foundry; Vermont Foundry Div./Mahoney Foundries; Warwick Aluminum Company; Washington Iron Works, Inc.; Western Reserve Mfg. Co., Inc.; Wilton Company, The; Wolff & Dungey, Inc.; Wolverine Bronze Co.; Wyrwas Aluminum Foundry, Inc.

Summary of the Application

Export Trade

1. *Produce:* Any non-ferrous (e.g., aluminum, brass, bronze, copper, magnesium, pewter or zinc) casting, whether finish machined or unfinished.

2. *Services:* Engineering, design and other services related to Products and related manufacturing processes; licensing of Technology Rights concerning products and/or processes; and product testing and/or certification to standard or specifications.

3. *Technology Rights:* Patents, trademarks, service marks, copyrights, trade secrets; technology and/or expertise transfer; and semiconductor mask works.

4. *Export Trade Facilitation Services (as they relate to the export of Products, Services and Technology Rights):* Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; customs requirements compliance; communication and forwarding of sales leads, inquiries and export orders; information concerning foreign exchange and/or financing; warehousing, transportation, trade documentation and freight forwarding; liaison with agencies of the U.S. Government and of foreign governments, with trade association and banking institutions; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Under the proposed Export Trade Certificate of Review, NFFS and its Members will:

1. Engage in joint bidding or other joint selling arrangements for Products and Services, and allocate sales resulting from such arragements;

2. Establish prices for sales of Products and Services by Members in Export Markets, with each Member free to deviate from such prices by whatever amount it sees fit;

3. Refuse to quote prices for Products and Services, or to market or sell them, in specific Export Markets;

4. Solicit non-member Suppliers to sell their Products and Services, or offer their Export Trade Facilitation Services through the certified activities of NFFS or its Member companies, provided, however, that non-member Suppliers will not participate in the full range of certified export activities, but shall rather be limited to such activities as are normally associated with sub-contractors;

5. License associated Technology Rights in conjunction with the sale of Products and Services; in each case, the terms of such license shall be determined solely by negotiations between the licensing Member and the export customer without coordination or consultation with NFFS or any of its Members;

6. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing and/or expending current or new Export Markets; and

7. Discuss and agree on engineering and other technical Product and Service requirements of specific export cutomers or particular Export Markets as well as how to fulfill such requirements.

8. Enter into agreements whereby they agree to act in certain Export Markets as exclusive or non-exclusive Export Intermediaries for Products or Services. In an exclusive Export Intermediary agreement, (1) NFFS and/or its Members may agree not to represent any other Supplier for sale in the relevant market, and (11) Members may agree that they will export for sale in the relevant Export Market only through NFFS or the Members acting as exclusive intermediary, and that they will not export independently to the relevant market, either directly or through any other Export Intermediary. When acting as an exclusive Export Intermediary, NFFS and/or its Members shall not unreasonably refuse to supply its services on non-discriminatory terms to those Members that are parties to the exclusive arrangement and which request such services.

9. Exchange and discuss the following types of information solely about Export Markets:

a. Information about sales or marketing efforts, activities and opportunities for sales of Products and/or Services, selling strategies, pricing, terms and conditions of sale, competitive Products and the prices thereof available for sale in particular Export Markets, customer specifications, and international standards in Export Markets;

b. Information about export prices, quantity, quality, source and delivery dates of Products available from Members for export. Discussions on quality, source and delivery dates shall be on the basis of each individual transaction and involve only those Members participating or having a genuine interest in participating in each such transaction;

c. Information regarding terms, conditions and specifications of particular contracts of sale that may be offered for consideration or bid on by NFFS and/or its Members;

d. Information about joint bidding, selling, or servicing agreements, and allocations of sales among the Members resulting from such agreements;

e. Information about legislation and regulations, either current or pending, in the U.S. and foreign markets affecting export sales;

f. Information concerning expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales documentation, financing, customs, duties, and taxes; and

g. Information concerning the export operations of NFFS or its Members, including, without limitation, sales and distribution networks established by NFFS or its Members in Export Markets, and prior export prices and sales by Members.

10. Provide its Members or other Suppliers the benefit of Export Trading Facilitation Services regarding the export of Products to Export Markets,

either on its own or by agreements with its Members or other parties.

11. Forward to the appropriate individual Member requests for information received from foreign governments or their agents (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including costs and prices). If the Member elects to respond, it shall respond directly to the requesting foreign government or its agent.

12. Meet to engage in any of these activities.

Dated: February 7, 1990.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-3385 Filed 2-12-90; 8:45 am]

BILLING CODE 3510-DR-M

University of Maryland, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 85-276. *Applicant:* University of Maryland, College Park, MD 20742. *Instrument:* Equipment and components to produce streamer tube chambers. *Manufacturer:* Costruzioni Meccaniche M. Bindi, Italy. *Intended Use:* See notice at 50 FR 36128, September 5, 1985. Reasons for This Decision: The foreign apparatus and accessories are capable of producing charge particle detectors to detect strongly interacting particle showers.

Docket Number: 88-286. *Applicant:* Regents of the University of California, Riverside, CA 92521. *Instrument:* Particle Calorimeter—Limited Streamer Tracking Chamber System. *Manufacturer:* CERN, Switzerland. *Intended Use:* See notice at 53 FR 43436, October 27, 1988. *Reasons for This Decision:* The foreign articles are unique to the intended use in a cooperative experiment measuring the energy of incoming cosmic ray particles.

Docket Number: 89-083. *Applicant:* NOAA, National Ocean Service, Rockville, MD 20852. *Instrument:* Analytical Stereoplotter System. *Manufacturer:* Ottico Meccanica Italiana, Italy. *Intended Use:* See notice at 54 FR 13407, April 3, 1989. *Reasons for This Decision:* The foreign apparatus enables measurement and collection of topographic survey data.

Docket Number: 89-101R. *Applicant:* Ohio State University, Columbus, OH 43210. *Instrument:* Light Element Isotope Ratio Mass Spectrometer, Model Delta E. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 54 FR 13726, April 5, 1989. *Reasons for This Decision:* The foreign instrument is a fully automated high precision 48 sample batch system.

Docket Number: 89-241. *Applicant:* Michigan Technological University, Houghton, MI 49931. *Instrument:* Cambustion Fast Fuel Concentration and Hydrocarbon Analyser, Model HFR Series. *Manufacturer:* Cambustion, Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 47253, November 13, 1989. *Reasons for This Decision:* The foreign instrument provides a response time in the microsecond range.

Docket Number: 89-248. *Applicant:* Pennsylvania State University, University Park, PA 16802. *Instrument:* Ultrahigh Vacuum Surface Analysis System, Model LHS-12E. *Manufacturer:* Leybold Vacuum Products Inc., West Germany. *Intended Use:* See notice at 54 FR 47253, November 13, 1989. *Reasons for This Decision:* The foreign instrument provides a high resolution low energy electron loss spectrometer (HREELS) capability.

Docket Number: 89-250. *Applicant:* U.S. Department of Energy, Argonne, IL 60439. *Instrument:* Mass Spectrometer, Model PlasmaQuad PQ2 Plus. *Manufacturer:* VG Instruments Group, United Kingdom. *Intended Use:* See notice at 54 FR 47702, November 16, 1989. *Reasons for This Decision:* The foreign instrument provides the ability to determine major, minor, trace and ultratrace components during the analytical run without beam attenuation.

Docket Number: 89-254. *Applicant:* Catholic University of America, Washington, DC 20064. *Instrument:* FTIF Spectrometer, Model DA3.16. *Manufacturer:* Bomem, Inc., Canada. *Intended Use:* See notice at 54 FR 47703, November 16, 1989. *Reasons for This Decision:* The foreign instrument provides an unapodized resolution of $0.026cm^{-1}$.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-3276 Filed 2-12-90; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Tuesday, March 13 and Wednesday, March 14, 1990, from 9 a.m. to 5 p.m. This is the fifth meeting of the Advisory Board which was established by the Computer Security Act of 1987 (Pub. L. 100-235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. A closed session of the meeting will be held to discuss NIST outyear computer security budget matters. The closed session is scheduled to be held Tuesday, March 13, 1990, from 3:30 p.m. to 5 p.m. All other sessions will be open to the public.

DATES: The meeting will be held on March 13 and 14, 1990, from 9 a.m. to 5 p.m. A closed session will be on Tuesday, March 13, 1990, from 3:30 p.m. to 5 p.m.

ADDRESS: The meeting will take place at the Gaithersburg Marriott Hotel, 620 Lakeforest Blvd., Gaithersburg, Maryland. The conference room assignment will be posted at the hotel on the day of the meeting.

Agenda

1. Welcome
2. Review of Computer Security Board's Progress
3. Review of Draft Issue Papers
4. Discussion of Civil Agency Computer Security Evaluation Criteria
5. Subcommittee Reports
6. Discussion of Federal Government Computer Security Issues
7. Public Participation and Pending Board Matters

Public Participation

The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, National Computer Systems Laboratory, Building 225, Room B–154, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by March 1, 1990.

Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security and Advisory Board Secretary, National Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B–154, Gaithersburg, Maryland 20899, telephone: (301) 975–3240.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 15, 1989, that the portion of this meeting which involves examination of out-year computer security budgets may be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, P.L. 94–409. Those portions of the meeting, which involve discussion of future budget requests, may be closed to the public in accordance with section 552(b)(9)(B) of Title 5, United States Code, since those portions of the meeting are likely to divulge matters that may significantly frustrate implementation of proposed agency action. All other portions of the meeting will be open to the public.

Dated: February 7, 1990.

Raymond G. Kammer,

Acting Director.

[FR Doc. 90–3348 Filed 2–12–90; 8:45 am]

BILLING CODE 3510–13–M

Announcement of Workshop for Users and Implementors of Broadband Integrated Services Digital Network (B–ISDN)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The NIST, in cooperation with the Defense Advanced Research Projects Agency (DARPA), is sponsoring an open workshop to address commercialization agreements for the emerging broadband ISDN (B–ISDN) standards. These standards include options to be selected and require additional service definitions to be provided by users especially for the Asynchronous Transfer Mode (ATM) and the ATM Adaptation Layers (AAL).

The purpose of the workshop is to:

1. Initiate a process by which implementation agreements are made for commercial B–ISDN products. Identification and resolution of differences and ambiguities is a necessary agenda.

2. Provide user input to Technical Committee T1S1 for the purpose of defining the remaining functions of the ATM, service aspects of the AAL, extending the bandwidth beyond OC–12, and possibly defining a Synchronous Optical Network (SONET) interface to High Performance Parallel Interface (HPPI) and multi-mode fiber. Numerous other unresolved issues (i.e., performance related) may also need to be addressed.

The needs of end users as well as those of the computer and the telecommunications industries should be addressed so as to maximize the likelihood of commercialization. Interfaces, access, services, and applications need to be specified in the context of a comprehensive set of standards and corresponding selection of options. The goal is to assure portable equipment, network interworking, and interoperable applications.

Attendance at the workshop is open. The agenda will consist of presentations and discussion groups. In order to focus the discussions, up to twelve presentations will be selected, based on abstracts that support the workshop's purpose. Authors of selected abstracts will then be asked to write and present papers and to lead discussion groups. Papers will be published in workshop proceedings and distributed to all participants.

DATES: The B–ISDN workshop will be held in conjunction with The Eighth North American ISDN Users' Forum (NIU–FORUM) which will be held at the Dallas Park Inn Plaza Hotel, Dallas, Texas, March 6–9, 1990.

ADDRESSES: Parties interested in preparing abstracts should direct correspondence to: B–ISDN Workshop, c/o Thomas DeWitt, Bldg. 223, Room B–364, National Institute of Standards and Technology, Gaithersburg, MD 20899, Tel: 301/975–5750, FAX: 301/975–2128, E–Mail: tbd@isdn.ncsl.nist.gov.

FOR FURTHER INFORMATION CONTACT: Parties interested in attending the workshop should contact: Dawn Hoffman, National Institute of Standards and Technology, Bldg. 223, Room B364, Gaithersburg, MD 20899, Tel: 301/975–2937, FAX: 301/975–2128.

Dated: February 7, 1990.

Raymond G. Kammer,

Acting Director.

[FR Doc. 90–3349 Filed 2–12–90; 8:45 am]

BILLING CODE 3510–CN–M

Announcement of the Eighth North American ISDN Users' Forum (NIU–FORUM)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The National Computer Systems Laboratory (NCSL) at the NIST announces the Eighth North American ISDN Users' Forum (NIU–FORUM). The NIU–FORUM will be hosted by INTERFACE '90 PLUS. The NIU–FORUM was formed in 1988 under the auspices of NIST to create a strong user voice in the implementation of Integrated Services Digital Network (ISDN) (narrow and broadband) and to ensure that the emerging ISDN services meet users' application needs.

DATES: The Eighth North American ISDN Users' Forum (NIU–FORUM) will be held at the Dallas Park Inn Plaza Hotel, Dallas, Texas, March 6–9, 1990. ISDN tutorials with increased focus on broadband applications will be conducted on March 6–9. This FORUM will consist of joint sessions for the ISDN User's Workshop (IUW) and the ISDN Implementors' Workshop (IIW). The IUW will continue work identifying, defining, and prioritizing user applications of ISDN. The IIW will continue defining implementation agreements for ISDN. Working group meetings will discuss issues related to the use and implementation of ISDN technology. Manufacturers and service providers are invited to participate in this workshop.

ADDRESS: To obtain registration forms for the workshops, companies may

contact: ISDN Workshops, Attn: Kim Brashears, National Institute of Standards and Technology, Building 223, Room B364, Gaithersburg, MD 20899, Telephone: (301) 975–4853. Upon receipt of the completed registration form, additional registration information will then be mailed to the registrant.

FOR FURTHER INFORMATION CONTACT: Dawn Hoffman (301) 975–2937.

SUPPLEMENTARY INFORMATION: The registration fee on or before February 26, 1990, will be $275. After February 26, 1990, the registration fee will be $325. Participants are expected to make their own travel arrangements and accommodations. NIST reserves the right to cancel any part of the workshops.

Dated: February 7, 1990.

Raymond G. Kammer,

Acting Director.

[FR Doc. 90–3350 Filed 2–12–90; 8:45 am]

BILLING CODE 3510–CN–M

International Trade Administration

Short Supply Determinations; Steel Pile Weaving Wire

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: Certain steel pile weaving wire. Short-supply review number: 6.

SUMMARY: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 State. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Regulations, published in the **Federal Register** on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations"), the Secretary of Commerce ("Secretary") hereby announces that a short-supply determination is under review with respect to certain steel pile weaving wire for use in the carpet manufacturing industry. On February 8, 1990, York Saw & Knife Co., Inc., submitted an adequate petition to the Secretary requesting a short-supply allowance for 6 net tons of this product. The Secretary has granted short-supply allowances during each of the two immediately preceding years for certain sizes of this product and has found, on the basis of available information, that other sizes of this product, ranging from 0.120–0.875 inch in width and 0.038–0.090 inch in thickness, are not produced in the United States. Therefore in accordance with sections 4(b)(4)(B)(1)(II) and (III) of the Act and §§ 357.106(b)(1)(ii) and (iii) of Commerce's Short-Supply Regulations, the Secretary will apply a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice proving that they can and will produce and supply the requested quantity of this product within the desired period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than February 23, 1990.

Comments: Interested parties wishing to comment on this review must send written comments not later than February 20, 1990, to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration. U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTAL INFORMATION: Pursuant to section 4(b)(3)(B) of the Act and § 357.104(b) of Commerce's Short-Supply Regulations, the Secretary hereby announces that a short-supply determination is under review with respect to certain steel pile weaving wire. On February 8, 1990, the Secretary received an adequate short-supply petition from York Saw & Knife Co., Inc., under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, for 6 net tons of certain steel pile weaving wire for use in the carpet manufacturing industry meeting the following specifications:

Chemistry: American Iron and Steel Institute (AISI) specification 1080 typical analysis carbon spring steel with low impurities;

Thickness tolerance deviation: +0.0005, −0.000 inch;

Width tolerance deviation: +0.001, −0.000 inch;

Condition: Hardened and tempered to 52–54 on the Rockwell "C" scale;

Surface finish: Grind, removing 0.0002 inch per side, and polished;

Size range: The following sizes have been determined by the Secretary to be in short supply during each of the two immediately preceding years:

SIZE RANGE (IN INCHES)

Width	Thickness
0.120	0.062
0.125	0.062
0.145	0.062
0.140	0.062
0.140	0.090
0.150	0.080
0.167	0.062
0.188	0.055
0.185	0.055
0.188	0.045
0.200	0.038
0.202	0.046
0.205	0.055
0.205	0.080
0.220	0.045
0.230	0.080
0.230	0.045
0.240	0.050
0.247	0.046
0.250	0.062
0.255	0.062
0.255	0.045
0.260	0.045
0.290	0.038
0.290	0.080
0.290	0.045
0.290	0.055
0.312	0.038
0.312	0.045
0.312	0.054
0.324	0.048
0.370	0.045
0.370	0.055
0.390	0.048
0.625	0.045
0.875	0.062

Size range: The Secretary finds, on the basic of available information, that other widths and thicknesses of pile

weaving wire, ranging from 0.120–0.875 inch in width and 0.038–0.090 inch in thickness, are not produced in the United States;

Other specifications: Minimum variation, free of rolling cracks and surface defects, full #1 round edge—not a rolled edge, camber free.

Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Regulations require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that the importation of additional quantities of certain sizes of the requested steel product was authorized during each of the two immediately preceding years and, on the basis of available information, that other sizes of this product are not produced in the United States. Therefore, in accordance with sections 4(b)(4)(B)(i)(II) and (III) of the Act and §§ 357.106(b)(1) (ii) and (iii) of Commerce's Short-Supply Regulations, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice proving that they can and will produce and supply the requested quantity of this product within the desired period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than February 23, 1990.

Dated: February 9, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–3524 Filed 2–12–90; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[Permit # 697]

Endangered Species; Issuance of Permit; Donna McDonald and Peter Dutton, Sea World Research Institute

On November 13, 1989, notice was published in the **Federal Register** (54 FR 47256) that an application has been filed by Donna McDonald and Peter Dutton, of the Sea World Research Institute, 1700 South Shores Road, San Diego, California 92109, for a permit to take olive ridley (*Lepidochelys olivacea*), Green (*Chelonia mydas*), and Loggerhead (*Caretta caretta*) sea turtles for scientific research.

Notice is hereby given that on February 7, 1990, as authorized by the provisions of the Endangered Species Act of 1973, the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered and threatened species which are the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act. The Permit was also issued in accordance with and is subject to parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered and threatened species permits.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415

Dated: February 7, 1990.

Nancy Foster, Ph.D.,

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

[FR Doc. 90–3311 Filed 2–12–90; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION FOR THE IMPROVEMENT OF THE FEDERAL CROP INSURANCE PROGRAM

Under the Federal Crop Insurance Commission Act of 1988 (7 U.S.C. 1508 note), notice is hereby given of the following meeting of the Commission for the Improvement of the Federal Crop Insurance Program:

Date: February 23–24, 1990.

Time: 8:00 a.m.-noon, and 1:00 p.m.-5:30 p.m., Feb. 23, 8:00 a.m.-noon, Feb. 24.

Place: Best Western Inn Suites, 6201 N. Oracle Road, Tucson, Arizona 85704, Telephone: (602) 297–8111.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To review the extent to which the Committee's recommendations for improvements in the Federal crop insurance program have been implemented; to draft the Commission's February 1990 monthly report; to consider other possible recommendations to improve the program; and to consider any other item of business necessary for the effective functioning of the Commission.

The Commission will be meeting in plenary session from 1 p.m. to 5:30 p.m. on February 23, 1990, and again in plenary session, if necessary to complete its agenda of business, from 8 a.m. to noon on February 24, 1990. The Commission's three committees will be meeting from 8 a.m. to noon on February 23, 1990.

In April 1989, the Commission submitted an interim report to the congressional agriculture committees and the Secretary of Agriculture. The report sets forth the Commission's findings and recommendations for immediate administrative improvements in the Federal crop insurance program that it believes would foster increased participation by farmers.

In July 1989, the Commission submitted its principal report to the congressional agriculture committees and the Secretary. In addition to recommendations for administrative improvements in the Federal crop insurance program, the report includes recommendations for legislation and a status report on the improvement of program administration by the Secretary based on the recommendations made by the Commission in the April report.

Under the Federal Crop Insurance Commission Act of 1988, the Commission is charged with the responsibility of continuing to monitor the Federal crop insurance program and reporting on a monthly basis, through December 31, 1990, to the congressional agriculture committees and the Secretary on (1) the extent to which the recommendations of the Commission have been implemented, and (2) the level of participation in the program by producers.

The Commission considers the continued monitoring and monthly reporting a serious responsibility. In addition to meeting the statutory requirements, the Commission intends to use the monthly reporting process as a means of furnishing the congressional agriculture committees and the Secretary with any additional recommendations it may develop on ways to improve the program. In that connection, at its December 1989 meeting, the Commission adopted five additional recommendations to improve the Federal crop insurance program. Those recommendations have been sent to the congressional agricultural committees and the Secretary.

Accordingly, at this meeting, the Commission will be reviewing the extent to which its recommendations are being implemented; drafting the Commission's February report; and considering other possible recommendations to improve the Federal crop insurance program. The Commission will also consider any other item of business necessary for the effective functioning of the Commission.

Contact Person: Kellye A. Eversole, Executive Director, Commission for the Improvement of the Federal Crop Insurance

Program, 1255 23rd Street NW., Suite 880, Washington, D.C., 20037. Telephone: (202) 887–6700.

Done at Washington, DC, this 8th day of February 1990.

Benjamin I. Baker,

Acting Executive Director.

[FR Doc. 90–3410 Filed 2–12–90; 8:45 am]

BILLING CODE 3410–PM–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Rescission of a Request To Consult and Cancellation of a Restraint Limit on Cotton Textile Products Produced or Manufactured in Panama

February 6, 1990.

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

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

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

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

The purpose of this notice is to announce that the United States Government has decided to rescind the request to consult with the Government of Panama on Categories 347/348. Should it become necessary to discuss these categories with the Government of Panama at a later date, further notice will be published in the **Federal Register.**

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the import restraint limit previously established for Categories 347/348 for the period August 30, 1989 through August 29, 1990. (See **Federal Register** notice 54 FR 46964, published on November 8, 1989.)

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 6, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on February 13, 1990, this directive cancels the directive dated November 2, 1989 which established a restraint limit for cotton textile products in Categories 347/348, produced or manufactured in Panama and exported during the period August 30, 1989 through August 29, 1990.

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

Sincerely,

Ronald L. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–3282 Filed 2–12–90; 8:45 am]

BILLING CODE 3510–DR–M

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

February 6, 1990.

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

ACTION: Issing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6581. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

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

Inasmuch as recent consultations held between the Governments of the United States and Thailand have not resulted in a mutually satisfactory solution for Categories 336/636, the United States Government has decided to control imports in these categories for the period October 31, 1989 through October 30, 1990.

The United States remains committed to finding a solution concerning Categories 336/636. Should such a solution be reached in further consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48295, published on November 22, 1989.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 6, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 13, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 336/636, produced or manufactured in Thailand and exported during the twelve-month period beginning on October 31, 1989 and extending through October 30, 1990, in excess of 93,787 dozen.[1]

You are directed to amend the 1989 counting period for Categories 336 and 636 to end on October 30, 1989. Also, you are directed to amend the 1990 counting period to conform to the restraint period above, and to retain all charges for that period.

For imports through December 31, 1989, the following amounts shall be charged to the restraint limit established in this directive for Categories 336/636. These same quantities shall be deducted from the counting period that ended on October 30, 1989. Charges for shipments exported from October 31, 1989 through December 31, 1989, and entered in 1990 up to the effective date of this directive, shall be supplied subsequently.

Category	Amount to be charged
336	3,595 dozen.
636	26,651 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

[1] The limit has not been adjusted to account for any imports exported after October 30, 1989.

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

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-3277 Filed 2-12-90; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

February 6, 1990.

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

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

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740 .

SUPPLEMENTARY INFORMATION:

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

As a result of recent consultations held between the Governments of the United States and Thailand, the United States Government has decided to control imports in Categories 647/648 for the period October 31, 1989 through October 30, 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48295, published on November 22, 1989.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 6, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 13, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Categories 647/648, produced or manufactured in Thailand and exported during the twelve-month period beginning on October 31, 1989 and extending through October 30, 1990, in excess of 542,063 dozen.[1]

You are directed to amend the 1989 counting period for Categories 647/648 to end on October 30, 1989. Also, you are directed to amend the 1990 counting period to conform to the restraint period above, and to retain all charges for that period.

For imports through December 31, 1989, the following amounts shall be charged to the restraint limit established in this directive for Categories 647/648. These same quantities shall be deducted from the counting period that ended on October 30, 1989. Charges for shipments exported from October 31, 1989 through December 31, 1989, and entered in 1990 up to the effective date of this directive, shall be supplied subsequently.

Category	Amount to be charged
647	19,886 dozen.
648	63,794 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-3278 Filed 2-12-90; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

February 6, 1990.

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

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

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

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

Inasmuch as recent consultations held between the Governments of the United States and Thailand have not resulted in a mutually satisfactory solution for Categories 314 and 614, the United States Government has decided to control imports in these categories for the period October 30, 1989 through October 29, 1990.

The United States remains committed to finding a solution concerning Categories 314 and 614. Should such a solution be reached in further consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonzed Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48295, published on November 22, 1989.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 6, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 13, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or

[1] The limit has not been adjusted to account for any imports exported after October 30, 1989.

manufactured in Thailand and exported during the twelve-month period beginning on October 30, 1989 and extending through October 29, 1990, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
314	25,191,959 (square meters).
614	12,026,288 (square meters).

[1] The limits have not been adjusted to account for any imports exported after October 29, 1989.

You are directed to amend the 1989 counting period for Categories 314 and 614 to end on October 29, 1989. Also, you are directed to amend the 1990 counting period to conform to the restraint period above, and to retain all charges for that period.

For imports through December 31, 1989, charges against the above restraints shall be 356,731 square meters for Category 314 and 799,116 square meters for Category 614. These same quantities shall be deducted from the counting period that ended on October 29, 1989. Charges for shipments exported from October 30, 1989 through December 31, 1989, and entered in 1990 up to the effective date of this directive, shall be supplied subsequently.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-3279 Filed 2-12-90; 8:45 am]

BILLING CODE 3510-DR-M

Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

February 6, 1990.

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

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

EFFECTIVE DATE: February 13, 1990.

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

SUPPLEMENTARY INFORMATION:

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

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, under section 204 of the Agricultural Act of 1956, to establish limits for certain cotton and man-made fiber textile products for the period January 1, 1990 through December 31, 1990. In addition, the Commissioner of Customs is being directed to charge goods exported in excess of the 1988 limits to the limits established in this directive.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 12472, published on March 27, 1989.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 6, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 13, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1990, and extending through December 31, 1990, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
338/339	371,000 dozen of which not more than 247,333 dozen shall be in Categories 338-S/339-S. [1]
340/640	243,800 dozen.
341/641	201,400 dozen.
347/348	275,600 dozen of which not more than 137,800 dozen shall be in Categories 347-T/348-T. [2]
352	212,000 dozen.

[1] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S; only HTS numnbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[2] Category 347-T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

Imports charged to these category limits for the period January 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

You are directed to charge the following amounts to the limits established in this directive. These charges are the result of an agreement in 1989 between the Governments of the United States and the United Arab Emirates.

Category	Amount to be charged
338/339	41,957 dozen.
340/640	22,473 dozen.
341/641	3,028 dozen.
347/348	78,815 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-3280 filed 2-12-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

February 6, 1990.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3717.

SUPPLEMENTARY INFORMATION:

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

In a Memorandum of Understanding (MOU) dated January 18, 1990, the Governments of the United States and the Socialist Federal Republic of Yugoslavia agreed to amend their current bilateral textile agreement to extend through December 31, 1992. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period January 1, 1990 through December 31, 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

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

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 6, 1990.

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

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended by the Memorandum of Understanding dated January 18, 1990, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 13, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Yugoslavia and exported during the twelve-month period beginning on January 1, 1990 and extending through December 31, 1990, in excess of the following limits:

Category	Twelve-month restraint limit [1]
300/301	1,682,828 kilograms.
338/339	494,384 dozen of which not more than 296,630 dozen shall be in Categories 338–S/339–S. [2]
340/640	429,242 dozen.
341/641	279,889 dozen.
410	500,000 square meters.
433	8,058 dozen.
434	8,934 dozen.
435	39,413 dozen.
442	11,077 dozen.
443/643	323,422 numbers of which not more than 106,133 numbers shall be in Category 443.
444	92,985 numbers.
447/448	49,397 dozen of which not more than 31,272 dozen shall be in Category 447 and not more than 31,272 dozen shall be in Category 448.
604–A [3]	324,142 kilograms.
624	3,750,000 square meters.
666–B [4]	968,347 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[3] Category 604–A: only HTS number 5509.32.0000.

[4] Category 666–B: only HTS numbers 6301.10.0000, 6301.40.0010, 6301.40.0020 and 6301.90.0010.

Imports charged to these category limits, except Categories 410 and 624, for the period January 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–3284 Filed 2–12–90; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of a Request for Bilateral Textile Consultations With the Government of the United Arab Emirates

February 6, 1990.

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

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

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

On January 28, 1990, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of the United Arab Emirates regarding cotton terry and other pile towels in Category 363, produced or manufactured in the United Arab Emirates.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the United Arab Emirates, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton terry and other pile towels in Category 363, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 28, 1990 and extends through January 27, 1991, at a level of 5,570,584 numbers.

A summary market statement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 363, or to comment on domestic production or availability of products included in the category, in invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230, ATTN: Public Comments.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will

be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreement considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 363. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS number is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989).

Dated: February 6, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

United Arab Emirates—Market Statement

Category 363—Cotton Terry and Other Pile Towels

January 1990.

Import Situation and Conclusion

U.S. imports of cotton towels—Category 363—from the United Arab Emirates surged to 5,570,584 units in the year ending October 1989, fourteen times the 386,161 units imported a year earlier. During the first ten months of 1989, the United Arab Emirates shipped 5,367,184 units, 19 times their January-October 1988 level and 11 times their total calendar year 1987 and 1988 levels. There were no category 363 imports from the United Arab Emirates in 1986. In the January-October 1989 period, the United Arab Emirates became the ninth largest supplier of cotton terry towels to the United States, accounting for 4.5 percent of the total category 363 imports. In the January-October 1988 period the United Arab Emirates was ranked 14 among the supplying countries and accounted for 0.2 percent of total category 363 imports.

The sharp and substantial increase of category 363 imports from the United Arab Emirates is disrupting the U.S. market for cotton terry and other pile towels.

Import Penetration and Market Share

U.S. production of cotton towels—Category 363—dropped to 505,704,000 units in 1988, nine percent below the 1987 level and 0.3 percent below the 1986 level. In contrast, U.S. imports of Category 363 increased seven percent between 1986 and 1988, from 129,493,000 units in 1986 to 138,358,000 units in 1988. Imports are up two percent in the first ten months of 1989 over the January-October 1988 level.

The U.S. producers' share of the cotton towel market dropped from 80 percent in 1986 to 78 percent in 1988. The ratio of imports to domestic production reached 27 percent in 1988, up from 25 percent in 1986.

Duty Paid Value and U.S. Producers' Price

All of Category 363 imports from the United Arab Emirates during January-October 1989 entered under HTS number 6302.60.0020—toilet linen, of terry toweling or similar terry fabrics of cotton. These towels entered the U.S. at a duty paid landed value substantially below the U.S. producers' prices for comparable towels.

[FR Doc. 90-3283 Filed 2-2-90; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of a New Export Visa Arrangement for Textiles and Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

February 7, 1990.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing a new export visa arrangement.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

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

In a Memorandum of Understanding dated January 18, 1990, the Governments of the United States and the Socialist Federal Republic of Yugoslavia agreed to establish a new export visa arrangement covering certain cotton, wool and man-made fiber textile products, produced or manufactured in Yugoslavia and exported from Yugoslavia on and after March 1, 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedules of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Also see 51 FR 4413, published on February 4, 1986.

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in Yugoslavia, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, that are exported from Yugoslavia on and after March 1, 1990, will meet the stated visa requirements.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 7, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on January 30, 1986, as amended and clarified, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Yugoslavia which were not properly visaed.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding dated January 18, 1990 between the Governments of the United States and the Socialist Federal Republic of Yugoslavia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 1, 1990, entry into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool and manmade fiber textile and textile products in Categories 300/301, 338/339, 338-S/339-S, 340/640, 341/641, 410, 433, 434, 435, 442, 443/643, 444, 447/448, 604-A, 611, 618, 624 and 666-B, produced or manufactured in Yugoslavia and exported from Yugoslavia on and after March 1, 1990 for which the Government of the Socialist Federal Republic of Yugoslavia has not issued an appropriate visa fully described below. Should additional categories, merged categories or part-categories be added to the bilateral agreement, or become subject to import

quotas, the entire category or categories shall be included in the coverage of this visa arrangement.

A visa must accompany each commercial shipment of the aforementioned textiles and textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO), and a six-digit numerical serial number identifying the shipment; e.g., 0YU123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States (e.g., "Cat. 340–510 DZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as 347/348 or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illigible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and ony the amount entered shall be charged to any applicable quota.

If the visa is not acceptable then a new visa must be obtained from the Government of the Socialist Federal Republic of Yugoslavia or its designate, or a visa waiver must be issued by the U.S. Department of Commerce at the request of the Embassy of the Socialist Federal Republic of Yugoslavia in Washington, D.C., and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment, it does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Yugoslavia has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Any shipment which requires a visa, but which is not accompanied by a valid and correct visa in accordance with the foregoing provisions shall be denied entry by U.S. Customs Service unless the Government of the Socialist Federal Republic of Yugoslavia authorizes the entry and any charges to the agreement levels through the visa waiver process.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less, do not require a visa for entry and shall not be charged to the agreement levels.

A facsimile of the visa stamp is enclosed with this letter.

The actions taken with respect to the Government of the Socialist Federal Republic of Yugoslavia with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.



[FR Doc. 90–3384 Filed 2–12–90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Office of Management; Availability of Data Acquisition Activities Approved Prior to February 15, 1990

AGENCY: Department of Education.

ACTION: Notice of availability of data acquisition activities approved prior to February 15, 1990.

SUMMARY: The Secretary publishes this notice to advise interested persons that they may obtain information regarding a list of approved education-related data acquisition activites that Federal agencies will use to collect data during school year 1990–91. The list includes all data acquisition activities approved before February 15, 1990.

DATES: The listing of approved data acquisition activities will be available February 15, 1990.

FOR FURTHER INFORMATION CONTACT: For information about this list or copies of the list, contact Mr. George P. Sotos, U.S. Department of Education, Information Management and Compliance Division, 400 Maryland Avenue, SW., room 5624, ROB–3, Washington, DC 20202. Telephone: (202) 732–2174.

SUPPLEMENTARY INFORMATION: Under section 400A of the General Education Provisions Act, the Secretary of Education is responsible for reviewing and coordinating the collection of information and data acquisition activities of Federal agencies:

(a) Whenever the respondents are primarily educational agencies or institutions; or

(b) Whenever the purpose of the activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

Under section 400A the Secretary also informs the public of data acquisition activities that were approved by February 15, 1990. These data acquisition activities are considered information collection requests under the Paperwork Reduction Act of 1980. Under that Act and Office of Management and Budget (OMB) implementing regulations, proposed information collection requests must be published in the **Federal Register** on or before submission to OMB for final approval. Thus, the list announced by this notice includes each data acquisition activity for which the following requirements have been met prior to February 15, 1990: Approval by

the Secretary for use in the 1990–91 school year; publication in the Federal Register as a proposed information collection request; and approval by OMB.

Interested persons may obtain a copy of the list of approved information collection requests, or information regarding that list from Mr. George P. Sotos at the address and telephone number listed at the beginning of this notice.

Dated: February 7, 1990.

Thomas E. Anfinson,

Deputy Under Secretary for Management.

[FR Doc. 90–3290 Filed 2–12–90; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.003R]

Educational Personnel Training Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1990

Purpose of Program: Provides grants to institutions of higher education to meet the needs for additional or better trained educational personnel for programs for limited English proficient persons.

Deadline for Transmittal of Applications: April 9, 1990.

Deadline for Intergovernmental Review: June 8, 1990.

Applications Available: February 20, 1990.

Available Funds: $3,200,000.

Estimated Range of Awards: $70,000–$200,000.

Estimated Average Size of Awards: $139,000.

Estimated Number of Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, and 85; and (b) The regulations for this program in 34 CFR parts 500 and 561.

Priorities: The Secretary is particularly interested in applications that are consistent with one or more of the following invitational priorities:

(1) Provide inservice training to prepare mainstream teachers with LEP children in their classes to participate in programs for children of limited English proficiency.

(2) Provide preservice or inservice training to prepare administrators, counselors, psychologists, or mathematics, science, and early childhood education teachers for participation in programs for limited English proficient children.

However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 561.31.

In addition to the points awarded under 34 CFR 561.31, the program regulations in 34 CFR 561.32(b) provide that the Secretary distributes 10 points among the factors in 34 CFR 561.32(a). For this competition the Secretary distributes the 10 points as follows:

Job placement and development (4 points).

Evidence of demonstrated capacity and cost effectiveness as described in 34 CFR 561.31 (d) and (f) (6 points).

For Applications or Information Contact: U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Avenue, SW., Room 5086, Mary E. Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–5722.

Program Authority: 20 U.S.C. 3321(a)(1).

Dated: February 5, 1990.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 90–3289 Filed 2–12–90; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. 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 its opportunity to attend.

DATES: March 12, 8:30 a.m. until 5: 30 p.m. and March 13, 8:30 a.m. until 5 p.m.

LOCATION: The Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia 22204, (703) 521–1900.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, Acting Executive Director, National Advisory Committee on Accreditation and Institutional Eligibility, 400 Maryland Avenue SW., Room 3036, ROB–3, Washington, DC 20202–5171, (202) 732–3417.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is authorized under section 1205 of the Higher Education Act as amended by Public Law 96–374 [20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Secretary of Education regarding policy concerning recognition of accrediting and State approval bodies, and concerning institutional eligibility for participation in Federally funded programs.

AGENDA: The meeting on March 12–13 will be open to the public. The Advisory Committee will review petitions and interim reports by the following accrediting agencies and State approval bodies relative to initial or continued recognition by the Secretary of Education. The Committee also will hear presentations by representatives of these petitioning agencies and any interested third parties. The following petitions, interim reports and request for withdrawal will be reviewed:

Petitions for Recognition as Nationally Recognized Accrediting Agencies and Associations

A. *Petitions for Initial Recognition*

American Culinary Federation Education Institute, Accrediting Commission

Transnational Association of Christian Schools, Accrediting Commission

Transnational Association of Christian Schools, Accrediting Commission

B. *Petitions for Renewal of Recognition*

Accrediting Bureau of Health Education Schools

American College of Nurse-Midwives, Division of Accreditation

American Physical Therapy Association, Commission on Accreditation in Education

Council on Naturopathic Medical Education, Commission on Accreditation

National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine
National Association of Schools of Theatre, Commission on Accreditation.
National Association of Trade and Technical Schools, Accrediting Commission
National Home Study Council, Accrediting Commission
National League for Nursing

C. *Interim Reports*

American Board of Funeral Service Education, Committee on Accreditation
American Dietetic Association, Division of Education Accreditation/Approval
American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with—
Accreditation Review Committee for Educational Programs in Surgical Technology
Curriculum Review Board, American Association of Medical Assistants' Endowment
Joint Review Committee for the Ophthalmic Medical Assistant
Joint Review Committee for Respiratory Therapy Education
American Society of Landscape Architects, Landscape Architectural Accreditation Board
American Veterinary Medical Association, Committee on Animal Technician Activities and Training
American Veterinary Medical Association, Council on Education
Computing Sciences Accreditation Board, Inc., Computer Sciences Accreditation Council
Council on Chiropractic Education, Commission on Accreditation
Council on Education for Public Health
Middle States Association of Colleges and Schools, Commission on Secondary Schools
National Architectural Accrediting Board, Inc.
National Accrediting Agency for Clinical Laboratory Sciences
National Association of Schools of Art and Design, Commission on Accreditation
National Association of Schools of Dance, Commission on Accreditation
National Association of Schools of Music
New England Association of Schools and Colleges
Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges

Petitions for Recognition as State Agencies for the Approval of Public Postsecondary Vocational Education

A. *Interim Reports*

Iowa Department of Education
Puerto Rico State Agency for the Approval of Public Postsecondary Vocational Technical Education

Petition for Recognition as a State Agency for the Approval of Nurse Education

A. *Petition for Initial Recognition*

Colorado Board of Nursing

Request for Withdrawal of Recognition as a State Agency for the Approval of Public Postsecondary Vocational Education

New Jersey State Board of Education

Third Parties: The Department urges third parties interested in commenting on any of the agencies and associations scheduled for review to submit their comments in writing by March 2, 1990, to Mr. Steven Pappas (address above).

While the Committee is required to accept all written material up through the date of its meeting, the Committee strongly urges that written comments be submitted by March 2 to facilitate the work of the Committee by providing for advance review and analysis of third party positions. All petitions, interim reports, and those third party comments received in advance of the meeting will be available for public inspection at the address noted above between the hours of 8 a.m. and 4: 30 p.m. Monday through Friday.

Also, requests for oral presentations before the Advisory Committee should be submitted in writing to Mr. Pappas by March 2. Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested. Time constraints may limit oral presentations.

The acceptance of written and oral third party comments is limited to issues relevant to an accrediting or State agency's compliance with the Secretary's recognition regulations (Criteria for Recognition).

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland, SW. (room 3036, ROB–3) Washington, DC between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

Signed in Washington, DC on February 6, 1990.

Leonard L. Haynes,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–3317 Filed 2–12–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Additional Scoping Meeting for the Environmental Impact Statement on Proposed Construction and Operation of a Special Nuclear Materials Research and Development Laboratory at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: Department of Energy (DOE).

ACTION: Announcement of additional environmental impact statement (EIS) scoping meeting.

SUMMARY: DOE announces an additional EIS scoping meeting, to be held in Santa Fe, New Mexico, for the proposed construction and operation of a Special Nuclear Materials Research and Development Laboratory (SNML) at the Los Alamos National Laboratory in Los Alamos, New Mexico.

BACKGROUND: A Notice of Intent (NOI) to prepare and EIS on the SNML project was announced on January 12, 1990 (**Federal Register,** Vol. 55, No. 9, pages 1251–1253). Comments were requested with the comment period closing March 1, 1990, and a scoping meeting was announced to be held in Los Alamos, New Mexico, on January 31, 1990. Another scoping meeting was requested and a Notice announcing this meeting in Espanola, New Mexico, on February 13, 1990, was published on February 1, 1990 (**Federal Register,** Vol. 55, No. 22, page 3455). The purpose of this Notice is to announce an additional scoping meeting at Santa Fe, New Mexico.

ADDRESSES: Written comments or suggestions on the scope of the EIS, requests to speak at the public scoping meeting, questions concerning the project, and requests for copies of the draft EIS should be directed to: Mr. Donald Lucero, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87115, (505) 665–2170.

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process, please contact: Carol M. Borgstrom, Director, Office of NEPA Project Assistance (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

DATES: Written comments and suggestions on the proposed scope of the EIS should be postmarked by March 1, 1990, to assure consideration in the preparation of the EIS. Comments postmarked after that date will be considered to the extent practicable. An additional public scoping meeting will be held in Santa Fe, New Mexico, on February 27, 1990.

Scoping Meeting: The meeting will be held at 6 p.m. on February 27, 1990, in the Harold Runnels Building Auditorium, 1190 St. Francis Drive, South Capitol Complex, Santa Fe, New Mexico.

Individuals desiring to comment orally at this meeting should notify Mr. Lucero at the address above as soon as possible so that the Department can arrange a schedule of presentations. Persons who have not submitted a request to speak in advance may register to do so at the meeting. The meeting will not be conducted as an evidentiary hearing and there will be no questioning of speakers. In order to assure that everyone who wishes to present oral comments has the opportunity to do so, five minutes will be allotted to each speaker. Comments received at the meeting will be considered in the preparation of the Draft EIS. Speakers who wish to provide further information for the record should submit it to Mr. Lucero at the address above, postmarked by March 1, 1990. Oral and written comments will be given equal consideration. DOE will prepare transcripts of the scoping meeting and make them available to the public. The transcripts will be available for examination at the Reading Rooms and libraries identified in the NOI.

Issued in Washington, DC., this 8th day of February 1990.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90–3430 Filed 2–13–90; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE desk officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–80
3. 1902–0106
4. Licensed Hydropower Development Recreation Report
5. Revision
6. Quadrennial reporting
7. Mandatory
8. Businesses or other for profit and Individuals or households
9. 300 respondents
10. 300 responses
11. 3 hours per response
12. 900 hours (total)
13. Part I, Section 10a of the Federal Power Act requires that a licensee submit to the Commission for approval, plans, maps and specifications which will present a comprehensive plan for improving or developing a waterway for beneficial uses, including recreation.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. Subsections 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, February 7, 1990.

Yvonne Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90–3394 Filed 2–12–90; 8:45 am]

BILLING CODE 6450–01–M

Form EIA–876A–C—Residential Transportation Energy Consumption Survey

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed revision and extension of the forms EIA–876A–C "Residential Transportation Energy Consumption Survey" (RTECS) and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision and extension to Forms EIA–876A–C "Residential Transportation Energy Consumption Survey".

DATES: Written comments must be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this

notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Martha M. Johnson, EI–651, Mail Stop 1H–053, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–1135.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Martha M. Johnson at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Department of Energy Organization Act (Public Law 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to enery resources reserves, production, demand, and technology, and related economic and statistical information. The program will also include data and information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA has developed an ongoing program of national sample surveys on energy consumption in the residential transportation, manufacturing, commercial, and residential sectors.

The RTECS has been designed by the EIA to collect data on how energy is used by households for personal transportation. The RTECS sample of approximately 3,000 households is drawn from the large sample selected for participation in the Residential Energy Consumption Survey (RECS). Data are collected primarily during telephone interviews; households that cannot be reached by telephone are contacted by mail. The survey provides data on the number and types of vehicles used regularly by household members for personal transportation. For each vehicle, data are collected on the vehicle characteristics, the annual vehicle miles traveled, type of fuel purchased, vehicle fuel efficiency, and vehicle fuel price. The RTECS was conducted in 1983, 1985, and 1988.

II. Current Actions

The EIA is proposing an extension of three (3) years with minor changes. Changes will include an update of Forms EIA–876A–C to collect information for calendar year 1991 with reinstatement of a question pertaining to the existence of vehicle air conditioning. Additionally, the EIA is considering reinstating the fuel purchase log. Questions contained on the log consist of (1) odometer fuel gauge readings; and (2) for each purchase of fuel: The purchase date, odometer reading on that date, number of gallons of motor fuel purchased, total cost of fuel, price per gallon, whether the tank was filled, and a fuel tank reading. Respondents would maintain the log for a maximum of one month.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension and revisions within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average .164 hours per response. (If fuel purchase logs are reinstated, the response burden will increase. Previously when logs were used, the response burden was .85 hours per response.) How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information?

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Residential Transportation Energy Consumption Survey.

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval of the forms; they also will become a matter of public record.

Authority: Sections 5(a), 5(b), 13(b), and 52 of Public Law 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 722(b) and 790a.

Issued in Washington, DC, February 7, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90–3395 Filed 2–12–90; 8:45 am]

BILLING CODE 6450–01–M

Changes to DOE Energy Information Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the DOE's Office of Management and Administration, are not included in these notices.

During the first quarter of fiscal year 1990 (October 1, 1989 through December 31, 1989), changes were made to the October 1, 1989 inventory of DOE information collections, which was published in the **Federal Register**, 54 FR 46288 (November 2, 1989).

The first quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement

reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Etta Harris, EIA's Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586–2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI–231, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586–8800.

Authority: Sec. 3506, Pub. L. 96–511, Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3506.

Issued in Washington, DC, February 7, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90–3396 Filed 2–12–90; 8:45 am]

BILLING CODE 6450–01–M

New DOE Energy Information Collections Approved by OMB

DOE No.	Title	OMB Control No.	Expiration Date	CFR Citation
	Energy Information Administration			
EIA–867	Nonutility electric power production	19050177	11/30/90	

DOE Energy Information Collections Extended

DOE No.	Title	OMB Control No.	Expiration date	CFR citation
	Federal Energy Regulatory Commission			
FERC–73	Service life data	19020019	10/31/92	18 CFR 357.3
FERC–80 [1]	Licensed hydropower development recreation report	19020106	11/30/92	18 CFR 8.11, 141.14
FERC–523 [1]	Application for authorization of the issuance of securities or the assumption of liabilities.	19020043	10/31/92	18 CFR 34
FERC–557 [1]	PURPA section 133, cost of service data	19020042	11/30/92	18 CFR 290
FERC–574 [1]	Gas pipeline certificates—Hinshaw exemption	19020116	11/30/92	18 CFR 152
FERC–592 [1]	Marketing affiliates of interstate pipelines	19020157	03/31/90	18 CFR 161.250
	Fossil Energy			
FE–746R [1]	Import and export of natural gas	19010294	01/31/92	10 CFR 205, 590

[1] Does not utilize a structured form.

Reinstated DOE Energy Information Collections

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Energy Information Administration			
None	None			

DOE Energy Information Collections Discontinued or Allowed to Expire

DOE No.	Title	OMB control No.	Discontinued date	CFR citation
	Conservation and Renewable Energy			
CE–63A/B	Annual solar thermal collector manufacturers survey and annual photovoltaic module manufacturers survey.	19010292	12/31/89	

Allowed to temporarily expire and will be resubmitted to OMB for reinstatment in the next few months.

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

DOE numbers as previously listed	Changes
Energy Information Administration	
EIA-28	The revisions were a change in methods for the reporting of net cash flow from operating activities on Schedule 5130 of the form, and a change to the selection critiera for the group of companies required to file the form.
EIA-767	Approved for use through 12/31/92, had minor revisions, and a new sponsor was added.
EIA-213, 412, 759, 826, 860, and 861.	The Electric Power Surveys were approved for use through 12/31/92. Demand side management information was added to the EIA-861. Minor changes were made to the other forms. Respondents to the EIA-213 have been notified of the discontinuance of the survey due to budget constraints.
Federal Energy Regulatory Commission	
FERC-569 [1]	Changes in regulations.

[1] Does not utilize a structured form.

[FR Doc. 90-3396 Filed 2-12-90; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI86-419-004, et al.]

ANR Supply Co., et al.; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandoned [1]

February 7, 1990.

Take notice that each Applicant listed herein has filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1990, to extend such authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 26, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.21 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CI86-419-004 [1]	1-31-90	ANR Supply Company, 500 Renaissance Center, Detroit, Michigan 48243.
CI87-621-003 [1]	1-31-90	Mountain Industrial Gas Company, 2 North Nevada Avenue, Colorado Springs, Colorado 80903.
CI88-274-002 [1]	1-31-90	Coastal States Gas Transmission Company, Coastal Tower, 9 Greenway Plaza, Houston, Texas 77046.
CI89-194-001 [1]	1-31-90	Coastal Gas Marketing Company, Coastal Tower, 9 Greenway Plaza, Houston, Texas 77046.
CI89-501-001 [1]	1-31-90	Enserch Gas Company, Suite 504-H, 301 South Harwood, Dallas, Texas 75201.

[1] Applicant also requests amendments of its certificate to authorize the sale of Canadian gas.

[FR Doc. 90-3329 Filed 2-12-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-10199-002, et al]

Marathon Oil Co., et al.; Applications for Termination or Amendment of Certificates [1]

February 7, 1990.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 26, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or to be represented at the hearing.

Lois D. Cashell

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-10199-002, D, 1-16-90	Marathon Oil Co., P.O. Box 3128, Houston, TX 77253.	Williams Natural Gas Co. Rhodes Field, Barber and Kiowa Counties, Kansas.	Assigned 9-1-89 to Amcon Resources, Inc.
CI60-250-001, D, 1-31-90	Oryx Energy Co., P.O. Box 2880, Dallas, TX 75221-2880.	United Gas Pipe Line Co., Leroy North Field, Vermilion Parish, Louisiana.	Assigned 5-1-89 to Eurampex.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI90-37-000 (CI81-244), D, 1-22-90.	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Mitchell Energy Corp., Marrs McLean Field, Jefferson County, Texas.	Assigned 7-1-89 to Euro American Energy Group, Inc.
CI90-38-000 (CI69-926) D, 1-22-90.	Marathon Oil Co.	Transwestern Pipeline Co., Rock Tank Morrow Field, Eddy County, New Mexico.	Assigned 6-1-89 to Bledsoe Petro Corp.
CI90-42-000 (CI84-428-000), D, 1-17-90.	Maxus Exploration Co., 717 N. Harwood Street, Dallas, TX 75201.	Northern Natural Gas Co., Division of Enron Corp., Harper Ranch Field, Clark County, Kansas.	Assigned 10-1-88 and 12-16-88 to Black Dome Energy Corp.
CI90-43-000 (G-19421), D, 1-30-90.	TEX/CON Oil & Gas Co., 9401 Southwest Freeway, Suite 1200, Houston, TX 77074.	Northern Natural Gas Co., Division of Enron Corp. Mocane-Laverne Field, Beaver County, Oklahoma.	Assigned 10-1-89 to Kenneth W. Cory.
CI90-46-000 (CI62-596), D, 1-30-90.	TEX/CON Oil & Gas Co.	Pahhandle Eastern Pipe Line Co., Mocane-laverne Field, Beaver County, Oklahoma.	Assigned 10-1-89 to Kenneth W Cory
CI90-47-000 (CI65-319), D, 1-30-90.	TEX/CON Oil & Gas Co.	Northern Natural Gas Co., Division of Enron Corp., Mocane-Laverne Field, Harper County, Oklahoma.	Assigned 10-1-89 to Kenneth W. Cory
CI90-48-000 (CI69-119), D, 1-30-90.	TEX/CON Oil & Gas Co.	Northern Natural Gas Co., Division of Enron Corp., N.W. Camrick Field, Texas County, Oklahoma.	Assigned 10-1-89 to Kenneth W Cory
CI90-49-000 (CI69-766), D, 1-30-90.	TEX/CON Oil & Gas Co.	K N Energy, Inc., Madden-Badwater Field, Fremont County, Wyoming.	Assigned 7-1-89 to Louisiana Land & Exploration Co. and Inexco Oil Co.
CI90-50-000 (CI69-849), D, 1-30-90.	TEX/CON Oil & Gas Co.	Colorado Interstate Gas Co., Madden-Badwater Field, Fremont County, Wyoming.	Assigned 7-1-89 to Louisiana Land & Exploration Co. and Inexco Oil Co.
CI90-51-000 (CI75-524), D, 1-30-90.	TEX/CON Oil & Gas Co.	Colorado Interstate Gas Co., Madden (Deep) Field, Fremont and Natrona Counties, Wyoming.	Assigned 7-1-89 to Louisiana Land & Exploration Co. and Inexco Oil Co.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 90-3330 Filed 2-12-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ90-2-1-000]

Alabama-Tennessee Natural Gas Co.; Notice of Proposed PGA Rate Adustment

February 7, 1990.

Take notice that on February 5, 1990, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Substitute Alternate Nineteenth Revised Sheet No. 4

The tariff sheet is proposed to become effective February 5, 1990. Alabama-Tennessee states that the purpose of the instant filing is to reflect an increase of 31.92 cents per dth in the maximum commodity cost of gas from that established in Docket No. TA90-1-1-000 and to increase its rates over the rates established in Docket No. TF90-4-1. According to Alabama-Tennessee, the adjustment is based upon the cost of supplies from Tennessee Gas Pipeline Company as reflected in that company's out-of-cycle PGA filed in Docket No. TQ90-2-9.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory 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, N.E., Washington, DC., 20426, in accordance with Rule 211 or Rule 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 February 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding 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. 90-3331 Filed 2-12-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM90-7-21-000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

February 7, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on January 31, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective February 1, 1990:

First Revised Sheet No. 16B9
First Revised Sheet No. 16B10
First Revised Sheet No. 16B11
Second Revised Sheet No. 16B12

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket Nos. RP88-187, *et al.*, in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to modify its earlier filings in Docket No. TM90-6-21 to permit it to flow through revised take-or-pay and contract reformation costs from (i) Tennessee Gas Pipeline Company (Tennessee) pursuant to a filing made on November 30, 1989, which was accepted by Commission order issued on December 29, 1989 in Docket Nos. RP88-191 and RP90-48; (ii) Texas Gas Transmission Corporation (Texas Gas) filing made on December 14, 1989, which was accepted by Commission order issued on January 12, 1990 in Docket No. RP90-58; and (iii) Texas Gas pursuant to a filing made on December 21, 1989, in Docket No. RP90-64, which was accepted by Commission order issued on January 19, 1990.

Copies of the filing were served upon Columbia's jurisdictional customers, interested state commissions, and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187, RP89-181, RP89-214, RP89-229, TM89-3-21, TM89-4-21, TM89-5-21, TM89-7-21, RP90-26, TM90-2-21, TM90-5-21 and TM90-6-21.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-3332 Filed 2-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No TM90-4-4-00]

Granite State Gas Transmission, Inc.; Notice of Proposed Change in Rates

February 7, 1990.

Take notice that on February 1, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing the revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, listed below containing changes in rates for effectiveness as indicated:

Revised Tariff Sheets and Proposed Effective Dates

Second Substitute Twenty-First Revised Sheet No. 8 November 1, 1989
Substitute Twenty-Second Revised Sheet No. 8 January 1, 1990

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that, on December 14, 1989, it filed a revised tariff sheet tracking a change in CNG's Rate Schedule GSS which CNG had filed in Docket No. RP85-169-045 for effectiveness on November 1, 1989. According to Granite State, its filing was accepted subject to a condition that it refile to reflect any revisions made by CNG in its Rate Schedule GSS. CNG filed a revision in its Rate Schedule GSS on January 23, 1990 for effectiveness on November 1, 1989 and Granite State states that Second Substitute Twenty-First Revised Sheet No. 8 tracks the revision made by CNG in its Rate Schedule GSS for effectiveness on November 1, 1989.

According to Granite State, CNG also filed in Docket No. RP90-56 on December 8, 1989, a change in its Rate Schedule GSS for effectiveness on January 1, 1990 to reflect an updating of recovery for costs related to take-or-pay payments to suppliers. It is further stated that Granite State tracked CNG's January 1, 1990 Rate Schedule GSS rate change on December 14, 1989 and the filing was accepted subject to the condition that Granite State refile to reflect any revision made by CNG in its proposed January 1, 1990 rate. Granite State further states that CNG filed a revision in its January 1, 1990 Rate Schedule GSS rate on January 22, 1990 in Docket No. RP90-56 and Substitute Twenty-Second Revised Sheet No. 8 tracks the latest revision in CNG's Rate Schedule GSS rate for effectiveness January 1, 1990.

According to Granite State, copies of its filing were served upon Bay State Gas Company and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 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 February 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-3333 Filed 2-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ90-5-5-000; RP89-25-007]

Midwestern Gas Transmission Co.; Filing To Implement Settlement Rates, Track Changes in Supplier Rates and Modify Tariff Sheets Pursuant to Commission Orders

February 7, 1990.

Take notice that on February 1, 1990, Midwestern Gas Transmission Company (Midwestern) filed the following tariff sheets to First Revised Volume Nos. 1 and 2 of its FERC Gas Tariff:

To be effective February 1, 1990

Volume No. 1

Fifth Revised Sheet No. 5
Original Sheet No. 6

Volume No. 2

Second Revised Sheet Nos. 60, 85 and 86

To be effective September 1, 1989

Volume No. 1

Second Revised Sheet No. 46
Third Revised Sheet No. 62
Second Revised Sheet No. 62E
Second Revised Sheet No. 62F
First Revised Sheet No. 122

Midwestern states that Sheet Nos. 5 and 6 implement Midwestern's settlement base tariff rates, which were approved by the Commission in Docket No. RP89-35-000 by order issued January 26, 1990, track the filing by Midwestern's firm supplier Tennessee Gas Pipeline Company (Tennessee) in Docket Nos. TA90-1-9 and TQ90-2-9 to reflect the allocation of Canadian demand costs between Tennessee's demand and commodity rates as required by Opinion Nos. 256 and 256-A, and incorporate Midwestern's January 31, 1990 filing in Docket No. TF90-6-5-000 as a cumulative adjustment to the settlement base tariff rates. Midwestern states further that the other tariff sheets listed above correct or modify Midwestern's open-access tariff pursuant to the Commission's order of January 26 in Docket No. RP89-35-000 and the Commission's letter order of January 29, 1990 in Docket No. RP89-35-006, without prejudice to Midwestern's right to request rehearing of those changes. Midwestern requests waiver of the Commission's regulations to the extent necessary for acceptance of the tariff sheets as of February 1, 1990 and September 1, 1989, as proposed.

Midwestern states that copies of this filing have been mailed to all affected customers and State regulatory 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 20425, 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 February 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a petition to intervene; provided, however, that any person who has previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-3334 Filed 2-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-38-001]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

February 7, 1990.

Take notice that on February 2, 1990, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed a modified Substitute Fifty-third Sheet Quarterly PGA-1 to its FERC Gas Tariff and FERC Form No 542-PGA pursuant to 18 CFR 154.308.

Copies of this filing were served upon Ringwood, jurisdictional customers and interested State agencies.

Ringwood's Out-of-Cycle Quarterly PGA filing reflects an estimated $1.5078 per Mcf cost of gas, a current adjustment of $.059 per Mcf; a cumulative credit adjustment of ($.4171) per Mcf; a surcharge adjustment of $.1746 per Mcf and a total sales rate of $2.0544 per Mcf.

The increase in Ringwood's purchased gas cost is based upon known and measurable changes in the amount Ringwood will pay to its producer-suppliers for gas delivered in the months of February and March, 1990, the remaining months of its current PGA period.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before February 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-3335 Filed 2-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-7-064]

Transcontinental Gas Pipe Line Corp.; Supplemental Compliance Filing

February 7, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on February 1, 1990, revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are attached hereto. The proposed effective date of the revised tariff sheets is January 1, 1990.

Transco states that the purpose of this filing is to supplement its November 30, 1989 compliance filing in Docket No. RP87-7-062 to correct minor errors in the stated fuel retention percentages for market area transportation deliveries and to include an additional footnote reference.

Transco states that copies of the instant filing are being mailed to all parties served with copies of the November 30, 1989 compliance filing in Docket No. RP87-7-062. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-3336 Filed 2-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ90-2-82-001 and TM90-2-82-001]

Viking Gas Transmission Co.; Rate Filing

February 7, 1990.

Take notice that on February 1, 1990, Viking Gas Transmission Company (Viking) filed its Substitute Fourth Revised Sheet No. 6 and Substitute Fifth Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff, to be effective January 1, 1990, and February 1, 1990, respectively. The purpose of this filing is to comply with the Commission's order of January 26, 1990, which directed Viking to refile its rates classifying its Canadian demand costs between its demand and commodity rates using the MFV methodology as reflected in Viking's previous PGA filings.

The current Purchased Gas Cost Rate Adjustments reflected on Substitute Fifth Revised Sheet No. 6 consist of a ($.0620) per dekatherm adjustment applicable to the gas component of Viking's sales rates, and a ($1.35) per dekatherm adjustment applicable to the Demand D-1 component.

Substitute Fourth Revised Sheet No. 6 reflects the new GRI Rate Adjustment effective January 1, 1990, pursuant to Article XIX of the General Terms and Conditions of Viking's FERC Gas Tariff.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules or Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before February 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-3337 Filed 2-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-62-001]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

February 7, 1990.

Take notice that on February 1, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance Substitute First Revised Sheet No. 318-A, to be a part of Volume No. 1-A of its FERC Gas Tariff.

The above tariff sheet was filed to provide additional receipt point

flexibility for Rate Schedule TF–1 customers, and to clarify and justify the notice period Northwest intends to provide to its interruptible customers.

A copy of this filing is being served on all jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before February 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–3345 Filed 2–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–77–000]

Sabine Pipe Line Co.; Petition for Waiver

February 7, 1990.

Take notice that on February 1, 1990, Sabine Pipe Line Company (Sabine) petitioned for a limited waiver of the transportation provisions of its FERC Gas Tariff, Second Revised Volume No. 1, to comply with § 161.3(b) of the Commission's regulations. 18 CFR 161.3(b) (1989).

Sabine requests a one-time waiver of its gas quality specifications for the Sabine/Tennessee/Producer Interconnect Facilities to allow Sabine to accept gas into a proposed Sabine lateral where it will be combined with other shippers' gas flowing from Sabine's main pipeline system and redelivered to Tennessee Gas Pipeline Company (Tennessee) for the producer's account. Sabine states that when delivered to Tennessee , the combined stream in its lateral will meet Tennessee's gas quality specifications.

Sabine states that the requested waiver is in the public interest in that it permits transportation of gas that meets Tennessee's specifications in a small segment of Sabine's system without any adverse impact on Sabine's other transportation customers. Sabine states that without the waiver, the producer's gas cannot be transported under Sabine's tariff and is therefore lost to the interstate market.

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 (1989)]. All such motions or protests should be filed on or before February 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–3346 Filed 2–12–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 89–78–NG]

Carson Water Co.; Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an Order Granting a Blanket Authorization To Export Natural Gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Carson Water Company (Carson) blanket authorization to export up to a total of 4,000,000 Mcf of natural gas to Mexico during a two-year period beginning on the date of first delivery.

A copy of the order is available for inspection and copying at the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 7, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–3388 Filed 2–12–90; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–39–NG]

Midland Cogeneration Venture Limited Partnership; Final Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossile Energy.

ACTION: Notice of Final Order Authorizing Importation of Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a final order authorizing Midland Cogeneration Venture Limited Partnership (Midland) to import up to an aggregate daily contract quantity of 55,000 Mcf of Canadian natural gas for firm deliveries over a 15-year period. The Canadian gas would be used to fuel Midland's proposed new cogeneration plant to be constructed from a portion of the idled Midland nuclear plant in Midland County, Michigan.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestral Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 6, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–3389 Filed 2–12–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–60–NG]

Northwest Pipeline Corp.; Order Granting Authorization to Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order granting authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Northwest Pipeline Corporation (Northwest) an extension of the term of its existing import authorization through October 31, 2004. The extension will permit Northwest to continue to import up to 152 MMcf per day of Canadian natural gas via the import point near

Kingsgate, British Columbia over a 15-year term. The order supersedes DOE/FE Opinion and Order No. 346 issued October 30, 1989, authorizing Northwest on an interim basis to continue to import up to 152 MMcf per day of Canadian natural gas until a final determination is made on Northwest's request to extend the term of its existing import authorization.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 7, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–3390 Filed 2–12–90; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–50–NG]

Poco Petroleum Inc.; Final Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of final order authorizing importation of natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a final order to Poco Petroleum Inc. (Poco) to import up to 25 MMcf per day of Canadian natural gas for delivery to Midland Cogeneration Venture Limited Partnership (Midland) to fuel Midland's proposed new cogeneration plant to be constructed from a portion of the idled Midland nuclear plant in Midland County, Michigan.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585 (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 7, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–3391 Filed 2–12–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–26–NG]

Texas Eastern Transmission Corp., Northeastern Energy Associates, and North Jersey Energy Associates; Conditional Order Granting Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Conditional Order Granting Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting authority to Texas Eastern Transmission Company (Texas Eastern), Northeast Energy Associates (Northeast), and North Jersey Associates (North Jersey) to import up to a combined average of 101,000 Mcf of Canadian gas per day over separate 15-year terms from ProGas Limited. In addition, the order grants short-term, blanket authority for Northeast and North Jersey to jointly import up to 50,000 Mcf of Canadian supplies per day from ProGas or other Canadian supplies over a term of two years from the date of first delivery. Texas Eastern intends to use up to 29,000 Mcf per day for its system supply while the balance of the long-term supply would be used by Northeast and North Jersey to fuel two new 300-megawatt cogeneration facilities located in Bellingham, Massachusetts, and Sayerville, New Jersey. The blanket imports would be used by Northeast and North Jersey as supplemental gas supply for the two cogeneration units. A final decision in this proceeding is conditioned upon the Federal Energy Regulatory Commission's environmental analyses of a proposed 49-mile pipeline loop to be constructed between Niagara Falls and Marilla, New York, and the completion by the DOE of its responsibilities under the National Environmental Policy Act.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 7, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuel Programs, Office of Fossil Energy.

[FR Doc. 90–3392 Filed 2–12–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–68–NG]

Vermont Gas Systems, Inc.; Order Amending Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy.

ACTION: Notice of an order amending authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order amending Vermont Gas System, Inc.'s (Vermont Gas), authorization to import natural gas from Canada. The order grants Vermont Gas authorization to import up to 32,000 Mcf of natural gas per day until October 31, 1992. The natural gas will be imported pursuant to the terms of Vermont Gas' November 28, 1985, gas purchase contract with its Canadian supplier, TransCanada PipeLines, Ltd. (TransCanada), as amended by the September 29, 1989, letter agreement between Vermont Gas and Western Gas Marketing Limited, a subsidiary of TransCanada. .

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 2, 1990.

Constance L. Buckley,

Deputy Assistant Secretary, for Fuels Programs Office of Fossil Energy.

[FR Doc. 90–3393 Filed 2–12–90; 8:45 am]

BILLING CODE 6450–01

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3723–4]

Stratospheric Ozone Protection Advisory Committee Meeting; Correction

ACTION: Correction notice—announcement of advisory committee meeting.

SUMMARY: The date of the next meeting of the U.S. Environmental Protection Agency (EPA) Federal Advisory Council on Stratospheric Ozone Protection (STOPAC) was listed incorrectly in the February 5, 1990 **Federal Register** (55 FR 3764) announcement. The meeting will be held on Friday, February 16, 1990.

FOR FURTHER INFORMATION CONTACT: Karla Perri, at (202) 475–7496 or write to the Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dated: February 8, 1990.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs.

[FR Doc. 90–3468 Filed 2–12–90; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51743A; FRL 3707–7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice correction.

SUMMARY: EPA is correcting a premanufacture notice where the signs for greater than were inadvertanly changed to less than or equal to.

ADDRESS: Written comments, identified by the document control number [OPTS–51743A] and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L–100, Washington DC 20460 (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street, SW., Washington, DC 20460 (202) 554–0551.

SUPPLEMENTARY INFORMATION: In FR Doc. 89–29692, appearing in the **Federal Register** of December 21, 1989 (54 FR 52450), wherever the symbol < appears, change it to read >.

Dated: February 1, 1990.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90–3369 Filed 2–12–90; 8:45am]

BILLING CODE 6560–50–D

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200120–002

Title: Fairway Terminal Corporation Shareholders Agreement.

Parties: Young and Company, I.T.O. Corporation, Stevens Shipping & Terminal Company.

Synopsis: The Agreement restates and amends the basic shareholders agreement, as amended, to permit Fairway Terminal Corporation (Fairway) in its own name or doing business under the other names, or through wholly owned subsidiaries, to: (1) Establish rates, charges and competitive practices; (2) publish marine terminal tariffs; (3) enter into marine terminal/stevedoring agreements and/or marine terminal conference agreements; (4) own and/or lease and operate all cranes, lift machines, trucks and other equipment incident to its purposes; and (5) operate, pursuant to lease, assignment, purchase or acquisition, any marine terminal facility, and operations connected therewith, within the state of Texas. The Agreement also provides that its parties each own one-third of the Fairway shares; and it includes, as a part of the Agreement, Fairway's Articles of Incorporation. The Agreement further provides that any unanimous agreement under the Agreement's "Non-Competition" provision must be filed as an amendment to the Agreement pursuant to the Shipping Act of 1984.

By Order of the Federal Maritime Commission.

Dated: February 7, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–3305 Filed 2–12–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

BT Financial Corp., 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 section 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 March 5, 1990.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *BT Financial Corporation*, Johnstown, Pennsylvania; to engage *de novo* through its subsidiary, BT Management Trust Company, Johnstown, Pennsylvania, in trust company activities including activities of a fiduciary agency or custodial nature pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Pennsylvania.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Algemene Bank Nederland, N.V.*, Amsterdam, The Netherlands; to engage *de novo* through its subsidiary, ABN Capital Markets Corporation, New York, New York, in acting as a futures

commission merchant (including acting as an introducing broker) for affiliated and nonaffiliated persons pursuant to § 225.25(b)(18); and providing investment advice including counsel, publications, written analyses and reports, as a future commission merchant or as a commodity trading advisor pursuant to § 225.25(b)(19) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 7, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–3324 Filed 2–12–90; 8:45 am]

BILLING CODE 6210–01–M

Cheshire Financial Corp., 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 March 5, 1990.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Cheshire Financial Corporation*, Keene, New Hampshire; to acquire 100 percent of the voting shares of The Valley Bank, Hillsborough, New Hampshire.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Missouri Quad Bancshares, Inc.*, Kansas City, Missouri; to become a bank holding company by acquiring 89.6 percent of the voting shares of Quad County Bancshares, Inc., Viburnum, Missouri, and thereby indirectly acquire The Quad County State Bank, Viburnum, Missouri.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Britton Bancshares, Inc.*, Ellsworth, Kansas; to acquire 100 percent of the voting shares of First National Bank of Holcomb, Holcomb, Kansas.

2. *First Formoso Bancshares, Inc.*, Formoso, Kansas; to acquire 100 percent of the voting shares of Mankato Bankshares, Inc., Smith Center, Kansas, and thereby indirectly acquire The First National Bank in Mankato, Mankato, Kansas.

3. *Fourth Financial Corporation*, Wichita, Kansas; to merge with Citadel Bankshares, Inc., Wichita, Kansas, and thereby indirectly acquire Citadel Bank of Wichita, Wichita, Kansas, and Citadel Bank of Augusta, Augusta, Kansas.

4. *Lafayette Bancshares, Inc.*, Lexington, Missouri; to become a bank holding company by acquiring Lafayette County Banchares, Inc., Lafayette, Missouri, and thereby indirectly acquire Lafayette County Bank, Lafayette, Missouri.

Board of Governors of the Federal Reserve System, February 7, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–3323 Filed 2–12–90; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; James F. Justiss, Jr.

The notificant listed below has 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 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 February 28, 1990.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James F. Justiss, Jr.*, Trout, Louisiana; to acquire 10.95 percent of the voting shares of JBI Financial Corporation, Jena, Louisiana, and thereby indirectly acquire Bank of Jena, Jena, Louisiana,

Board of Governors of the Federal Reserve System, February 7, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–3322 Filed 2–12–90; 8:45 am]

BILLING CODE 6210–01–M

The Mitsubishi Trust and Banking Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

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 each of these applications

must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 5, 1990.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Mitsubishi Trust and Banking Corporation,* Tokyo, Japan; to acquire Spectrum Capital, Ltd., New York, New York, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for the company's account or for the account of others pursuant to § 225.25(b)(1); and leasing personal or real property or acting as agent, broker, or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted worldwide.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 100 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Florida Banks, Inc.,* Tampa, Florida; to acquire Mid-State Federal Savings Bank and thereby engage in savings and loan activities pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Florida.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Redwood Empire Bancorp,* Santa Rosa, California; to acquire Allied Savings Bank, F.S.B., Santa Rosa, California, and thereby engage in owning, controlling, or operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of California.

Board of Governors of the Federal Reserve System, February 7, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-3325 Filed 2-12-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9235]

Imo Industries, Inc., et al.; 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 require, among other things, a Lawrenceville, N.J. based corporation to seek prior FTC approval, for a period of ten years, before acquiring any company that has manufactured and sold 25 millimeter second generation image intensifier tubes in the U.S., or that has sold such tubes to the U.S. Dept of Defense at any time since January 1, 1988.

DATES: Comments must be received on or before April 11, 1990.

ADDRESSES: 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: Steven A. Newborn, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), 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)).

The agreement herein, by and between Imo Industries Inc. ("Imo"), a corporation, by its duly authorized office and its attorney, and counsel for the Federal Trade Commission ("the Commission"), is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Imo is a corporation organized under the laws of Delaware with its executive office of 3450 Princeton Pike, Lawrenceville, New Jersey 08648.

2. Imo has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of section 7 of the Clayton Act, as amended, and section 5 of the Federal Trade Commission Act, as amended. Imo denies said charges.

3. Imo admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Imo 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. All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the complaint issued by the Commission, 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 Imo in which event it will take such action as it may consider appropriate, or the Commission may enter this Order as final disposition of this matter.

6. This agreement is for settlement purposes only and does not constitute an admission by Imo that the law has been violated as alleged in said copy of the complaint issued by the Commission.

7. 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 § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Imo, 1) issue its decision containing this Order in disposition of the proceeding, and 2) make information public with respect thereto. When so entered, this Order shall have the same force and effect as, and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. This Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed to Order to Imo's address as stated in this agreement shall constitute service. Imo waives any right it may have to any other manner of service. The complaint may be used in construing the terms of this Order, and no agreement, understanding, representation or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

8. Imo has read the Order contemplated hereby. Imo 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

I.

For purposes of this Order, the following definitions shall apply:

Imo means Imo Industries Inc., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

II.

It is ordered, That for a period commencing on the date this Order becomes final and continuing for ten (10) years from the date this Order becomes final, Imo shall not acquire, without the prior approval of the Commission, directly or indirectly, the whole or any part of the stock, share capital, equity interest, or assets, other than purchases of manufactured product in the ordinary course of business, of any company that has manufactured and sold 25 millimeter second generation image intensifier tubes in the United States, or that has sold 25 millimeter second generation image intensifier tubes to the United States Department of Defense, at any time since January 1, 1988.

III.

It is further ordered for a period commencing on the date this Order becomes final and continuing for ten (10) years from the date this Order becomes final, That any successor corporation to Imo shall be bound by this Order to the same extent as Imo; further, Imo shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation that may affect compliance obligations arising out of the Order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary manufacturing or selling 25 millimeter second generation image intensifier tubes in the United States, or any other change that may affect compliance obligations arising out of the Order.

IV.

It is further ordered, That Imo shall within sixty (60) days after service of this Order, file with the 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 an agreement containing a proposed consent order from Imo Industries Inc. ("Imo"), concerning Imo's proposed acquisition of Optic-Electronic Corp. ("OEC"), its competitor in the manufacture and sale of 25 millimeter second generation image intensifier tubes. The proposed order requires Imo to seek prior approval for certain mergers or acquisitions for a period of ten (10) years.

The proposed consent order has been placed on the public record for sixty (60) days for reception 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 or make final the agreement's proposed order.

In June of 1989, Imo proposed to acquire OEC and merge the two companies' operations. On October 26, 1989, the Federal Trade Commission filed a preliminary injunction action against Imo in the United States District Court for the District of Columbia to enjoin the proposed merger. The Commission won a preliminary injunction on November 22, 1989.

On November 8, 1989, the Commission issued an administrative complaint against Imo which alleges that Imo's proposed acquisition of OEC violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended, and that, if consummated, such acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. 18, as amended, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended. The complaint alleges that both Imo and OEC are actual and potential competitors in the United States in the manufacture and sale of 25 millimeter second generation image intensifier tubes. The complaint alleges that the market is highly concentrated and that the barriers to entry into the manufacture and sale of the product are significant. The complaint alleges that the effects of the proposed acquisition would be to: (1) eliminate actual and potential competition between Imo and OEC and between OEC and others in the market; (2) significantly increase the already high levels of concentration in the market; (3) create a firm whose share of the market is so high as to lead to dominant firm status; (4) eliminate OEC as a substantial independent competitive force in the market; and (5) enhance the possibility of collusion or interdependent coordination among the remaining firms in the market.

The first paragraph of the proposed order defines the term "Imo" as used in the order. Paragraph II bans Imo from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, any stock, share capital, or assets of any company that has manufactured and sold 25 millimeter second generation image intensifier tubes in the United States, or that has sold 25 millimeter second generation image intensifier tubes to the United States Department of Defense, at any time since January 1, 1988. This ban lasts ten (10) years from the date the order becomes final.

Paragraph III of the proposed order requires that any successor corporation to Imo be bound by this order to the same extent as Imo, and that Imo notify the Commission at least thirty (30) days prior to any proposed change in the corporation, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary manufacturing or selling 25 millimeter second generation image intensifier tubes in the United States, or any other change that may affect compliance obligations arising out of the Order.

Paragraph IV of the proposed order requires Imo to file with the Commission, within sixty (60) days after service of the order, a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

The agreement is for settlement purposes only and does not constitute an admission by Imo that the law has been violated as alleged in the complaint issued by the Commission.

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. 90-3360 Filed 2-12-90; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892 3188]

Import Image, Inc., et al.; 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, a New York wholesaler of women's clothing from

falsely or deceptively labeling, invoicing, or advertising its textile fiber products as to name or amount of constituent fibers; failing to affix, or removing, labels containing the information required by the Textile Fiber Products Identification Act; and misrepresenting or failing to disclose the country of origin of its products.

DATES: Comments must be received on or before April 16, 1990.

ADDRESSES: 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: Katharine B. Alphin, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, Ga. 30367. (404) 257–7520.

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 the 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)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Import Image Inc., a corporation and Bertram Turoff, individually and as an officer of said corporation, and it now appearing that Import Image Inc., a corporation, and Bertram Turoff, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, are 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 Import Image Inc., by its duly authorized officer, and Bertram Turoff, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Import Image Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 498 Seventh Avenue, New York, New York, 10018.

2. Proposed respondent Bertram Turoff is the sole shareholder and president of Import Image Inc. He formulates, directs and controls the policies, acts and practices of said corporation and his office and principal place of business are the same as Import Image, Inc.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

(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 to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. 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 respondents, 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.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

7. 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 respondents, (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 any 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 respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they 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.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That respondents Import Image Inc., a corporation, its successors and assigns, and its officers, and Bertram Turoff, individually and an officer of said corporation, and respondents, representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product, as "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, 15 U.S.C. 70, hereinafter "Textile Fiber Act," and the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR part 303, hereinafter "Rule(s)," do forthwith cease and desist from misbranding or falsely or deceptively advertising any such product by:

A. Falsely or deceptively stamping, tagging, labeling, invoicing advertising or otherwise identifying such products as to the name or amount of constituent fibers contained therein in violation of Sections 3 and 4 of the Textile Fiber Act, 15 U.S.C. 70a and 70b , and Rules 2, 4, 6, and 7, 16 CFR 303.2, 303.4, 303.6, and 303.7;

B. Failing to affix securely to or place securely on each such product in the location, manner, and form required by the Rules, a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4 of the Textile Fiber Act, 15 U.S.C. 70b, and the Rules;

C. Causing or participating in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to a textile fiber product, unless a substitute stamp, tag, or label or other form of identification is affixed that shows in a clear and conspicuous manner each element of information required to be disclosed by section 4 of the Textile Fiber Act, 15 U.S.C. 70b, and the Rules.

II

It is further ordered, That respondents Import Image Inc., a corporation, its successors and assigns, and its officers, and Bertram Turoff, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any product in or affecting commerce, as "commerce" is defined in the Textile Fiber Act, do forthwith cease and desist from misrepresenting or failing to disclose, in any manner, the country of origin of such products in violation of sections 3, 4(b)(4) and 4(b)(5) of the Textile Fiber Act, 15 U.S.C. 70a, 70b(b)(4) and 70b(b)(5), and Rule 33, 16 CFR 303.33.

III

It is further ordered, That respondents shall forthwith file with the Commission a continuing guaranty applicable to all textile products handled by respondents, in the form prescribed by Rule 38, 16 CFR 303.38.

IV

It is further ordered, That respondents shall distribute a copy of this order to all present or future personnel, agents or representatives having managerial, purchasing, importing, sales, advertising, or policy responsibilities with respect to the subject matter of this order and that respondents shall secure from each such person a signed statement acknowledging receipt of said order.

V

It is further ordered, That, for a period of five (5) years, respondents will keep copies of each stamp, tag, label or other form of identification which shows information required by the Textile Fiber Act as well as such records as will show the textile fiber products in which each stamp, tag, label or other form of identification was affixed for each product it introduces, manufactures for introduction, sells, advertises, offers for sale or imports.

VI

It is further ordered, That respondents shall, for a period of five (5) years after this order becomes final, maintain and upon request make available to the Federal Trade Commission for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which respondents have complied with this order.

VII

It is further ordered, That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Import Image Inc., such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.

VIII

It is further ordered, That Import Image Inc., shall require, as a conditon precedent to the closing of the sale of its business or other disposition of all or a substantial part of its assets, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of the order that relate to Import Image Inc.

IX

It is further ordered, That the individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and, in addition, for a period of 10 years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment, each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

X

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this order, submit a verified report in writing, to the Federal Trade Commission setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Import Image Inc., and Bertram Turoff, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception 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 or make final the agreement's proposed order.

The complaint alleges that respondents misbranded certain textile fiber products by failing to stamp or affix a label identifying the country of origin of each product and by identifying certain constituent fibers as "fibranne," rather than by their English generic name, rayon. These acts and practices are in violation of the Textile Fiber Products Identification Act, 15 U.S.C. 70; the Commission's Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR 303; and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The proposed order requires that the company cease and desist (1) from failing to stamp or affix a label identifying the country of origin of each product it advertises or introduces into commerce, and (2) from failing to use the correct generic names in identifying constituent fibers in each product it advertises or introduces into commerce.

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. 90-3356 Filed 2-12-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority; Office of the Regional Director et al.

This Notice amends the following chapters of part A of the Statement of Organization, Functions and Delegations of Authority of the Office of the Secretary for the Department of Health and Human Services: Chapter AD, "Office of the Regional Director" as last amended at 54 FR 30107 on 7/18/89; and Chapter AMN "Office of Finance" as last amended at 53 FR 39145 on 10/5/88. These Chapters are being amended to reflect the consolidation of the Department's Regional Divisions of Cost Allocation (DCAs) into four offices located in New York, Washington, DC, Dallas, and San Francisco.

SUPPLEMENTARY INFORMATION: In November, 1989, the Assistant Secretary for Management and Budget signed an order consolidating the DCAs into four offices as the second phase of an overall DCA consolidation plan. The first phase of the plan, which consolidated the DCAs from ten to seven offices, was published in the Federal Register on July 18, 1989 (54 FR 30107).

The organizational structure of the DCAs has been a concern for some time. The current structure fragments this function into small offices, each dedicated to a small part of the overall national workload. This makes it difficult to maintain a broad range of expertise in each office and to use staff most effectively and productively. These problems have become especially acute in recent years as total DCA staff has been reduced while the cost proposals they are responsible for evaluating and negotiating have become increasingly complex. Accordingly, the Region I (Boston) DCA is being merged into the Region II (New York) DCA; the Region III (Philadelphia) and IV (Atlanta) DCAs are being consolidated in Washington, DC; the Region V (Chicago) and Region VII (Kansas City) DCAs are being merged into the Region VI (Dallas) DCA; and the Region VIII (Denver) and X (Seattle) DCAs have been merged into the Region IX (San Francisco) DCA. This consolidation is designed to strengthen DCA operations by assuring that there is a sufficient breadth and depth of expertise in each DCA office to properly handle the wide range of cost allocation plans and indirect cost proposals they are required to review and negotiate.

While the consolidation will become effective upon publication in the **Federal Register**, there will be a period of time before the affected staff actually relocate and the DCA offices in Regions I, III, IV, V, VII, VIII, and X physically close. During this transition period, DCA operations in those Regions will continue to be part of the Regional Administrative Support Centers in those Regions, but will be under the technical oversight of the DCA Director for Region II, VI or IX, or the Director, Division of Cost Determination Management, Office of Grant and Contract Financial Management, Office of Finance, in Washington, DC. Also, Interim Operating Instructions have been issued which provide general groundrules for managing DCA activities during the transition. Grantees and contractors located in Regions I, III, IV, V, VII, VIII and X should continue to submit their cost allocation plans and indirect cost proposals to the DCA offices in Boston, Philadelphia, Atlanta, Chicago, Kansas City, Denver and Seattle, respectively, until notified to do otherwise.

Accordingly, Chapter AD (I–X) and AMN of the Department's Organization Manual are amended as follows:

I. Section AD.20 D. Regional Administrative Support Center (AD(I–X)L), paragraph 3 is amended by deleting paragraph 3 in its entirety and replacing it with the following:

3. In accordance with policies and procedures established by the Office of Grant and Contract Financial Management, Office of Finance, ASMB, conducts cost allocation activities in New York City, Dallas and San Francisco. Reviews, negotiates and approves indirect cost rates, State and local government cost allocation plans, research patient care rates and amounts, fringe benefit rates, and other special rates applicable to Federal grant and contract programs. Provides technical assistance and training on cost allocation and indirect costs to grantees and contractors, HHS grant and contract officials, and grant and contract officials of other Federal agencies. Resolves audit findings on cost allocation plans, indirect cost rates, etc. Carries out these functions on behalf of all Federal agencies and programs when HHS is designated the cognizant agency by OMB. The New York, Dallas and San Francisco offices will generally perform these activities for grantees and contractors located in the following States, territories, and Nations.

New York office—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Puerto Rico, Virgin Islands, foreign countries (excluding Australia and Japan).

Dallas office—Arkansas, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, New Mexico, Ohio, Oklahoma, Texas, and Wisconsin.

San Francisco office—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming, American Samoa, the Trust Territories of the Pacific Islands and Eastern Caroline, Guam and Wake Islands, Australia, and Japan.

(Cost allocation activities for grantees and contractors located in the middle-Atlantic and southeastern States and the District of Columbia are generally performed by the HHS Office of Finance in Washington, DC—See Chapter AMN, section AMN. 20.)"

II. Section AMN.20 Office of Finance, Functions is amended as follows:

A. Reletter paragraphs P and Q as Q and R, and insert the following new paragraph P:

P. Conducts cost allocation activities, including the review, negotiation and approval of indirect cost rates and cost allocation plans, for grantees and contractors located in the States specified in paragraph 6.D.

B. Make fhe following changes to section AMN.20, paragraph 6, Office of Grant and Contract Financial Management:

1. Add a new pargraph (8) as follows:

(8) Conducts cost allocation activities, including the review, negotiation and approval of indirect cost rates and cost allocation plans, for grantees and contractors located in the States specified in paragraph 6.D.

2. Add a new paragraph D as follows:

a. Serves as liaison between regional cost allocation staff and Federal agencies in the Washington, DC area on operational matters involving the review and negotiation of indirect cost rates and cost allocation plans. Reviews, negotiates, and approves indirect cost rates, State and local government cost allocation plans, research patient care rates and amounts, fringe benefit rates, and other special rates for grantees and contractors located in the following States and the District of Columbia: Alabama, Delaware, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.

b. Resolves audit findings on cost allocation plans, indirect cost rates, etc., for grantees and contractors under the Division's negotiation cognizance. Also provides technical assistance on cost allocation matters to these grantees and contractors.

c. Carries out the functions described in paragraphs a. and b. on behalf of all Federal agencies and programs when HHS is designated the cognizant agency by OMB.

Dated: January 23, 1990.

Kevin E. Moley,

Assistant Secretary for Management and Budget.

[FR Doc. 90-3294 Filed 2-12-90; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Request for Comments and Secondary Data Relevant to Occupational Exposure to Synthetic and Natural Mineral Fibers

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of request for comments and secondary data.

SUMMARY: NIOSH is requesting comments and secondary data from all interested parties concerning synthetic and natural mineral fibers. Interested parties may submit published and unpublished data on the health and safety hazards from occupational exposure to synthetic and natural mineral fibers, including but not limited to: (1) Types of mineral fibers identified in occupational environments, (2) the results of occupational exposure monitoring for mineral fibers, (3) the results of any animal studies in which mineral fibers were used, and (4) the results of any health studies of persons exposed to mineral fibers.

DATES: Comments and secondary data concerning this notice should be submitted by April 16, 1990.

ADDRESSES: Please submit any information, comments, suggestions, or recommendations in writing to: Dr. Richard W. Niemeier, Acting Director, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C-14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton B. Doak, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C-30, Cincinnati, Ohio 45226, (513) 533-8324, or FTS 684-8324.

SUPPLEMENTARY INFORMATION: Under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.), and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801, et seq.), NIOSH is directed to develop recommendations for improving occupational safety and health. NIOSH has been concerned with the possible adverse health effects that may be associated with exposure to mineral fibers. Additionally, NIOSH has an ongoing interest in the fiber definitions used by others in reporting results from studies (e.g., environmental, industrial hygiene, and toxicology). NIOSH requests information concerning glass fibers (including glass wool and glass filaments); mineral wool (including rock and slag wool); and refractory or aluminosilicate ceramic fibers. Data on other types of synthetic mineral fibers should also be submitted.

NIOSH also seeks information on serpentine asbestos (chrysotile), riebeckite asbestos (crocidolite), cummingtonite-grunerite asbestos (amosite), the fibrous and nonfibrous habits of actinolite, tremolite, anthophyllite, amphiboles that form in a fibrous crystal habit, or those that may separate into elongated particles (>3:1 length to diamter aspect ratio).

NIOSH is interested in comments, as well as all published and unpublished data on natural and synthetic mineral fibers (except data on chrysotile, crocidolite, or amosite, published before 1984, and data that were officially submitted to the Occupational Safety and Health Administration (OSHA) dockets H-033, H-330, and H-033C). Such as:

1. Criteria used for defining fibers including morphologic (e.g., size, shape, etc.) and mineralogic (e.g., elemental composition) parameters.

2. The results of experimental animal studies (e.g., intratracheal, inhalation, intraperitoneal) in which mineral fibers were used for testing, as well as any physical and chemical charaterization data (e.g., size distribution, surface area, traced element chemistry, etc.) developed for these fibers.

3. The results of industrial hygiene personal and area airborne samples collected to determine exposure to mineral fibers in any work setting, as well as any physical and chemical charaterization data (e.g., size distribution, surface area, trace element chemistry, etc.) developed for these fibers.

4. The results of medical studies or epidemiological studies of persons exposed to mineral fibers.

5. Any information on the number of workers and types of occupations exposed to mineral fibers.

6. Any information on the types of industries in which mineral fibers are mined, produced, or processed, including those industries in which mineral fibers occur as a contaminant.

All information received in response to this notice, except that designated as trade secret and protected by Section 15 of the Occupational Safety and Health Act, or personal identifying information contained in medical case reports or data, will be available for public examination and copying at the above address.

Dated: February 6, 1990.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 90-3342 Filed 2-12-90; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Veterinary Laboratories, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Veterinary Laboratories, Inc. The NADA provides for use of sodium arsanilate tablets in swine drinking water for control of swine dysentery. The firm requested the withdrawal of approval.

EFFECTIVE DATE: February 23, 1990.

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: Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215, is the sponsor of NADA 8-354 which provides for the use of sodium arsanilate tablets in swine drinking water for control of swine dysentery. The NADA originally became effective February 26, 1952.

Several products containing sodium arsanilate were the subject of a National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group report published in the **Federal Register** of March 1, 1969 (34 FR 3712). In addition, several other sodium arsanilate products were the subject of an effectiveness notice ("Report of Information for Drug Effectiveness") published in the **Federal Register** of July 9, 1966 (31 FR 9426), and were not evaluated in the NAS/NRC report. They were all subject to a notice of opportunity for hearing published in the **Federal Register** of May 26, 1971 (36 FR 9573) (Docket No. FDC-D-229;

NADA No. 5–687V, etc., Beebe Laboratories et al., sodium arsanilate). Final action has not been taken regarding these publications.

In response to a February 17, 1988, letter from FDA regarding reports required by 21 CFR 510.300, Veterinary Laboratories, Inc., in their letter of February 23, 1988, requested withdrawal of approval of NADA 8–354 under 21 CFR 514.115(d) and waived an opportunity for hearing, stating the product is no longer marketed.

Section 514.115(d) provides for voluntary withdrawal of approval of an NADA. It normally does not apply if the holder of the application whose withdrawal has been requested already has been afforded an opportunity for hearing on a proposal to withdraw approval of the NADA. In this case, however, the firm's request is being granted because of the extended time that has elapsed since publication of the notice of opportunity for hearing and also because the public interest will be served and the firm's interest will not be prejudiced.

Therefore, under section 512(e) of the Federal Food, Drug, and Cosmetic Act (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 8–354 and all supplements thereto is hereby withdrawn, effective February 23, 1990.

Dated: February 7, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90–3340 Filed 2–12–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90N–0055]

Abbreviated New Drug Applications for Conjugated Estrogens; Proposal To Withdraw Approval; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of abbreviated new drug applications (ANDA's) for certain oral drug products that contain conjugated estrogens, and is offering an opportunity for a hearing on the proposal. These drug products are now indicated for treatment of vasomotor symptoms associated with menopause, osteoporosis, atrophic vaginitis, female hypogonadism, female castration, primary ovarian failure, and as palliative therapy for breast cancer and prostatic carcinoma. The proposal to withdraw approval is based on a finding that the oral conjugated estrogens approved under ANDA's are potentially bioinequivalent to Premarin Tablets, and, hence, can no longer be considered to be shown safe and effective for their intended uses.

DATES: Requests for a hearing are due on or before March 15, 1990; data and information in support of a hearing request are due on or before April 16, 1990.

ADDRESSES: Requests for a hearing, supporting data, and other comments should be identified with Docket No. 90N–0055, and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Harry T. Schiller, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION:

Background

In 1942, the new drug application for Premarin Tablets (NDA 4–782; held by Ayerst Laboratories, now Wyeth-Ayerst Laboratories (Wyeth-Ayerst)) became effective based on a showing that the product was safe for its intended use in the treatment of various menopausal symptoms. Premarin Tablets contain conjugated estrogens obtained exclusively from natural sources. These estrogens are blended to reduce the variation in composition of material derived from pregnant mares' urine. The product contains estrone and equilin, as well as other estrogenic substances of the type excreted by pregnant mares, including 17 *alpha*-dihydroequilin, 17 *alpha*-estradiol, equilenin, and 17 *alpha*-dihydroequilenin, all as salts of their sulfate esters.

Under the agency's Drug Efficacy Study Implementation (DESI) program, FDA evaluated the effectiveness of Premarin Tablets. The DESI program implemented the requirement set forth in the 1962 Drug Amendments to the Federal Food, Drug, and Cosmetic Act (the act) that all products allowed to be marketed on the basis of safety between 1938 and 1962 be evaluated for effectiveness. FDA was required to approve affirmatively the products as effective or remove them from the market.

Under DESI, FDA announced in the **Federal Register** of July 25, 1972 (37 FR 14826) that Premarin Tablets were effective for replacement therapy of estrogen deficiency associated with menopausal syndrome, female hypogonadism (hypogenitalism), amenorrhea, female castration, or primary ovarian failure, and for the prevention of postpartum breast engorgement and abnormal uterine bleeding due to hormonal imbalance in the absence of organic pathology. FDA also evaluated the product as effective for senile vaginitis, kraurosis vulvae with or without pruritis and palliative therapy of inoperable progessing prostatic cancer and breast cancer.

In addition, FDA evaluated various estrogen-containing products, including Premarin, as probably effective for selected cases of osteoporosis. For the osteoporosis indication, FDA required that manufacturers either submit substantial evidence of effectiveness for the indication or remove it from the labeling of their products within a certain period of time.

The July 1972 notice, in conjunction with notices published in the **Federal Register** of April 24, 1970 (35 FR 6574) and July 14, 1970 (35 FR 11273), as modified by a notice published in the **Federal Register** of September 22, 1975 (40 FR 43531), also provided for the submission and approval of ANDA's for generic versions of Premarin Tablets labeled for those indications found effective. These ANDA's were to be submitted under section 505(b) of the act (21 U.S.C. 355(b)) but were not required to contain clinical safety and effectiveness data. FDA considered sufficient a showing that the proposed generic products were chemically similar to Premarin Tablets, and that the generic products could be manufactured properly, to demonstrate that the generic products were safe and effective. No bioavailability data were required to support approval of the generic conjugated estrogen tablets. At that time, FDA did not require bioavailability testing for conjugated estrogen drug products.

In the **Federal Register** of January 7, 1977 (42 FR 1624), FDA issued a final regulation concerning bioequivalence and bioavailability requirements for drugs. One aspect of this regulation required any person submitting a full or abbreviated new drug application after July 7, 1977, to include either evidence demonstrating the in vivo bioavailability of the drug product or information to permit waiver of the requirement. The regulation, however, waived the requirement for submission of in vivo bioavailability data for solid oral dosage forms (other than enteric-coated or

controlled-release dosage forms) of drug products (1) determined to be effective for at least one indication in a DESI notice published before promulgation of the regulation, and (2) not included on the list of products identified in 21 CFR 320.22(c) as having actual or potential bioequivalence problems.

As noted by the Commissioner in the preamble to the final rule (comment 21 at 42 FR 1641):

> The FDA, in preparing the proposed bioequivalence regulations, reviewed all of the drug products evaluated as effective for at least one indication in a DESI notice and determined that, except for those drug products listed in the preamble [and codified in 21 CFR 320.22(c)], there is at the present time no evidence that these drug products have a known or potential bioequivalence problem.

In promulgating this regulation, FDA evaluated whether evidence existed indicating a potential bioequivalence problem for conjugated estrogens. The agency found no evidence indicating a bioequivalence problem for conjugated estrogens based upon the criteria outlined in 21 CFR 320.52. At that time, however, the complex biochemistry of conjugated estrogens was unexplored, and no methodology existed to measure the active moieties of conjugated estrogens in the blood.

In the late 1970's, however, FDA reconsidered the oral conjugated estrogens approved under ANDA's and found them not shown to be therapeutically equivalent to Premarin Tablets. This determination was first publicly announced in FDA's list entitled Approved Prescription Drug Products with Proposed Therapeutic Equivalence Evaluations (the precursor to FDA's publication Approved Drug Products with Therapeutic Equivalence Evaluations, commonly known as the "Orange Book"). The availability of this list was announced in the **Federal Register** of January 12, 1979 (44 FR 2932). FDA's determination was based on a conclusion that the United States Pharmacopeia (U.S.P.) compendial standards for these products permitted too much variation in the chemical content of estrone and equilin sulfates. It was not based on a conclusion that conjugated estrogens presented bioavailability or bioequivalence problems.

In response to FDA's "probably effective" evaluation of Premarin Tablets for use in osteoporosis, Ayerst submitted additional data from clinical trials. Initially, these data were found not to provide substantial evidence of effectiveness of Premarin Tablets for osteoporosis. Later, however, FDA determined that Premarin Tablets were effective for the treatment of postmenopausal osteoporosis. This determination was based upon a review of recommendations from two advisory committee meetings (Endocrinology and Metabolism Advisory Committee meeting held on February 18, 1977, and the Obstetrics and Gynecology Advisory Committee meeting held on July 28, 1977), additional published literature, and a reevaluation of the previously submitted data.

FDA's determination was announced in the **Federal Register** of April 11, 1986 (51 FR 12568). The agency also amended the conditions for approval of short-acting oral estrogens, including Premarin, to include the additional indication of postmenopausal osteoporosis. The notice allowed all manufacturers of approved noncontraceptive conjugated estrogen tablets to add the osteoporosis indication to their products' labeling. The notice also provided for approval of new ANDA's for conjugated estrogen tablets labeled in compliance with the requirements set forth in the July 1972 and the April 1986 notices. Per 21 CFR part 320, the in vivo bioavailability requirement for these products was waived.

In accord with the conditions specified in the 1972 notice, as amended by the April 1986 notice, the ANDA's listed below were approved for synthetic oral conjugated estrogens tablets (Many of the oral conjugated estrogen products listed below are no longer marketed. ANDA's for these products remain approved, however. Thus, the Center for Drug Evaluation and Research is offering an equal opportunity to the sponsors of these previously marketed products to request a hearing on any or all of the issues raised by this notice.) The ANDA's are:

ANDA 83–272; 0.625 milligram (mg) of conjugated estrogens; Duramed Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213.

ANDA 83–294; 1.25 mg of conjugated estrogens; Duramed Pharmaceuticals, Inc.

ANDA 83–295; 2.5 mg of conjugated estrogens; Duramed Pharmaceuticals, Inc.

ANDA 83–354; 0.625 mg, 1.25 mg, and 2.5 mg conjugated estrogens; Private Formulations, Inc., 460 Plainsfield Ave., Edison, NJ 08818–1904.

ANDA 83–356; 0.625 mg of conjugated estrogens; Heather Drug Co., Inc., No. 1 Fellowship Rd., Cherry Hill, NJ 08003.

ANDA 83–357; 0.625 mg, 1.25 mg, and 2.5 mg of conjugated estrogens; Organon Sub Akzona, Inc., 375 Mt. Pleasant Ave., West Orange, NJ 07052.

ANDA 83–360; 1.25 mg of conjugated estrogens; Heather Drug Co., Inc.

ANDA 83–373; 0.625 mg, 1.25 mg, and 2.5 mg of conjugated estrogens; Zenith Laboratories, Inc., 50 Williams Dr., Ramsey, NJ 07446.

ANDA 83–592; 1.25 mg of conjugated estrogens; Private Formulations, Inc.

ANDA 83–601; 1.25 mg of conjugated estrogens; Zenith Laboratories, Inc.

ANDA 83–602; 2.5 mg of conjugated estrogens; Zenith Laboratories, Inc.

ANDA 83–761; 0.625 mg of conjugated estrogens; Cord Laboratories, Inc., 2555 W. Midway Blvd., P.O. Box 446, Broomfield, CO 80020–0446.

ANDA 83–762; 2.5 mg of conjugated estrogens; Cord Laboratories, Inc.

ANDA 83–763; 1.25 mg of conjugated estrogens; Cord Laboratories, Inc.

ANDA 83–996; 1.25 mg of conjugated estrogens; KV Pharmaceutical Co., Inc., 2503 South Hanley Rd., St. Louis, MO 63144.

ANDA 84–295; 1.25 mg of conjugated estrogens; Standard Pharmaceutical Corp., Inc., 1300 Abbott Dr., Elgin, IL 60120.

ANDA 84–296; 0.625 mg of conjugated estrogens; Standard Pharmaceutical Corp., Inc.

ANDA 84–297; 2.5 mg of conjugated estrogens; Standard Pharmaceutical Corp., Inc.

ANDA 84–368; 1.25 mg of conjugated estrogens; West Ward Pharmaceutical Corp., Inc., 465 Industrial Way West, Eatontown, NJ 07724.

ANDA 84–371; 0.625 mg of conjugated estrogens; West Ward Pharmaceutical Corp., Inc.

ANDA 84–372; 2.5 mg of conjugated estrogens; West Ward Pharmaceutical Corp., Inc.

ANDA 84–650; 2.5 mg of conjugated estrogens; Heather Drug Co., Inc.

ANDA 85–396; 1.25 mg of conjugated estrogens; KV Pharmaceutical Co., Inc.

ANDA 85–800; 0.625 mg of conjugated estrogens; Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552.

ANDA 85–801; 1.25 mg of conjugated estrogens; Chelsea Laboratories, Inc.

ANDA 85–826; 2.5 mg of conjugated estrogens; Chelsea Laboratories, Inc.

ANDA 85–908; 2.5 mg of conjugated estrogens; Private Formulations, Inc.

ANDA 86–070; 0.3 mg of conjugated estrogens; Cord Laboratories, Inc.

ANDA 85–084; 1.25 mg of conjugated estrogens; Cord Laboratories, Inc.

ANDA 86–085; 0.625 mg of conjugated estrogens; Cord Laboratories, Inc.
ANDA 86–492; 0.3 mg of conjugated estrogens; Duramed Pharmaceuticals, Inc.
ANDA 88–569; 0.3 mg of conjugated estrogens; Zenith Laboratories, Inc.

In July 1986, FDA determined through in vitro disintegration and dissolution studies that Premarin Tablets behaved similarly to an enteric-coated formulation upon aqueous testing. This turned out to be the result of Premarin's unique coating and core composition. Based on this finding, FDA changed the therapeutic equivalence classification of oral conjugated estrogen products approved under ANDA's reported in the Orange Book to Code BP (not shown to be therapeutically equivalent to Premarin Tablets due to potential bioequivalence problems). The code was changed in March 1987. Because FDA identified a potential bioequivalence problem associated with oral conjugated estrogen products, the agency established a requirement that all pending and future ANDA's for these products contain in vivo data demonstrating the bioequivalence of the proposed products to Premarin Tablets.

To assist applicants in meeting this requirement, FDA gave informal advice in the form of a written guidance in December 1986 on how to conduct in vivo bioequivalence studies of oral conjugated estrogens. In this guidance, FDA recommended that the determination of bioequivalence be based on the pooled 24-hour urinary excretion of metabolities of estrone sulfate and equilin sulfate, i.e., total estrone and total equilin following hydrolysis of the glucuronide and sulfate conjugates. This method was capable of assessing the extent of urinary excretion (and, by extrapolation, the extent of absorption), but not the rate of absorption. Moreover, it did not measure free equilin or estrone, the presumed active moieties of the conjugated estrogen products.

Beginning in late 1987, however, several manufacturers of oral conjugated estrogens submitted plasma studies to FDA seeking classification of their products in the Orange Book as therapeutically equivalent to Premarin Tablets. None of these studies demonstrated that the products were bioequivalent to Premarin Tablets, however, in part because the rates of absorption of these products were significantly faster than the rate of absorption of Premarin Tablets.

Around this time, FDA also received from Duramed Pharmaceuticals and Wyeth-Ayerst comments on its 1986 guidance. Both firms maintained that urinary excretion studies were inadequate to measure the pharmacologic activity of the active moieties of conjugated estrogens in the blood because of the small fraction of the administered dosage recovered in urine. Both firms included methodologies for measuring active moieties in plasma.

Wyeth-Ayerst noted that the urinary studies failed to reflect a shift in the plasma ratio of estrone to estradiol with Premarin. Stating that such shifts indicated nonlinear behavior in enzyme medicated pathways, Wyeth-Ayerst developed a pharmacokinetic model that predicted that the rate of absorption of all estrogen sulfates contributed to the proportion of active moieties in the plasma and altered the pharmacological effect-time profile.

In 1988, FDA reconsidered the 1986 guidance. This reconsideration centered on the following concerns: (1) Lack of bioequivalence resulting in instances of subtherapeutic concentrations would have a serious adverse effect on the treatment of osteoporosis, but such a therapeutic failure might go undetected during the early years of treatment. Conversely, too much of the active moieties would increase the risk of endometrial carcinoma. (2) The pharmacokinetics of human oral estrogen use is poorly understood, especially with regard to the probable nonlinearity to their absorption and metabolism. In such a complex system, there are many reasons to expect that the rate of absorption would significantly affect the peak levels of circulating active moieties. (3) Previously, FDA had consistently taken the position that, in regard to such steroids, the area under the curve (AUC) is the most important pharmacokinetic parameter. However, with regard to conjugated estrogen tablets, there is a possibility that a product that is absorbed at a faster rate than Premarin Tablets may never achieve an equivalent AUC in regard to circulating active moieties in spite of similar levels of estrogen metabolites in the 24-hour pooled urine specimen. Indirect measurement of the extent of absorption by urinary excretion studies using only a single pooled urine sample, therefore, may not accurately reflect the status of the circulating levels of active moieties. Particularly relevant to this concern are the facts that active moieties in the plasma may deconjugate and reconjugate before urinary excretion, and that the steady state urinary excretion of estrone and equilin represents less than one third of the dosed quantity of these estrogens. See Johnson, R. N., et al., *Journal of Pharmaceutical Sciences*, 67:1218–1224, 1978.

Because of these considerations, FDA concluded that plasma level studies were necessary to show the bioequivalence of conjugated estrogen tablets to Premarin Tablets (i.e., to establish convincingly that these products had rates and extents of absorption equivalent to Premarin Tablets). No new ANDA's for products were to be approved without such a showing based on plasma level studies, and the agency removed its urinary excretion guidance on conjugated estrogen tablets from the Orange Book.

In January 1989, the agency brought the question of revising the bioequivalence guidance for conjugated estrogens before its Fertility and Maternal Health Drugs Advisory Committee. The Committee concluded that urinary excretion studies were insufficient to establish bioequivalence and should be replaced by plasma level bioequivalence studies.

The Committee was also asked whether the rate of absorption was medically significant for conjugated estrogens. Of the eight Committee members that considered this issue, three abstained from voting and one stated more research was needed. At least two of the four members voting that the rate of absorption is not very important based their vote on the presumption that circulating plasma levels of the active moieties of conjugated estrogens would level out upon chronic dosing. Because there is insufficient evidence to determine whether this presumption is correct and because of the equivocal nature of the Committee's vote, the agency considers the Committee's deliberations on this issue inconclusive. As further described below, FDA finds that there is evidence that differences in rate or extent of absorption may affect both safety and effectiveness of conjugated estrogen products.

Around this time, FDA began drafting a new guidance for bioequivalence testing of conjugated estrogens utilizing plasma determinations. FDA also solicited outside comments on the draft guidance. To date, FDA has received 14 comments. These comments include concerns that nonlinear kinetics and rate of absorption play an important role in determining the therapeutic equivalency of conjugated estrogens. In the **Federal Register** of December 26, 1989 (54 FR 53011), FDA announced the formation of a special subcommittee of the Fertility and Maternal Health Drugs Advisory Committee to provide further

guidance to the agency in developing appropriate bioequivalence standards for conjugated estrogens.

Reevaluation of Conjugated Estrogens Approved Under Abbreviated New Drug Applications

Premarin Tablets were not represented to FDA as similar to an enteric-coated formulation and, consequently, the ANDA's for conjugated estrogen tablets were approved as conventional release formulations. The agency has determined, since the approval of the ANDA's, and since the approval of the osteoporosis indication, however, that Premarin Tablets act like an enteric-coated product. Thus, there is new information that oral conjugated estrogen products approved under ANDA's have the potential for different rates and/or extents or absorption than Premarin Tabets. In fact, several conjugated estrogen tablets approved under ANDA's have been shown through plasma studies to have significantly higher rates of absorption than Premarin Tablets. In light of the new information demonstrating the fast rates of absorption for certain conjugated estrogen products approved under ANDA's, and revealing the potential for differences in rates and/or extents of absorption posed by other conjugated estrogen products approved under ANDA's, a reevaluation of other information raises several significant concerns about the safety and effectiveness of these products.

First, in accordance with well-established principles of pharmacokinetics, oral conjugated estrogen products with a faster rate of absorption or a greater extent of absorption than Premarin Tables may result in instances of higher peak drug plasma concentrations. There is evidence that higher plasma concentrations of conjugated estrogens may unnecessarily raise the risk of endometrial cancer. See Varma, T. R., D. Everard, and D. Hole, "Effect of Natural Estrogen on the Serum Level of Follicle-Stimulating Hormone (FSH), Estradiol and Estrone in Post-Menopausal Women and its Effect on Endometrium," *Acta Obstetrica Gynecologica Scandinavica,* 64:105–109, 1985; and Whitehead, M. I., and S. Campbell, "Endometrial Histology, Uterine Bleeding and Oestrogen Levels in Menopausal Women Receiving Estrogen Therapy and Estrogen/Progestogen Therapy," *International Symposium on Endometrial Cancer and Related Topics,* St. Thomas Hospital, pp. 65–80, 1977. Because treatment of postmenopausal syndrome with conjugated estrogens may extend over several years and the preventative treatment of osteoporosis involves many more years, long-term exposure to such an increased risk constitutes an unnecessary health hazard associated with conjugated estrogen products that have not been shown to be bioequivalent to Premarin.

Second, oral conjugated estrogen products with a rate of absorption different than Premarin Tablets may be ineffective in the treatment of osteoporosis. Well-understood principles of pharmacokinetics establish that drug elimination mechanisms usually are linear, i.e., metabolism or removal of a drug from the body occurs at rates directly proportional to the plasma concentrations. Therefore, when a product releases the drug rapidly, and the drug is rapidly absorded, the result is high peak plasma levels that decline rapidly as the drug is eliminated from the plasma. In contract, a product that releases the drug more slowly results in lower peak plasma levels, and the body's elimination mechanisms usually will remove a smaller absolute amount of drug per unit of time from the plasma than would be the case if the levels were higher. This raises the possibility that the drug plasma concentrations produced by the conjugated estrogen products with a faster rate of absorption could decline between dosing to levels lower than those produced by Premarin Tablets. Because reducing Premarin's dosage by a small amount renders it ineffective for the treatment of osteoporosis, any decline in drug plasma concentrations below those produced by Premarin Tablets could result in subtherapeutic or ineffective levels of the drug.

The possibility exists that oral conjugated estrogens currently approved under ANDA's may not be effective in the treatment of osteoporosis or may cause irreversible harm to patients. Conjugated estrogens must be given for many years for osteoporosis, and therapeutic failure may not be apparent until significant morbidity (e.g., hip fractures) has occurred. Bone densitometry methods are relatively imprecise and expensive, requiring years to show trends. Thus, sustained underavailability of conjugated estrogens might insidiously fail to prevent bone mass loss without the knowledge of the patient or her clinician. Furthermore, while treatment with currently approved bioinequivalent conjugated estrogens may be therapeutically ineffective in the treatment of osteoporosis, the patient still would be exposed to an increased risk of endometrial cancer without any benefit.

Third, oral conjugated estrogen products approved under ANDA's with lower rates and/or extents of absorption than Premarin Tablets could produce plasma concentrations of the drug that are subtherapeutic or ineffective for any of the labeled indications for conjugated estrogens.

Finally, because of the complex biopharmaceutical nature of Premarin Tablets, there is insufficient evidence that oral conjugated estrogens approved under ANDA's have been shown to be safe or effective in the absence of adequate bioequivalence studies. The complex biochemistry of conjugated estrogens handling in humans is still not well understood. For example, estrogen sulfates undergo deconjugation in the human intestinal tract prior to absorption (see Behavnani, B.R., C.A. Woolever, D. Wallace, and C.C. Pan, "Metabolism of [3H]Equilin-[35S]Sulfate and [3H]Equilin Sulfate After Oral and Intravenous Administration in Normal Postmemopausal Women and Men," *Journal of Clinical Endocrinology and Metabolism,* 68(4):757–65, 1989), and unconjugated estrogens are conjugated in human intestinal lining cells (see Diczfalusy, E., C. Franksson, and B. Martinsen, "Oestrogen Conjugation by the Human Gastrointestinal Tract," *Acta Endocrinologica,* 38:59–72, 1961). Once in the plasma, conjugated estrogens may deconjugate and reconjugate or interconvert with their metabolites in an equilibrium affected by rate of absorption and concentration. The active moieties and/or metabolites of conjugated estrogens may compete with each other for binding sites in target tissues. In addition, estrogens induce hepatic synthesis of proteins, including sex-harmone binding globulin, which bind and carry the estrogens in the circulation. Because of these multiple levels of complexity, and differences between the absorption of a conjugated estrogen product approved under an ANDA and the absorption of Premarin could potentially alter toxicity or efficacy in ways that are difficult to predict.

Accordingly, new information and tests by new methods show that there are demonstrated and potential differences in rate and/or extent of absorption between Premarin and the conjugated estrogens aproved under ANDA's. New and reevaluated information also shows that there is an increased risk of endometrial cancer or other toxicities and an increased risk of therapeutic failure from conjugated estrogen products whose rate and/or

extent of absorption differ from those of Premarin. The conjugated estrogens approved under ANDA's were originally determined to be safe on the basis of evidence that the demonstrated benefits of Premarin outweighed its risks, and that the conjugated estrogens approved under ANDA's could be expected to have the same risks and benefits. The new information shows that bioinequivalent conjugated estrogens approved under ANDA's may pose greater or different risks to patients than Premarin without any increase in demonstrated benefits. (As described above, the differences in rate and/or extent of absorption may decrease the drug's benefits.) Thus, the safety of conjugated estrogens that are not bioequivalent to Premarin has not been shown.

In addition, new information shows that, because of demonstrated and potential differences in rate and/or extent of absorption between Premarin and the conjugated estrogens approved under ANDA's, there is no longer an adequate basis to conclude that the products approved under ANDA's are as effective as Premarin. Differences in rate and/or extent of absorption may not only decrease the effectiveness of conjugated estrogens in the treatment of osteoporosis, but may potentially alter the effectiveness of the drug for all of its indications. The conjugated estrogens approved under ANDA's were determined to be effective on the basis of substantial evidence that Premarin was effective for its labeled indications and the expectation that this evidence would be equally applicable to the chemically synthesized products. The new information described herein shows that, in the absence of reliable bioequivalence studies showing that the products approved under ANDA's have the same rate and extent of absorption of the active moities as Premarin, the substantial evidence of Premarin's effectiveness for its labeled indications can no longer be considered applicable to the conjugated estrogens approved under ANDA's.

Findings and Proposed Action

Based on the reevaluation above, the Director finds that:

(1) New evidence of clinical experience not contained in the applications or not available until after the applications were approved, and tests by new methods, and tests by methods not deemed reasonably applicable when the applications were approved, evaluated together with the evidence available when the applications were approved, show that the conjugated estrogens currently approved under NADA's are not shown to be safe for use under the conditions of use upon the basis of which the applications were approved (21 U.S.C. 355(e)(2)); and

(2) On the basis of new information with respect to the conjugated estrogens currently approved under ANDA's, evaluated together with the evidence available when the applications were approved, there is a lack of substantial evidence that these conjugated estrogen drug products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(e)(3)).

Thus, the Director of the Center for Drug Evaluation and Research proposes to withdraw approval of the ANDA's listed above for oral conjugated estrogen products.

Notice of Opportunity for Hearing

Notice is hereby given to the holders of the ANDA's for conjugated estrogens listed above and to all other interested persons that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the act (21 U.S.C. 355(e)), withdrawing approval of the applications and all amendments and supplements thereto on the grounds stated above.

In accordance withe section 505 of the act and 21 CFR part 314, the applicant is hereby given an opportunity for a hearing to show why approval of the ANDA's should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) On or before March 15, 1990, a written notice of appearance and request for hearing, and (2) on or before April 16, 1990, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in 21 CFR 314.200 and 21 CFR part 12.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that person's drug products. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug that was withdrawn for grounds described in the first sentence of section 505(e) of the act. If the agency determines that withdrawal of the drugs subject to this notice is appropriate, FDA will announce their removal from the list in the **Federal Register** notice announcing the withdrawal of approval of the drugs.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: February 2, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90-3292 Filed 2-12-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Pediatric Acquired Immune Deficiency Syndrome (AIDS); Health Care Demonstration Projects

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BNCHRD), Health Resources and Services Administration (HRSA) announces that Fiscal Year (FY) 1990 funds are available for grants for Pediatric AIDS Health Care Demonstration Projects, Pediatric AIDS Comprehensive Center Demonstration Projects, and National Issues of High Priority. Projects will be funded to demonstrate strategies and innovative models for intervention in pediatric AIDS and coordinated services for children, youth, and women of childbearing age with Human Immunodeficiency Virus (HIV) infection, AIDS or other related conditions, or those at risk for developing infection and its consequences. Funds were appropriated for this purpose by Public Law 101–166.

DATE: The deadline for receipt of applications is April 16, 1990. Applications shall be considered as meeting the deadline if they are either: (1) Received by the Grants Management Branch at the address below on or before the deadline date; or (2) postmarked on or before the deadline date, and received in time for submission to the review group.

Applicants must obtain a legibly dated U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Grant applications received after the deadline date will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical and program issues may be obtained from: John J. Hutchings, M.D., Division of Services for Children with Special Health Needs, BMCHRD, Parklawn Building, Room 9–48, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2350.

Grant applications and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from: Grants Management Officer, Suite 100A, 12300 Twinbrook Parkway, Rockville, Maryland 20852, (301) 443–1440. The original and two (2) copies of the applications must be submitted to the Grants Management Officer.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Through June 1989, 97,193 cases of AIDS have been reported to the Centers for Disease Control (CDC). Of these, 1,569 have been infants and children 0–12 years of age and 381 have been adolescents 13–19 years of age. Approximately one-half of the known cases in this pediatric population have died. The Public Health Service (PHS) predicts an increase in pediatric AIDS by 1991 to 3,000 cases.

The cost of providing a full range of services in the pediatric population with AIDS is high, largely reflecting hospital costs with the higher inpatient hospital rates for children and the long periods of hospitalization these children experience. Cost reduction can be made through the use of comprehensive ambulatory and community-based services, which these demonstration projects should provide.

The Pediatric AIDS projects are designed to further the coordination of services for children, youth, and women of childbearing age with HIV infection, AIDS or related conditions, or those at risk for developing infection and its consequences. This coordination is to be accomplished through enhancement of current pediatric AIDS activities developed by the Office of Maternal and Child Health (OMCH), including those activities supported by Title V of the Social Security Act or through the exisitng Pediatric AIDS Health Care Demonstration Projects previously funded by OMCH, and other departmental AIDS activities, particularly the HRSA Service Demonstration grants.

Purpose

It is generally recognized that there is a need for the development of strategies and innovative models for managing pediatric patients with AIDS, which emphasize service delivery in outpatient and community settings and reduce the amount of time spent in hospital settings. Three categories of projects, which are intended to accomplish these purposes and also are expected to provide solutions to a broad range of critical problems arising from the AIDS crisis, will be funded in FY 1990. The first category, the Pediatric AIDS Health Care Demonstration Projects, which were also funded in FY 1988 and FY 1989 should: (1) Demonstrate effective ways to prevent infection, especially through the reduction of perinatal transmission; (2) develop community-based, family-centered, coordinated services for infected infants, children, and youth; and (3) develop programs to reduce the spread of HIV infection to vulnerable populations of young people. The Pediatric AIDS Health Care Demonstration Projects should serve as models for other communities and should identify the range of resources needed to provide appropriate, humane, and effective care to pediatric AIDS patients. They are designed to build on existing resources or networks in impacted communities for reaching and providing health care and supportive services to women and children most at risk. These projects will focus on local capacity-building, making maximum use of all available public and private resources.

The second category, Pediatric AIDS Comprehensive Center Demonstration Projects, should: (1) Establish public-private consortia among institutions and service providers, including community-based organizations and program-conducting organizations that have entered into a joint agreement to provide comprehensive services to HIV-infected individuals and their families. Such consortia shall include health care institutions, social services providers located in the target area and entities such as health care facilities (including hospitals and migrant and community health centers), programs serving the homeless, runaway and homeless youth shelters, organizations representing HIV-infected individuals, local health departments, home health agencies, foster care facilities, colleges and universities (with priority given to Historically Black Colleges and Universities), the Visiting Nurses Association, child welfare agencies, mental health agencies, and programs serving intravenous drug users; (2) Develop a service, training and research capability to support the community base of services and to advance the knowledge base. A substantial financial commitment from the private sector will be required.

Pediatric AIDS Comprehensive Centers will be overseen by eligible consortia that will provide care and treatment to individuals affected by the HIV virus and their families; will conduct research to determine the effectiveness of various treatment modalities and services impacting on the HIV affected population; will provide AIDS education, testing, treatment, and counseling services; will provide AIDS-related training to professionals, paraprofessionals, and volunteers, e.g., which include foster parents, respite care providers and relatives caring for families of HIV patients, and will serve as a general resource in the care, treatment, and applied research relating to individuals infected with the HIV virus and their families.

The third category of projects is intended to focus on National Issues of High Priority in Pediatric AIDS, and should address those issues which are of critical importance to people with

AIDS and their families, especially in the areas of prevention and early detection and service provision. Proposed issues include, but are not limited to: Developing community plans to respond to issues arising from HIV infection in mothers, infants, children, and youth; special problems of: Access, institutionalization, or homelessness; innovative training regarding care of families where there are HIV-infected children; the preservation of maternal and child rights of privacy, confidentiality, and informed consent; the recommendations from the Surgeon General's Workshop on Children with HIV Infection and Their Families; the services of Comprehensive Hemophilia Centers to HIV-infected children who do not have hemophilia. A major activity within this category will be the establishment of a National Resource Center in Pediatric AIDS. The intent is to identify and to deal with issues which interfere with and prevent AIDS patients and their families from receiving the services they require.

Availability of Funds

Approximately $5 million is available for competitive grant applications for the categories of projects described above; i.e., (1) Pediatric AIDS Health Care Demonstration Projects, (2) Pediatric AIDS Comprehensive Centers, and (3) National Issues of High Priority in Pediatric AIDS. It is anticipated that six to eight grants will be made in Category (1); up to three in Category (2); and four to six in Category (3). Funds shall be made available over a three-year project period.

Collaboration/Coordination With Other AIDS Programs

Pediatric AIDS grantees supported by HRSA will be expected to coordinate their projects with other Federal, State, and local programs concerned with AIDS including, but not limited to: (1) HRSA AIDS Service Demonstration Grants; (2) CDC AIDS activities; (3) Community Health Centers and Migrant Health Centers; (4) Medicaid; (5) Title V programs: Maternal and Child Health Services Block Grants, Maternal and Child Health Hemophilia Services Projects, and other relevant SPRANS grants under title V; (6) the education and outreach programs of the National Institute on Drug Abuse, especially those concerned with IV drug users, their sexual partners, and prostitutes; (7) HRSA Education and Training Centers Grants; (8) grants concerned with mothers and children funded by the National Institute of Child Health and Human Development; (9) the clinical drug trials or other relevant research conducted by other institutes of the National Institutes of Health; and, (10) discretionary grants by the Office of Human Development Services to demonstrate innovative approaches to providing child welfare services for infants with AIDS.

To the maximum extent possible, HRSA's Pediatric AIDS Health Care Demonstration Program grantees also will be expected to work closely with community-based AIDS service organizations, local AIDS service activities supported by the Robert Wood Johnson Foundation, the National Hemophilia Foundation, or other foundations and organizations with AIDS activities.

Eligible Applicants

Public and private entities, nonprofit and for-profit, are eligible to apply for these grants awards. Eligible entities include public or private hospitals, university medical centers, State or local health departments, or consortia of health care and community organizations.

Review and Evaluation Criteria

Grant applications will be reviewed and rated by objective review panels according to each applicant's ability to demonstrate the most effective ways of organizing services and providing treatment and support to children and women of childbearing age with HIV infection, AIDS or AIDS-related conditions or those at risk for developing infection and its consequences. Applicants will be expected to demonstrate how proposed programs will be integrated with other AIDS service programs and indicate how the proposed services will augment existing activities. Applicants should also state the portion of total funds provided by non-Federal sources.

Grant applications in Category (2), Pediatric AIDS Comprehensive Centers, in addition to meeting the requirements for Category (1) applicants, will be judged on the documented need for a Comprehensive Center within the area and upon the thoroughness of the description of the organizations comprising the partnership or consortium. Particular attention will be given to the existence of formal written agreements, the experience and ability of consortia members to provide the required services, the involvement and consultation with impacted neighborhoods, affected populations, community-based organizations, minority organizations, local institutions, and social and volunteer organizations in the planning, development, and implementation of the proposed project. Applications in this category will also be judged on the assurance that the applicant will cooordinate its efforts with other Federal, State, and local programs concerned with individuals infected with the HIV virus.

The third category, National Issues of High Priority in Pediatric AIDS, will be reviewed to assess the importance of the issue selected, the applicant's understanding of the state of the knowledge about the issue, and the applicant's capacity to perform the activities proposed.

In addition, under the third category, A National Resource Center in Pediatric AIDS will be established. It is intended that the grantee shall meet the qualifications outlined in the Program Guidance available from the Office of Maternal and Child Health, Division of Services for Children with Special Health Needs. More detailed information on the review and evaluation criteria may be found in the grant application kit.

Allowable Costs-All Three Categories

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 74, subpart Q. The five separate sets of cost principles prescribed for grant recipients are: (1) OMB Circular A–87 for state and local governments; (2) OMB Circular A–21 for institutions of higher education; (3) 45 CFR part 47, Appendix E for hospitals; (4) OMB Circular A–122 for nonprofit organizations; and (5) CFR chapter 1, subpart 31.2 for for-profit (commercial) organizations.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR part 74, subpart J—Monitoring and Reporting of Program Performance.

Executive Order 12372

The Pediatric AID Health Care Demontration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their State for assistance under certain Federal programs. The application packages to be made available under this notice (Form PHS 5161–1 with revised facesheet HHS Form 424

approved under OMB 0348–0006) will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for the review. Each applicant should promptly contact his/her SPOC and follow instructions prior to the submission of an application. The SPOC has 60 days after the application deadline to submit its review comments.

(The OMB Catalog of Federal Domestic Assistance number for the Pediatric AIDS Health Care Demonstration program is 13.153.)

Dated: January 29, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 90–3338 Filed 2–12–90; 8:45 am]

BILING CODE 4160–15–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, March 26–27, 1990, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. on March 26 to adjournment on March 27. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Informaiton Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institues of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Michael J. Horan, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20892, (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Disease Research, National Institutes of Health.)

Dated: February 5, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–3268 Filed 2–12–90; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Allergy and Infectious Diseases; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on February 28 through March 2, 1990, at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Bethesda, Maryland 20815, which was published in the **Federal Register** on January 29, 1990 (55 FR 2883).

The meeting was cancelled due to complications of other commitments of several members of the Committee and will be rescheduled at a later date.

Dated: February 5, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–3269 Filed 2–12–90; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency for Health Care Policy and Research; Establishment of Peer Review Groups

The Acting Administrator, Agency for Health Care Policy and Research, has determined that the following previously chartered technical and scientific peer review groups are necessary to carry out the functions of section 922 of the Public Health Service (PHS) Act, 42 USC 299c–1. These groups meet the requirements of section 922(c) of the PHS Act and are hereby established under said section: Health Care Technology Study section, and the Health Services Research and Developmental Grants Review Committee.

Dated: February 6, 1990.

J. Jarrett Clinton,

Acting Administrator, Agency for Health Care Policy and Research.

[FR Doc. 90–3362 Filed 2–12–90; 8:45 am]

BILLING CODE 4160–17–M

National Vaccine Advisory Committee; Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATES: Date, Time and Place: March 8, 1990 at 9 a.m.; March 9, 1990 at 8:30 a.m.; Hubert H. Humphrey Building, room 703A, 200 Independence Avenue, SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Yuth Nimit, Ph.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Parklawn Building, room 13A–53, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0715.

Agenda: Open Public Hearing

Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described below. Those desiring to make such presentations should notify the contact person before February 23, 1990, and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Advisory Committee Discussion

Discussion at this meeting will be directed to two subcommittee reports on National Vaccine Plan Elements: Adverse Events and New Vaccine Development and Licensure. Also included on the agenda is an update of the National Vaccine Program and an update on development of a National Vaccine Plan. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of

the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available after the approval of the Advisory Committee at the subsequent Committee meeting on June 14, 1990.

Dated: February 2, 1990.

Yuth Nimit, Ph.D.,

Executive Secretary, NVAC.

[FR Doc. 90-3361 Filed 2-12-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-90-2063; FR-2709-N-4]

Fair Housing Initiative Program; Competitive Solicitation

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

ACTION: Notice—Clarification of due date for applications.

SUMMARY: This notice clarifies a conflict in published application due dates under the current funding round for the Fair Housing Initiative Program.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Director, Programs Division, Office of Fair Housing and Equal Opportunity, room 5112, 451 Seventh Street SW., Washington, DC 20410-2000. Telephone (202) 755-0455 (Voice and TDD) (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1990, the Department announced in the **Federal Register** (55 FR 3800) the availability of approximately $3.6 million for Education and Outreach funding under the Fair Housing Initiatives Program (FHIP).

The application deadline published on February 5, 1990 was March 7, 1990. The notice indicated that an application must be submitted by that date unless it qualifies for a late application exception as specified in the application kit, and is received before fund award determinations are made.

The application kits that the Department has dispatched in connection with this FHIP funding round set out the application deadline as March 2, 1990.

The purpose of this notice is to clarify to all potential applicants that the later, March 7, 1990 date set in the Department's notice of funding availability is the controlling date. All applications submitted on or before March 7, 1990 will be considered timely applications. Under section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Reform Act) (Pub. L. 101-235, approved December 15, 1989, 42 U.S.C. 3545), the Department is required to provide **Federal Register** notice of application processes for any assistance program "not less than 30 days before any deadline by which applications * * * must be submitted * * *". While the requirements of 102 of the Reform Act must be implemented by regulation, the Department's policy, even in advance of regulatory implementation, is to begin immediately to comply with the accountability requirements set out in section 102(a) and quoted above.

Accordingly, the March 2, 1990 application deadline set out in the FHIP application kits will not be controlling, and applications submitted on or before March 7, 1990 will be in all respects treated as timely applications.

Dated: February 8, 1990.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 90-3374 Filed 2-12-90; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Citizens Advisory Committee, San Joaquin Valley Drainage Program; Establishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1982). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing the Citizens Advisory Committee, San Joaquin Valley Drainage Program, as a Federal advisory committee. The purpose of the Committee is to represent the interests of the non-Federal communities in providing the U.S. Bureau of Reclamation, the U.S. Geological Survey, the U.S. Fish and Wildlife Service, as well as the California Department of Fish and Game and the California Department of Water Resources with comments, advice, and recommendations on the San Joaquin Valley Drainage Program. The Drainage Program is a Federal/State program of research, analysis, and planning, to find solutions to the agricultural drainage problems in the San Joaquin Valley, California. The Committee is also an advisory committee under the laws of the State of California.

I have determined that the current membership of the Committee meets the balanced membership required by the FACA, and I intend to appoint these members to the Committee. The current members include, among others, individuals from academia, the environmental community, the Federal water-using farm community, and water districts. I have concluded the current membership provides a cross-section of persons directly affected by and interested in the drainage problems of the San Joaquin Valley, and those who are qualified to provide valuable insights in the development of advice and recommendations to the Federal agencies participating in the Drainage Program.

Further information regarding the Committee may be obtained from the Manager, San Joaquin Valley Drainage Program, 2800 Cottage Way, Sacramento, California 95825.

The certification of establishment is published below.

Certification

I hereby certify that the establishment of the Citizens Advisory Committee, San Joaquin Valley Drainage Program as a Federal advisory committee is necessary and in the public interest in connection with the San Joaquin Valley Drainage Program, a Federal/State program of research, analysis, and planning to find solutions to the agricultural drainage problems in the San Joaquin Valley, California. The Committee provides the U.S. Bureau of Reclamation, the U.S. Geological Survey, the U.S. Fish and Wildlife Service, as well as the California Department of Water Resources and the California Department of Fish and Game with comments, advise, and recommendations on the following aspects of the Drainage Program: definition of problems to be studied, the identification of drainage problem impacts and corresponding needs for investigation; the identification and evaluation of alternative solutions; and the public involvement and information program.

Dated: December 20, 1989.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 90-3267 Filed 2-12-90; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[AA-220-00-4320-02]

Vegetation Treatment Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft environmental impact statement on vegetation treatment on Bureau of Land Management Lands in 13 western states.

SUMMARY: Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) has prepared a draft environmental impact statement (EIS) on vegetation treatment measures proposed for use on BLM-administered lands in 13 contiguous Western States. The purposes of the vegetation treatment program are to manage the vegetation for improved forage and other conditions in rangeland and forest land for wildlife and livestock, better protection of watershed, and to provide guidelines for herbicide application regarding human health and safety. Potential vegetation treatment measures include biological, chemical, mechanical, manual, and thermal methods, individually and in combination. The EIS will analyze impacts of ground and aerial application of herbicides. The BLM proposes to implement a combination of vegetation treatment programs on approximately 372,000 acres annually in Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oklahoma, eastern Oregon, South Dakota, Utah, Washington, and Wyoming. The impacts of BLM's program to manage vegetation in California and western Oregon were addressed in separate EIS documents and, therefore, are not analyzed in this EIS.

DATES: Responses and comments will be accepted until May 15, 1990. The public is invited to submit comments during the review period in writing and orally at public meetings. Each BLM State Office will publish times and locations of public meetings to be held within its jurisdiction. Please contact the respective BLM State Offices for additional information regarding public meetings planned in your area during the review and comment period.

ADDRESSES: Written comments should be sent to:

Jim Melton, Team Leader, Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Dee R. Ritchie, (202) 653-9195 and Jim Melton, (307) 329-7647.

SUPPLEMENTARY INFORMATION: The proposed action and alternatives incorporate a mix of vegetation treatment measures, including biological, chemical, mechanical, and thermal methods to achieve the most cost effective and practical means of satisfying specific vegetation management objectives. Alternatives include various combination of the aforementioned treatments under five basic themes consisting of: The Proposed Action, No Action, No Aerial Application of Herbicides, No Prescribed Burning, and No Herbicide Use. The proposed action represents an integrated pest management approach for the vegetation treatment program. The Environmental Consequences section depicts reasonably foreseeable direct, indirect, and cumulative impacts of the Proposed Action and Alternatives. Impacts on the biological, physical, and social components of the human environment are also analyzed.

Dated: February 7, 1990.

Michael J. Penfold,

Assistant Director, Bureau of Land Management.

[FR Doc. 90-3383 Filed 2-12-90; 8:45 am]

BILLING CODE 4310-84-M

[NV-010-00-4212-13-7122-09-1101; N-41646]

Realty Action; Exchange of Public Land in Elko County, Nevada/Notice of Termination of Segregation

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to Notice of Realty Action.

SUMMARY: This notice amends a Notice of Realty Action published in the **Federal Register** on December 12, 1988, 53 FR 49934, to add and delete both public and private lands from the exchange proposal. This notice will also serve to terminate the segregation for the public lands no longer included in the exchange. The following described public lands administered by the Bureau of Land Management have been proposed for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 3 U.S.C. 1716:

Mount Diablo Meridian, Nevada

T. 41 N., R. 64 E.,
Sec. 24, N½, SW¼, N½SE¼.
T. 40 N., R. 65 E.,
Sec. 4, All;
Sec. 10, All;
Sec. 14, All.
T. 41 N., R. 65 E.,
Sec. 30, Lots. 2–4, inclusive, E½, E½W½;
Sec. 32, All.
T. 38 N., R. 66 E.,
Sec. 4, All;
Sec. 10, All.
T. 39 N., R. 66 E.,
Sec. 16, All.

The areas described above aggregate 5,639.05 acres.

The following described public lands have been deleted from the land exchange proposal. Upon publication of this notice in the **Federal Register** the segregative effect as described in the December 12, 1988 notice shall be terminated as it effects these lands. These lands will be opened to the full operation of the public land laws 30 days from publication of this notice in the **Federal Register:**

Mount Diablo Meridian, Nevada

T. 40 N., R. 65 E.,
Sec. 12, All.
T. 40. N., R. 66 E.,
Sec. 4, All;
Sec. 6, All;
Sec. 8, All;
Sec. 10, Lots 4, 5, 10, 11;
Sec. 22, W½NE¼, SE¼NE¼, W½, SE¼.

The areas described above aggregate 2,684.63 acres.

In exchange for these lands the United States would acquire these additional described private lands from Thousand Springs Generating Company:

Mount Diablo Meridian, Nevada

T. 41 N., R. 62 E.,
Sec. 10, N½NE¼;
Sec. 11, N½NW¼, SE¼SE¼;
Sec. 12, SE¼NE¼, NE¼SW¼, S½SW¼, N½SE¼;
Sec. 13, S½;
Sec. 14, N½N½;
Sec. 15, All;
Sec. 23, All.
T. 41 N., R. 63 E.,
Sec. 6, SW¼SE¼;
Sec. 30, Lot 2, NE¼NE¼, S½NE¼, SE¼NW¼;
Sec. 31, All.
T. 40 N., R. 66 E.,
Sec. 11, All.

The areas described above aggregate 3,718.58 acres.

The following described private lands have been deleted from the land exchange proposal:

Mount Diablo Meridian, Nevada

T. 40 N., R. 62 E.,
Sec. 3, S½SW¼NW¼, W½SW¼;
Sec. 4, Lots 1–8, inclusive, S½N½, N½SW¼, SE¼SW¼, SE¼.

The areas described above aggregate 883.60 acres.

The purpose of the exchange is to acquire non-federal lands in the Snake

Mountain Range with demonstrated wildlife, riparian and recreational opportunities. The lands to be disposed of will be used in conjunction with private lands already owned by Thousand Springs Generating Company to construct eight, 250-megawatt, coal fired, steam-electric generating units, which after licensing and approvals, would be built one or two units at a time over a period of appeoximately 20 years. An Environmental Impact Statement (EIS) is being prepared to assess the regional effects resulting from the power plant and the exchange of public lands. A Notice of Intent to prepare an EIS and to conduct scoping for the proposed project was published in the **Federal Register** on June 16, 1988. The exchange would not be consummated until completion of the EIS and a subsequent Notice of Reality Action is published n the **Federal Register.**

Publication of this notice in the **Federal Register** will segregate the above described public lands from all appropriations under the public land laws, the mining laws, but not the mineral leasing laws. The segregation will terminate two years from the date of this notice or upon publication of a Termination of Segregation.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Elko District Office, Bureau of Land Management, 3900 E. Idaho St., Elko, Nevada 89801.

Dated: January 29, 1990.

Rodney Harris,

District Manager.

[FR Doc. 90–3286 Filed 2–2–90; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Gopher Tortoise (Gopherus Polyphemus) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the gopher tortoise. The population of this species which is federally listed as threatened lies west of the Tombigbee and Mobile Rivers in Alabama, south Mississippi, and extreme southeastern Louisiana. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 16, 1990, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39212. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wendell Neal at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the gopher tortoise (*Gopherus polyphemus*). The area of emphasis for recovery actions is the DeSoto National Forest in south Mississippi. Habitat protection and management are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 5, 1990.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 90–3320 Filed 2–12–90; 8:45 am]

BILLING CODE 4310–55–M

Intent To Prepare an Environmental Impact Statement To Fund Through the Federal Aid in Fish Restoration Act the Construction of a Lake at the Brushy Creek State Recreation Area, Webster County, Iowa

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (FWS) intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) to fund through the Federal Aid in Fish Restoration Act the construction of a lake at the Brushy Creek State Recreation Area, Webster County, Iowa. A public meeting regarding this proposal and preparation of the EIS will also be held. This notice is being furnished as required by the National Environmental Policy Act Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by March 21, 1990. A public meeting will be held in Fort Dodge, Iowa, on March 14, 1990. The public meeting on March 14, 1990, will be held from 6:30 to 9:30 p.m. in the auditorium of Iowa Central Community College, 330 Avenue M, Fort Dodge, Iowa.

FOR FURTHER INFORMATION CONTACT: David Pederson, Fisheries Biologist, Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, (612) 725–3596.

SUPPLEMENTARY INFORMATION: Lynn Lewis is the primary author of this document.

The Fish and Wildlife Service (FWS), Department of the Interior, proposes to prepare an environmental impact

statement (EIS) to fund through the Federal Aid in Fish Restoration Act the construction of a lake at the Brushy Creek State Recreation Area, Webster County, Iowa. In 1962, the Iowa Conservation Commission began evaluating sites for large (approximately 1,000-acre) artificial lakes to be located near major population centers that did not have lake recreational facilities. Four sites were selected, one of which was the Brushy Creek site near Fort Dodge, Iowa. A 1966 feasibility study of this site concluded that the physical features of Brushy Creek were favorable for construction of a large impoundment that would have good water quality.

Land acquisition began in 1968 and was completed in 1975, totaling about 4,200 acres at a cost of approximately $2,600,000. Funding was provided by appropriations from the Iowa Legislature and by a cost-sharing grant from the Bureau of Outdoor Recreation (later the Heritage Conservation and Recreation Service, now part of the National Park Service).

The impoundment and spillway structures were designed in 1976, and a master plan for development of recreational facilities was completed in 1977. In 1978, the Iowa Conservation Commission submitted an application to the Heritage Conservation and Recreation Service for a matching grant from the Land and Water Conservation Fund to cover 50 percent of the cost of the impoundment and spillway structure. Because of the possible environmental impacts of an impoundment of this size and the controversy surrounding the project, the Heritage Conservation and Recreation Service determined that completion of an EIS was needed prior to making a decision on the grant application. A draft EIS was completed in 1982, but the process was halted before the document was submitted to the Environmental Protection Agency for formal public review. The EIS process was abandoned because support from the Land and Water Conservation Fund became unlikely. The preferred alternative in the 1982 draft EIS consisted of a 470-acre impoundment.

In 1986, staff of the Iowa Department of Natural Resources recommended that a new dam site, with three alternative lake elevations, be investigated. The result of that investigation was a 1988 Feasibility Study recommending construction of a 690-acre lake. The Iowa Department of Natural Resources has now decided to submit an application to the FWS for Federal Aid in Fish Restoration funding for project construction. Accordingly, the FWS will prepare an EIS to determine whether to provide Federal funds for project development. The U.S. Army Corps of Engineers will be a cooperating agency in preparation of the EIS because of the Corps' involvement in the permitting process under section 404 of the Clean Water Act.

Brushy Creek is a tributary of the Des Moines River, located in central Iowa several miles to the east of Fort Dodge. The majority of the watershed is flat upland, with the exception of the Brushy Creek floodplain. In the southernmost area of the watershed, the topography adjacent to Brushy Creek becomes very rugged, with steep slopes (greater than 20 percent) adjacent to the floodplain.

The 4,200 acres acquired for this project is now known as the Brushy Creek State Recreation Area. Prior to purchase by the State of Iowa, the land was privately owned and used primarily for agricultural purposes. Most of the upland had been intensively row cropped. The remaining pasture and woodland areas had been heavily grazed and logged. However, the steep valley slopes have also prevented agricultural development and preserved some of the characteristic features of presettlement times.

Public use of the area has increased steadily since its acquisition. Primary uses of the area include: horseback riding, hiking, picnicking, sightseeing by car, nature observation, hunting, trapping, pond fishing, stream fishing, and unsupervised swimming.

Alternatives for the development of Brushy Creek that were considered in the 1982 draft EIS include:

Large Lake, Extensive Development—A 980-acre lake that would impound most of Brushy Creek on the site. A large percentage of the site would be affected by man-made development.

Large Lake, Moderate Development—A 980-acre lake that would impound most of Brushy Creek on the site. A moderate percentage of the site would be affected by man-made development features.

Medium Lake, Extensive Development—A 470-acre lake that would impound only the northern reach of Brushy Creek on the site. A large percentage of the site would be affected by man-made development features.

Medium Lake, Moderate Development (preferred alternative in the 1982 draft EIS)—A 470-acre lake that would impound only the northern reach of Brushy Creek on the site. A moderate percentage of the site would be affected by man-made development features.

No Lake, Moderate Development—No lake would be developed. Recreational development would center on land resources. A moderate percentage of the site would be affected by man-made development features.

No Lake, Limited Development—No Action—No lake would be developed. Existing recreational features would be improved.

The 1988 Feasibility Study addressed a new dam site, with three alternative lake elevations. Lakes with sizes of 535 acres, 610 acres, and 690 acres would result, depending on the pool elevation selected. At the present time, the Iowa Department of Natural Resoruces prefers the 690-acre lake alternative.

These alternatives, along with others identified through the scoping process, may or may not be considered in detail in the EIS, depending on their feasibility and the results of the scoping process.

Issues and concerns that have been identified to date include: Water quality, impacts to unique natural area, and impacts to scenic and cultural resources, vegetation, the fish and wildlife resources. The scoping process is designed to review these and identify other significant issues and concerns that need to be addressed in the EIS, while limiting the discussion of those areas that are not significant. Appropriate, significant issues and concerns identified during scoping will be addressed in the EIS.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

We estimate the draft EIS will be made available to the public by October 1990.

Dated: February 1, 1990.

Marvin E. Moriarty,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 90–3291 Filed 2–12–90; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 3, 1990 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 February 28, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Greenlee County

Clifton Townsite Historic District, Confluence of Chase Creek and the San Francisco River, Clifton, 90000339

FLORIDA

Highlands County

Harder Hall, 3300 Golfview Dr., Sebring, 90000341

HAWAII

Kauai County

Hanalei Elementary School, Kuhio Hwy., Hanalei, 90000344

IDAHO

Shoshone County

Wallace Historic District (Boundary Decrease), Roughly boundered by Tamarack St. and West Side Ave., Wallace, 90000360

ILLINOIS

Cook County

Teich, Curt, and Company Building, 1733—55 W. Irving Park Rd., Chicago, 90000340

KENTUCKY

Jefferson County

Kentucky Air National Guard and Archeological Site (Boundary Decrease), Address Restricted, Louisville vicinity, 90000359

LOUISIANA

Avoyelles Parish

St. Paul Lutheran Church, LA 107, N of Mansura, Mansura vicinity, 90000353

East Baton Rouge Parish

Baker Presbyterian Church, 3015 Groom Rd., Baker, 90000346

Natchitoches Parish

Keegan house, 225 Williams Ave., Natchitoches, 90000342

MARYLAND

Baltimore County

Montrose Mansion and Chapel, 13700 Hanover Rd., Reistertown, 90000354

Harford County

Priest Neal's Mass House and Mill Site, 2618 Cool Spring Rd., Bel Air vicinity, 90000352

MISSISSIPPI

Harrison County

Fisherman's Cottage, 138 Lameuse St., Biloxi, 90000347

MISSOURI

St. Louis Independent City

Christ Church Cathedral, 1210 Locust St., St. Louis, 90000345

MONTANA

Wibaux County

St. Peter's Catholic Church, W. Orgain Ave., Wibaux, 90000356

NEW YORK

Queens County

La Casina, 90–33 160th St., New York, 89002259

NORTH CAROLINA

Davidson County

Church Street School, Jasper St., W of Church St., Thomasville, 90000355

Durham County

Blacknall, Richard D., House, 300 Alexander Ave., Durham, 90000350

Franklin County

Portridge, SR 1224, 0.3 mi. N of jct. with NC 56, Louisburg vicinity, 90000351

Surry County

Carter, William, House, SR 1626, 0.35 mi. W of jct. with SR 1625, Mount Airy vicinity, 90000349

OREGON

Multnomah County

Cook, James W., House, 1883 SW Vista Ave., Portland, 90000335

RHODE ISLAND

Providence County

Our Lady of Lourdes Church Complex (Providence MPS), 901—903 Atwells Ave., Providence, 90000343

SOUTH DAKOTA

Custer County

Custer Initials Site (39CU861), Near jct. of US 16 and FS Rd. 346, Custer vicinity, 90000358

William's Ranch, S of jct. of US 385 and Shirtail Canyon, Pringle vicinity, 90000357

TEXAS

Mason County

Hasse, Heinrich and Fredericka, House, TX 29, W of Art, Art vicinity, 90000336

Tarrant County

Grand Avenue Historic District, Roughly Grand Ave. from Northside to Park, Fort Worth, 90000337

VERMONT

Rutland County

Marble Street Historic District, 87—132 Marble St. and 10 Smith Ave., West Rutland, 90000338.

[FR Doc. 90–3293 Filed 2–12–90; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8 a.m., Monday, March 5, 1990.

Place: Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, Virginia.

Status: Open.

Matters to be Considered: Review of recommendations for 1991 Program Plan, staff paper on juvenile "boot camps," review of the interagency agreement between the Office of Juvenile Justice and Delinquency Prevention and the National Institute of Corrections, review of 1990 Reverted Fund Plan, Large Jail Network membership response to smoke-free jail issues, a breifing from the Office of National Drug Control Policy, and federal agency reports.

Contact Person for More Information: Larry Solomon, Acting Director, (202) 724–3106.

Larry Solomon,

Acting Director.

[FR Doc. 90–3321 Filed 2–12–90; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 1990..

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the

separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases, the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–23,630; Shield Industries, Inc., Lowell, MA

TA–W–23,632; TRW–Transportation, Electronics Div., Knoxville, TN

TA–W–23,664; Eaton Corp., Engine Component Div., Belmond, IA

TA–W–23,672; June Sportswear Co., Inc., Boston, MA

In each of the following cases, the investigation revealed that criteria for eligibility has not been met for the reasons specified.

TA–W–23,648; ITT Hancock, Ithaca, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,657; Vassarette, Hamilton, AL

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,659; Approved Fur Processing, Inc., (Formerly Diamond-Alaska Processing, Inc). New York, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–23,670; Interbake Foods, Inc., Battle Creek, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,714; Tru-Stitch, Bombay, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,680; Robert L. Krul General Contractor, Midland, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–23,639; Bank One, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–23,697; Frank Money, Inc., D/B/A West Texas Pipe & Steel, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–23,715; Wacker Oil, Inc., Midland, TX

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA–W–23,698; Gemoco, Houma, LA

U.S. imports of oil field machinery are negligible.

TA–W–23,690; Diebold, Inc., Canton, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–23,682; Stanley Proto Tool, Portland, OR

The investigation revealed that criterion (1) and (2) has not been met. Employment did not decline during the relevant period as required for certification. Sales or production did not decline during the relevant period as required for cerfication.

Affirmative Determinations

TA–W–23,662; Delmar Sportswear, Inc., Delmar, MD

A certification was issued covering all workers separated on or after November 21, 1988.

TA–W–23,651; Pandora Industries, Inc., Manchester, NH

A certification was issued covering all workers separated on or after November 15, 1988.

TA–W–23,644; The Grove Co., St. Louis, MO

A certification was issued covering all workers separated on or after November 1, 1988 and before December 19, 1988.

TA–W–23,677; Quality Components, Inc., St. Marys, PA

A certification was issued covering all workers separated on or after November 20, 1988.

TA–W–23,674; Northern Telecom, Inc., Nashville, TN

A certification was issued covering all workers separated on or after October 30, 1988.

TA–W–23,661; Concord Manufacturing, Morrisville VT

A certification was issued covering all workers separated on or after October 16, 1988.

TA–W–23,691; Dietronics, Inc., Spartanburg, SC

A certification was issued covering all workers separated on or after January 1, 1989.

TA–W–23,654; The Tailors Shop, Old Forge, PA

A certification was issued covering all workers separated on or after November 14, 1988 and before November 30, 1989.

TA–W–23,675; Orbit Drilling, Inc., Kimball, NE

A certification was issued covering all workers separated on or after November 20, 1988 and before December 30, 1989.

TA–W–23,675A; Orbit Drilling II, Kimball, NE

A certification was issued covering all workers separated on or after November 20, 1988 and before December 30, 1989.

TA–W–23,675B; Tibro, Inc. Kimball NE

A certification was issued covering all workers separated on or after November 20, 1988 and before December 30, 1989.

TA–W–23,675C; Orbit Production Co., Kimball, NE

A certification was issued covering all workers separated on or after November 20, 1988 and before December 30, 1989.

I hereby certify that the aforementioned determinations were issued during the month of January 1990. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: February 6, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–3397 Filed 2–12–90; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–90–14–C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, 407 Brown Road, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Ohio No. Mine (I.D. No. 15–03178) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air to ventilate the

working faces to remove restrictions on the velocity of air in the belt entries.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring devices would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 part per million (ppm) above ambient air and an audible signal would sound at 15 ppm above ambient air. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal would be activated at an attended surface location where there is two-way communication. The CO system would be capable of identifying any activated sensor, monitoring electrical continuity and detecting electrical malfunctions.

4. The CO system would be visually examined at least once each coal-producing shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor would continue to operate and qualified persons would patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. The details for the fire detection system, and the permanent stopping separating the conveyor belt entries from the intake escapeway would be included as part of the ventilation system, methane and dust control plan.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 15, 1990. Copies of the petition are available for inspection at that address.

Dated: February 5, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-3398 Filed 2-12-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-5-C]

Turris Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 77.216-3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements) to its Vanderrick Preparation Plant, (I.D. No. 12-01677) located in Vanderburgh County, Illinois for Pond 003 (I.D. No. 1211-IN0801677-01). The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all water, sediment, or slurry impoundments be examined by a qualified person designated by the person owning, operating or controlling the impounding structure at intervals not exceeding seven days for appearances of structural weakness and other hazardous conditions.

2. As an alternate method, petitioner proposes to inspect the pond at monthly intervals in lieu of every seven days.

3. In support of this request, petitioner states that—

(a) The elevation or size of the pond would not be changed. It is presently sized for its intended capacity, has good vegetative cover on both the inside and outside of the dike and is totally enclosed by a fence;

(b) The pond is located in terrain that presents a very low hazard to lives and property in the event of an impoundment failure; and

(c) The pond is intended to serve the mine drainage needs of a future underground mine planned for the Vanderrick site. Because the pond is not in full operation, all impounded water is at or below grade level and will remain there due to low inflow and evaporation.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 15, 1990. Copies of the petition are available for inspection at that address:

Dated: February 8, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-3399 Filed 2-12-90; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

North Carolina Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR part 1902. On February 1, 1973, notice was published in the **Federal Register** (28 FR 3041) of the approval of the North Carolina Plan and the adoption of Subpart I to Part 1952 containing the decision.

The North Carolina Plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 of 29 CFR provides that "When * * * any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State Plan shall be required." By letter dated February 15, 1989 from Michael D. Ragland, Deputy Commissioner for Safety and Health, Occupational Safety and Health Division, North Carolina Department of Labor, to R. Davis Layne, Regional Administrator, and incorporated as a part of the State Plan, the State submitted the following amended State standards comparable to Federal Standards: Adopted amendments 29 CFR 1910.16 and 29 CFR 1910.177

Servicing of Single Piece and Multi Piece Rim Wheels, adoption date January 27, 1989, as published at 52 FR 36026 dated September 25, 1987, and at 53 FR 34737 dated September 8, 1988; Amendment 29 CFR 1910.1000, Air Contaminants, adoption date January 27, 1989 as published at 54 FR 2332 dated January 19, 1989; Adoption, 29 CFR 1910.1200, 29 CFR 1926.59, and 29 CFR 1928.21, Hazard Communication, adoption date January 27, 1989, as published at 52 FR 31852 dated August 24, 1987.

These standards were promulgated by filing with the North Carolina Attorney General and became effective on February 10, 1989, March 1, 1989 and March 17, 1989 respectively, pursuant to the North Carolina Occupational Safety and Health Act of 1973 (Chapter 295, General Statutes).

2. Decision

Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards are identical to the Federal standards. The State standards are hereby approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Commissioner of Labor, North Carolina Department of Labor, 11 West Edenton, Releigh, North Carolina 27611; Office of the Regional Administrator, Suite 587, 1375 Peachtree Street, NE., Atlanta, Georgia 30367; and Director of Federal State Operations, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplement to the North Carolina State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are essentially identical to the comparable Federal standards and are deemed to be at least as effective.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective February 13, 1990.

(Sec. 18 Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Atlanta, Georgia, this 24th day of July 1989.

R. Davis Layne,

Regional Administrator.

Note: This document was received by the Office of the Federal Register February 8, 1990.

[FR Doc. 90–3401 Filed 2–12–90; 8:45 am]

BILLING CODE 4510–26–M

THE LIBRARY OF CONGRESS

National Film Preservation Board; Notice of Public Meeting

February 19, 1990 Los Angeles.

AGENCY: Library of Congress, National Film Preservation Board.

ACTION: Notice of public meeting.

This notice is issued pursuant to Public Law 100–446, The National Film Preservation Act of 1988, 2 U.S.C. 178, by Dr. James H. Billington, the Librarian of Congress, to inform the public that the next meeting of the National Film Preservation Board will be held in Los Angeles, at the offices of the Writers Guild of America/West at 8955 Beverly Blvd. West Hollywood on February 19, 1990 at 1 p.m. For more information on the meeting location call the Writers Guild at (213) 550–1000.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707–8350.

Dated: February 7, 1990.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 90–3371 Filed 2–12–90; 8:45 am]

BILLING CODE 1410–18–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of the Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting(s).

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

(1) *Date:* March 2, 1990.
Time: 8:30 a.m. to 6:00 p.m.
Room: 430.
Program: This meeting will review applications for Special Competition—Distinguished Teaching Professorships, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

(2) *Date:* March 6, 1990.
Time: 8:30 a.m. to 6:00 p.m.
Room: 430.
Program: This meeting will review applications for Special Competition—Distinguished Teaching Professorships, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

(3) *Date:* March 9, 1990.
Time: 8:30 a.m. to 6:00 p.m.
Room: 430.
Program: This meeting will review applications for Special Competition—Distinguished Teaching Professorships, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

(4) *Date:* March 9, 1990.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Centers for Advanced Study, submitted to the Division of Research Programs, for projects beginning after July 1, 1990.

(5) *Date:* March 8–9, 1990.

Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Preservation Program, submitted to the Office of Preservation, for projects beginning after July 1, 1990.

Catherine Wolhowe,
Advisory Committee Management Officer (Alternate).

[FR Doc. 90-3364 Filed 2-12-90; 8:45 am]
BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Informal Science Education; Meeting

The National Science Foundation announces the following meeting:
Name: Advisory Panel for Informal Science Education.
Date and Time: March 1–2 1989, from 8:30 a.m. to 5 p.m.
Place: Orlando Science Center, 810 East Rollins Street, Orlando, FL 32803.
Type of Meeting: Closed Meeting.
Contact Person: Michael Templeton or Kenneth Starr, National Science Foundation, 1800 G. St., NW., Washington, DC 20550, Informal Science Education, room 635–A, phone (202) 357–7076.
Minutes: May be obtained from the Contact person at the above address.
Purpose of Meeting: To provide advice and recommendations concerning Informal Science Education proposals.
Agenda: To review and evaluate Informal Science Education proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Dated: February 8, 1990.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 90-3328 Filed 2-12-90; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240); January 1, 1990 Milestone for Governors' Certifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Governors' Certification.

SUMMARY: Notice is hereby given of the receipt of Governors' Certifications for the States or Commonwealths of Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, West Virginia, and Wisconsin. Section 5(e)(1)(E) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA or Pub. L. 99–240) requires NRC to publish these Certifications. Concurrently, NRC has dispatched copies of the Certifications to Congress. NRC has also provided the Department of Energy (DOE) and sited states with copies of the certifications in order to conduct their reviews as required by the LLRWPAA. These actions fulfill NRC's statutory obligations under the Act.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–0579.

SUPPLEMENTARY INFORMATION: Section 5(e) of the LLRWPAA sets forth the milestone requirements for states and interstate compacts to have continued interim access to existing disposal facilities in what the Act calls "sited" states. To meet the 1990 milestone, non-sited states by January 1, 1990, must either have: (1) Submitted a complete license application to NRC or the appropriate Agreement State agency (Section 5(e)(1)(C)(i)); or submit to NRC a written certification by the Governor that the state will be capable of providing for, and will provide for the storage, disposal, or management of any low-level radioactive waste generated within the state and requiring disposal after 1992 (section 5(e)(1)(C)(ii)). This certification is to include a description of the actions which will be taken to assure that such capacity exists. Section 5(e)(1)(F) of the Act also allows states to meet the 1990 milestone through disposal agreements with sited compacts.

The 1990 milestone is designed to assure that certifying states continue to progress toward the fulfillment of the LLRWPAA policy that each state, either by itself or in cooperation with other states, will be responsible for providing for the disposal of LLW generated within the state. Failure to meet this milestone may result in the loss of funding to the state or compact through a rebate of disposal surcharges paid by waste generators into an escrow fund maintained by the U.S. Department of Energy (DOE). Failure to meet this milestone may also result in loss of access by waste generators to currently operating disposal sites. It is the responsibility of the U.S. Department of Energy (DOE) and the sited states of Nevada, South Carolina and Washington to determine whether each certification complies with LLRWPAA requirements for the respective purposes of releasing escrowed disposal surcharge rebate funds and allowing continued access to existing disposal facilities.

The complete certifications are extensive in nature. Consequently, only the actual certification letters addressing the commitments required under section 5(e)(1)(C)(ii) of the LLRWPAA are published below. The complete text of each certification including any appendices or supporting information are available for public inspection in the Public Document Room, U.S. Nuclear Regulatory Commission, 2120 L Street NW., Washington, DC 20036.

Dated at Rockville, Maryland, this 7th day of February 1990.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,
Chief, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

Kenneth M. Carr,
Chairman, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Kenneth: The Low-Level Radioactive Waste Policy Amendments Act of 1985 (the Act) requires each State to provide, either unilaterally or in cooperation with other States, for the disposal of low-level radioactive waste (LLRW) generated within the State by December 31, 1992. (Pub. L. No. 99–240, 99 Stat. 1842.) In furtherance of this Act and with Congress' consent, the states of Arizona, California, North Dakota and South Dakota have joined together to form the Southwestern Low-Level Radioactive Waste Disposal Compact. The State of California is the host state under this compact for the first 30 years. (Pub. L. No. 100–712, 102 Stat. 4773.)

The Act establishes an interim access period from January 1, 1986, to January 1, 1993. During this period, States and Compacts are allowed continued access to existing LLRW disposal facilities of the Southeast Compact (Barnwell, SC); the Northwest Compact (Hanford, WA); or the Rocky Mountain Compact (Beatty, NV). For continued access, these States and Compacts are subjected to a series of milestones,

penalties and incentives intended to assure that when the interim access period ceases, LLRW would be safely managed at the State or Compact level. As to the January 1, 1990, milestone, the Act states:

"By January 1, 1990.

(i) a complete application . . . shall be filed for a license to operate a (LLRW) disposal facility within each non-sited compact region . . . ; or

(ii) the Governor . . . of any State . . . shall provide a written certification to the Nuclear Regulatory Commission. . . ." (42 U.S.C. § 2021e, subd.(1)(C).)

The following certification is in compliance with the latter provision:

I, Rose Mofford, Governor of the State of Arizona, certify to the U.S. Nuclear Regulatory Commission that the State of Arizona will be capable of providing for, and will provide for, the storage, disposal or management of any low-level radioactive waste generated within the State of Arizona and requiring disposal after December 31, 1992, through the utilization of the Southwestern Compact. The attachment describes the actions that have been or will be taken to ensure that interim storage capacity exists for low-level radioactive mixed waste generated in Arizona subsequent to and after December 31, 1992, until the California low-level radioactive mixed waste disposal facility is operational.

In making this certification note the following:

1. The information regarding storage requirements was provided to the State of Arizona by the licensees and/or generators.

2. It is assumed that the current federal regulatory framework will not change, that nuclear licensees will obtain the necessary permits or approvals, and the federal agencies will respond in a timely manner to their applications.

Dated: January 3, 1990.

Sincerely,

Rose Mofford,

Governor.

December 11, 1989.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dear Mr. Bernero: Section 5(e)(1)(C) of the Low-level Radioactive Waste Policy Amendments Act of 1985 (hereinafter referred to as the Act) provides that any non-sited compact region, or any State that is not a member of a compact region that does not have an operating disposal facility in place, shall comply with the following requirement:

"(C) By January 1, 1990—

(i) a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each nonmember State; or

(ii) the Governor (or, for any State without a Governor, the chief executive officer) of any State that is not a member of a compact region in compliance with clause (i), or has not complied with such clause by its own actions, shall provide a written certification to the Nuclear Regulatory Commission, that such State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within such State and requiring disposal after December 31, 1992, and include a description of the actions that will be taken to ensure that such capacity exists."

The purpose of this letter is to provide written certification that the state of Arkansas will be capable of providing for the storage, disposal or management of any low-level radioactive waste generated within its borders as required by section 5(e)(l)(C)(ii), of the Act.

The state of Arkansas is a member of the Central Insterstate Low-Level Radioactive Waste Compact. The Compact has been adopted in each of its member states and has the consent of Congress (Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act, 42 USC 2021d). The Compact Commission is charged with the responsibility of ensuring that safe and efficient management capacity is provided for the waste generated within the member states. To meet its responsibilities, the Commission in 1987 selected a developer for the regional disposal facility and designated the state of Nebraska as the host state for the facility. Subsequently, the Commission entered into a contract with its developer, U.S. Ecology, specifying the terms of conditions for the development of the regional facility.

As a part of its contract with the Commission, U.S. Ecology submitted a detailed work plan including cost schedule and time schedule for the development of the facility. The plan specifies that the facility will be operational no later than January 1, 1993, and that it will provide for the disposal of all Class A, B, and C waste as defined in Title 10, Code of Federal Regulations, part 61, including hazardous waste which contains low-level radioactive components (mixed waste).

Attached to this certification is the project schedule (Exhibit A) being followed by the developer. The project schedule details the activities to be conducted and the time frame for completion of such activities. The schedule verifies that the facility will be operational by January 1, 1993. Under the terms of the Compact, such facility will be available to accept waste generated within the state of Arkansas.

The state of Arkansas, as a member of the Compact, has previously been found to be in compliance with the milestones established in section 5(e)(1) (A) and (B) of the Act. Previous milestone compliance requirements have been submitted on behalf of the state in conjunction with submittals by the Compact Commission.

As part of its compliance with the milestone established in section 5(e)(1)(B) of the Act, the Commission submitted a detailed siting plan for the region. The siting plan established that the proposed facility will be constructed and operational by the milestone date of January 1, 1993, thereby providing for the disposal of waste generated within the member states after December 31, 1992. The legal authority of the appropriate regulatory agencies in the host state to implement the siting plan and all regulatory requirements thereunder was properly verified. The single state agency responsible for all actions was identified.

The following actions are evidence that the Commission (and its member states) is on schedule to meet the January 1, 1993 deadline for having a disposal facility operational:

1. June, 1987, developer (U.S. Ecology) for the regional facility selected by the Commission.

2. December, 1987, Nebraska designated as host state for first regional facility.

3. December, 1987, Compact member states comply with milestone requirement established in Section 5(e)(1)(B) of the Act.

4. January, 1988, Commission and developer enter into contract for development of regional disposal facility and adopt comprehensive development plan and schedule.

5. January, 1988 to November, 1988, developer conducts statewide screening to identify potential sites.

6. January, 1989, developer obtains options for land in Boyd, Nemaha and Nuckolls counties in Nebraska and begins characterization of potential sites.

7. June, 1989, site characterization field studies begin.

8. November, 1989, geologic drilling program at three potential sites substantially completed.

9. December, 1989, developer continues environmental studies of sites and begins preparation of license application to be submitted to state regulatory agency by July 1, 1990.

10. December, 1989, Governor of each member state submits certification as required by Section 5(e)(1)(C) of the Act.

In order to provide for ongoing oversight on the project, the Commission has established a Facility Review Committee to ensure the project stays on schedule and that adjustments can be made in a timely manner if required. The committee also oversees funding schedules to ensure that adequate funds are available throughout the project to the appropriate parties.

During the fall of 1989, the Arkansas Department of Health conducted a survey of all generators of waste within Arkansas to determine the amount and type of waste to be generated after December 31, 1992 that will require disposal at a commercial low-level radioactive waste disposal facility. A projection of waste requiring disposal for the period of January 1, 1993 through December 31, 1995, is shown in Exhibit B.

Based on the project plan and the schedule and work completed to date by its contractor, the Commission is confident that the regional disposal facility will be developed, constructed and operational by the required date of January 1, 1993. All regulatory requirements are in place in the host state, and all parties are working in a cooperative manner to ensure timely operation. This will allow for each member state of the Compact to meet its responsibility under the Act to provide for the disposal of all waste

generated within the state after January 1, 1993.

As Governor of the State of Arkansas, consistent with Section 5(e)(1)(C) of the Act, I hereby certify an intent to meet the state's responsibility under Public Law 99–240 to provide for the management of waste generated within Arkansas by having such waste disposed of at the regional low-level radioactive waste disposal facility referred to above.

Bill Clinton,

Governor, State of Arkansas.

December 14, 1989.

The Honorable Kenneth M. Carr,
Chairman, U.S. Nuclear Regulatory Commission, Office of the Commissioners, Washington, DC 20555.

Dear Chairman Carr:

GOVERNOR'S CERTIFICATION PURSUANT TO PUBLIC LAW 99–240

The Low-Level Radioactive Waste (LLRW) Policy Amendments Act of 1985 (the Act) requires each State to provide, either unilaterally or in cooperation with other States, for the disposal of LLRW generated within the State by December 31, 1992. In furtherance of this Act and with Congress' consent, the states of California, Arizona, North Dakota, and South Dakota have joined together to form the Southwestern LLRW Disposal Compact. The State of California is the host state under this Compact for the first 30 years.

The Act establishes an interim access period from January 1, 1986 to January 1, 1993. During this period, States and Compacts are allowed continued access to existing LLRW disposal facilities of the Southeast Compact (Barnwell, South Carolina); the Northwest Compact (Hanford, Washington); or the Rocky Mountain Compact (Beatty, Nevada). For continued access, these States and Compacts are subjected to a series of milestones, penalties and incentives intended to assure that when the interim access period ceases, LLRW would be safety managed at the State or Compact level. The Act requires that by January 1, 1990, a complete LLRW disposal facility license application will have been filed, or the Governor shall certify to the State's capability to manage its LLRW after December 31, 1992.

The following certification is in compliance with this latter provision:

I, George Deukmejian, Governor of the State of California, certify to the U.S. Nuclear Regulatory Commission that the State of California will be capable of providing for, and will provide for, the storage, disposal or management of any low-level radioactive waste generated within the State of California and requiring disposal after December 31, 1992. The attachment to this letter describes the actions that will be taken to ensure that such capacity exists.

In making this certification note that information regarding storage requirements was provided to the State of California by the licensees and/or generators. Further we have assumed that the current federal regulatory framework will not materially change, that nuclear licensees will obtain the necessary permits or approvals, and that federal agencies will respond in a timely manner to their applications.

Most cordially,

George Deukmejian.

December 22, 1989.

Mr. Robert M. Bernero,
Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Mr. Bernero: The State of Connecticut is pursuing its obligations under the provisions of the federal "Low-Level Radioactive Waste Policy Amendments Act of 1985," Pub. L. 99–240, 99 Stat. 1842 (1986) (Act). The State's responsibilities include compliance with the January 1, 1990 milestone set out in Section 5 (e)(1)(C) of the Act.

This certification, with supporting information attached hereto, is submitted under the provisions of subpart (ii) of Section 5(e)(1)(C). The option for compliance set out in this subpart requires that the governor submit a written certification to the Nuclear Regulatory Commission (NRC) that the State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within the State and requiring disposal after December 31, 1992. I certify that the State of Connecticut will assume this responsibility.

Enclosed herewith is a description of the actions that will be taken to ensure that such capacity exists. These proposed actions are within existing legal authorities.

In making this certification, I note the following factors:

(1) The data regarding types and volumes of waste and capabilities for on-site storage by generators of low-level radioactive waste was provided to the State of Connecticut by NRC radioactive material licensees and by Connecticut Department of Environmental Protection ionizing radiation registrants. The attached supporting information details the process by which this information was obtained.

(2) The estimation of amount of waste assumes that the current federal regulatory framework will remain unchanged, that radioactive material licensees will apply for the necessary permits, approvals, or amendments and the NRC will respond in a timely manner to their applications.

(3) This certification represents a projection of plans for waste management based on current information and judgment. The plan set out in the supporting information is subject to alteration given changes in conditions or information.

The State of Connecticut is confident that this certification and enclosed documentation meet the requirements for compliance with the January 1, 1990 milestone of Pub. L. 99–240.

Sincerely,

William A. O'Neill.

Governor.

December 22, 1989.

Mr. Robert M. Bernero,
Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RE: *Compliance with January 1, 1990, Milestone of Low-Level Radioactive Waste Policy Amendments Act of 1985*

Dear Mr. Bernero: Section 5(e) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Amendments Act) sets forth milestone requirements for continued access to regional low-level radioactive waste disposal facilities. Under Section 5(e)(1)(C), states and compacts must, by January 1, 1990, either:

1. Submit a complete license application to the U.S. Nuclear Regulatory Commission (NRC) or an Agreement State [Section 5(e)(1)(C)(i)]; or

2. Provide to NRC a written certification by the Governor that the state will be capable of providing for, and will provide for, storage, disposal, or management of any low-level radioactive waste generated within the state and requiring disposal after 1992 [Section 5(e)(1)(C)(ii)]].

States or compacts that do not meet the milestone face loss or surcharge rebates from the U.S. Department of Energy as well as denial of access by the sited states to the regional disposal facilities (Barnwell, Hanford, and Beatty).

By this letter, I certify that the State of Delaware is capable of providing for, and commits to providing for, management of all low-level radioactive waste generated within our borders and requiring disposal after December 31, 1992. This will be accomplished by directing all generators to store their waste on site for the required interim period and assuring other options are available for those that cannot store on site. The Appalachian States Compact is progressing steadily toward operation of a new disposal facility. The regional disposal facility, scheduled for operation in Pennsylvania by July 1995, will safely handle the entire region's low-level radioactive waste.

The party states and the Compact will not be in a position to comply with the requirement to have an operating disposal facility by January 1, 1993. However, we anticipate meeting the deadline of January 1, 1996, to have an operating facility. There will thus be a period of approximately two and one-half years following the 1993 milestone date when waste from the party states will need to be managed in an interim fashion. I will implement a follow-up program to ensure that all commitments are being met.

The Low-Level Radioactive Waste Disposal Act, enacted in 1988 by Pennsylvania, provides the necessary authority for development of the disposal facility serving the Compact region and for overall management of low-level waste. The Delaware Department of Natural Resources and Environmental Control is authorized to coordinate the implementation of the interim waste management plan in Delaware with the Delaware Department of Health and Social Services assuming lead responsibility.

We have taken steps as an individual party state and as part of the Appalachian States Compact to plan for interim management from 1993 through 1995. The steps include the following:

• Identifying sources and projecting the volume and types of low-level radioactive

waste requiring management after December 31, 1992

- Preparing an interim management strategy to handle all of the waste requiring such interim management
- Determining that the strategy is feasible within existing legal authorities and consistent with applicable regulatory frameworks
- Assigning responsibilities for implementation

The information supporting each of these steps is contained in the attachment, *Implementation Plan for Interim Low-Level Waste Management, Appalachian States Compact.* The attachment is hereby incorporated in this certification.

The plan is based on conditions existing in today's environment and on information provided by low-level waste generators. The State of Delaware commits to implementing this interim management plan to the best of its ability. It should also be noted that while the State intends to implement and closely monitor this approach, there is no intention to assume title or liability for the waste in the interim management period from 1993 through 1995.

The State of Delaware is confident that this approach meets all criteria imposed by the Low-Level Radioactive Waste Policy Amendments Act of 1985. Should you have any questions about this submittal, please do not hesitate to contact Dr. Harry W. Otto, Administrator—Technical Services, Division of Water Resources, Department of Natural Resources and Environmental Control, State of Delaware, 89 Kings Highway, P.O. Box 1401, Dover, DE 19903 (Telephone: 302/736–4771).

Sincerely,

Michael N. Castle,

Governor.

December 29, 1989.

Mr. Robert M. Bernero,

Director, Office of Nuclear Material, Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dear Mr. Bernero: Pursuant to the Low-Level Radioactive Waste Policy Amendments Act of 1985, please find enclosed the Governor's (Mayor's) Certification as to how the District of Columbia proposes to handle its low-level waste after December 31, 1992.

Should you require any further information, please feel free to contact Donald G. Murray, Director, Department of Consumer and Regulatory Affairs on 727–7170.

Sincerely,

Carol B. Thompson,

for Marion Barry, Jr., Mayor

Mayor's Certification Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985, the District of Columbia

Introduction

The geography and urban character of the District of Columbia and the small amount of low-level radioactive waste generated in the District make it impracticable to construct a low-level radioactive waste (LLRW) disposal facility within our borders. Consequently, in order to achieve compliance with Section 5(e)(1)(C) of the Low-Level Radioactive Waste Policy Amendments Act of 1985, the District is submitting to the Nuclear Regulatory Commission a Governor's (Mayor's) Certification as to how LLRW in the District of Columbia will be handled after December 31, 1992. At present the District has renewed its contract with the Rocky Mountain Compact Board for disposal of LLRW from January 1, 1990 through December 31, 1992. It is our contention that this contract places the District in compliance with the 1990 milestone as required under Section 5(e)(1)(F) which allows a state to contract with a compact as long as agreement is obtained by the host state. Since the District is contracting with the Rocky Mountain Compact Board, and Nevada as the host state has agreed to this contract, the District of Columbia contends that this contract constitutes compliance with the 1990 milestone.

Proposed Activities

The District of Columbia has fifteen low-level waste generators within its borders. The District is a non-agreement state that licenses and inspects facilities which use Naturally occurring or Accelerator produced Radioactive Materials (NARMs). The Nuclear Regulatory Commission (NRC) is the licensing authority for facilities that use by-product materials. However, since all fifteen of these generators also use NARMs, the District inspects and licenses these generators.

The District of Columbia government has initiated a study on how to handle low-level radioactive waste after December 31, 1992. Each generator has provided projections on the volume of waste that will be generated in 1993. (See Attachment No. 1) In addition, fourteen of the fifteen generators have conditions in their NRC license which allow them to hold waste a half life of 65 days or less up to ten half lives before disposal in ordinary trash. The District is therefore requesting that each of its generators evaluate the feasibility of amending their NRC license to allow them to hold waste which has a 90 day or less half life to decay. The increased holding time will greatly reduce the amount of low-level waste which is generated in the District of Columbia.

Eleven (11) of the District's fifteen generators send their waste to one broker which is Radiation Services Organization (RSO) located in Laurel, Maryland. Three other generators are federal facilities and send their waste directly either to Richland, Washington or Barnswell, South Carolina. The final facility sends waste to Adco in Chicago, Illinois. From Adco this waste is shipped to Richland, Washington. In consultation with officials from RSO, the District has learned that both RSO and Adco send their waste to processors such as SEG in Knoxville, Tennessee, RAMP in Denver, Colorado, and Chem Nuclear in Chanahon, Illinois for super compacting. These companies are able to reduce the volume of low-level waste to a ratio of 3 to 1. Thus, much of the amount projected by the fifteen generators for disposal will be sent to brokers and will be compacted to a much smaller amount that must be buried. (See Attachment 1). The District's feasibility study will monitor the difference between what the generators send out and what amount is actually buried in any given year. In addition, officials at RSO have informed the District that not all waste sent to them in any given year is sent to a burial site in that particular year. RSO has a condition in its NRC license which allows the organization to hold waste for up to one year. Some of the waste may decrease in its radioactive content, thereby reducing the amount of low-level waste which is actually buried in any given year.

During the two year period in which the District has contracted with the Rocky Mountain Compact Board, only *1,427ft*^{3} of District LLRW has been buried at any of the three sited compacts. Due to the process of holding to decay and/or compaction, the actual amount of waste which is buried is greatly reduced from the amount shipped by the generator. Therefore, the District feels that the total amount of waste actually buried in 1993 will be greatly reduced from the estimated amount of 4143ft^3 that has been projected by our generators. (See attachment 1) Knowledge of the actual amount of waste which must be buried yearly will allow the District to correctly project the minimum amount of space needed at a burial site when contracting or joining a compact.

Mixed Waste

From our latest survey with generators of LLRW, the District has learned that approximately ten percent of the waste generated after 1992 will consist of mixed waste. (See attachment # 1) Regulation of mixed waste falls under the purview of both NRC and the Enviornmental Protection Agency (EPA). These joint regulations prohibit the burial of mixed waste in any of the three existing burial sites. RSO does collect mixed waste from District of Columbia generators. All of this waste is in the form of liquid scintillation vials. This waste is then transferred to RAMP in Denver, Colorado, or to Quadrex in Gainsville, Florida. In both these plants the glass and the liquid are separated in giant crushers. The liquid is then bulk packed and placed in heat recovery units. The final ash product is then radiologically inspected, certified to be non-radioactive, and then buried. Consequently, mixed waste generated by the District is not buried in any of the burial sites which are now open. The process discussed will continue to be employed; thus, the District will not need to address mixed waste for burial in the future.

Legal Authority

Under Mayor's order No. 83–80, dated March 31, 1983, the Reorganization Plan No. 1 of 1983, effective March 31, 1983, and the District of Columbia Radiation Protection Regulations and Standards (DCMR Title 20, Chapter 20–22) the responsibility for the Radiation Control Program is delegated to the Department of Consumer and Regulatory Affairs (DCRA), Service Facility Regulation Administration (SFRA), Pharamaceutical and Medical Devices Control Divison (PMDCD).

Consonant with the responsibility for regulation of radioactive materials, the Department has the authority to implement the requirements of the Low-Level

Radioactive Waste Policy Amendments Act of 1985. All actions being proposed in this certification fall within that legal authority. However, being a non-agreement state, in order to increase holding time, District of Columbia generators will have to work out license amendments with NRC.

Time Table

The District as mentioned previously has initiated a study with its generators as to how they will handle thier waste after 1992. We anticipate that by March 31, 1990 all generators will have evaluated their facility in terms of holding their waste for longer periods of time. The District will encourage all generators who have the capability to increase holding time to do so. We anticipate that by October 1, 1990, all generators wishing to amend their NRC license to hold waste with a 90 day or less half life for 10 half lives will have done so. Finally, by January 1, 1991, the District will have been able to monitor for a one-year period the amount of waste sent to the broker and the amount which is finally buried.

LLRW Management Disposal Options

Since 1984 the District has made numerous attempt to join a compact. At present the District is contracting with the Rocky Mountain Compact Board. It is our intent to dispose of our waste after 1992 by contracting with a compact closer to our region. This is deemed to be the most viable management option for disposal of our LLRW.

In addition, in order to reduce the amount of LLRW which must be buried, the District will request of its generators that they seek to amend their NRC license to allow them to hold more radionuclides to decay. Consequently, the amount of LLRW produced by the District that requires burial can be substantially reduced.

Dated; December 29, 1989.

Carol B. Thompson,

For Marion Barry, Jr.,

Mayor.

Certification of James R. Thompson, Governor of Illinois and Wallace G. Wilkinson, Governor of Kentucky Under the Low-Level Radioactive Waste Policy Act of 1980, as Amended

The State of Illinois and the Commonwealth of Kentucky, acting cooperatively through the Central Midwest Interstate Low-Level Radioactive Waste Compact, will be capable of providing for, and will provide for, the disposal of the low-level radioactive waste generated in the State of Illinois and the Commonwealth of Kentucky after December 31, 1992, and described in Section (3)(a)(1) of the Low-Level Radioactive Waste Policy Act of 1980, as amended.

Exhibit I of this Certification contains an estimate of the volumes and types of the low-level radioactive waste. Exhibit II describes the proposed actions to be taken to ensure that sufficient disposal capacity will be available when needed.

Illinois will continue studying the feasibility of siting the low-level radioactive waste disposal facility at both the Martinsville and Geff alternative site locations. Our siting and safety processes will assure selection of a safe facility site and development of a safe facility. If neither alternative site is determined to be safe, then appropriate alternative actions will be taken to assure the eventual safe disposal of low-level radioactive waste generated within the boundaries of the Central Midwest Interstate Low-Level Radioactive Waste Compact.

This Certification does not create any new rights in any person or establish any new obligations or liabilities on the part of the State of Illinois, the Commonwealth of Kentucky, the Central Midwest Interstate Low-Level Radioactive Waste Compact, or any of their officers, employees, agents, or assigns.

Dated: December 29, 1989.

James R. Thompson,

Governor of Illinois.

Wallace G. Wilkinson,

Governor of Kentucky.

December 29, 1989.

Mr. Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Mr. Bernero: The Low-Level Radioactive Waste Policy Amendments Act of 1985 established certain milestone dates for state development of new waste disposal facilities. The Midwest Compact successfully met the first milestone by demonstrating that all of its member states had ratified Compact legislation by July 1, 1986. The Compact also met the January 1, 1988 milestone by submitting a siting plan and siting legislation for a new facility in the State of Michigan.

The third milestone requires submission of a complete license application to the Nuclear Regulatory Commission (NRC) by January 1, 1990, or certifications by Governors that the member states will be capable of managing waste generated after they lose access to the three existing disposal sites on January 1, 1993. Because Michigan does not expect to submit a license application until late 1991, our states began planning for certification early in 1988.

As a first step, each of our states agreed that the generators would be responsible for management and storage of waste between January 1, 1993, and may 1, 1995, when Michigan expects to begin operation of its new facility. Recognizing the possibility of delay, however, we conservatively extended the period until January 1, 1996.

A survey form was mailed to all licensees in our states to identify those who would generate waste during the interim period. Follow-up contacts were made if a generator indicated a lack of storage capacity for this waste. These generators were asked to develop and describe plans that provide for the necessary storage.

The generators identified in our states affirmed that they will be capable of managing and storing their waste during the interim period. Therefore, in accordance with Section 5(e)(1)(C)(ii) of the Low-Level Radioactive Waste Policy Amendments Act, we certify that our States will be capable of providing for, and will provide for, the storage of any low-level radioactive waste generated within our states and requiring disposal after December 31, 1992.

The enclosed state documentation includes our designations of responsible state agencies and individuals, our state implementation plans, and descriptions of actions that generators will take to ensure that such capacity exists. To further ensure that these necessary actions are taken, we will support the allocation of sufficient resources to our responsible state agencies and to our state institutions that generate this waste.

We wish to note the following with regard to this certification:

(a) It is based on the information provide to our states by the licensees

(b) Our states will *not* take title to, possession of, or assume liability for waste during the interim period.

(c) The length of the interim period is based on operation of a new Michigan facility before January 1, 1996.

(d) An unforeseen accident or emergency could result in waste volumes that exceed the contingencies that licensees have incorporated into their storage plans.

We are confident that our certification and enclosed documentation meets the requirements for our compliance with the January 1, 1990 milestone. The State of Michigan's certification will be provided under separate cover. If you have any questions regarding out certification, please contact the offices of the Midwest Compact Commission.

Sincerely,

Evan Bayh,

Governor of Indiana.

Terry E. Branstad,

Governor of Iowa.

Rudy Perpich,

Governor of Minnesota.

John Ashcroft,

Governor of Missouri.

Richard F. Celeste,

Governor of Ohio.

Tommy G. Thompson,

Governor of Wisconsin.

December 11, 1989.

Director,

Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Mr. Director: Section 5(e)(1)(C) of the Low-level Radioactive Waste Policy Amendments Act of 1985, (hereinafter referred to as the Act), provides that any non-sited compact region, or any State that is not a member of a compact region, that does not have an operating disposal facility in place, shall comply with the following requirement:

"(C) By January 1, 1990—

"(i) a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each nonmember State; or

"(ii) the Governor (or, for any State without a Governor, the chief executive officer) of any State that is not a member of a compact region in compliance with clause (i), or has not complied with such clause by its own actions, shall provide a written certification to the Nuclear Regulatory Commission, that such State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within such State and requiring disposal after December 31, 1992, and include a description of the actions that will be taken to ensure that such capacity exists."

The purpose of this letter is to provide written certification that the state of Kansas will be capable of providing for the storage, disposal or management of any low-level radioactive waste generated within its borders as required by Section 5(e)(1)(C)(ii), of the Act.

The state of Kansas is a member of the Central Interstate Low-Level Radioactive Waste Compact. The Compact has been adopted in each of its member states and has the consent of Congress (Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act, 42 U.S.C. 2021d). The Compact Commission is charged with the responsibility of ensuring that safe and efficient management capacity is provided for the waste generated within the member states. To meet its responsibilities, the commission in 1987 selected a developer for the regional disposal facility and designated the state of Nebraska as the host state for the facility. Subsequently, the Commission entered into a contract with its developer, US Ecology, specifying the terms and conditions for the development of the regional facility.

As a part of its contract with the Commission, US Ecology submitted a detailed work plan including cost schedule and time schedule for the development of the facility. The plan specifies that the facility will be operational no later than January 1, 1993, and that it will provide for the disposal of all Class A, B, and C waste as defined in Title 10, Code of Federal Regulations, Part 61, including hazardous waste which contains low-level radioactive components (mixed waste).

Attached to this certification is the project schedule (Exhibit A) being followed by the developer. The project schedule details the activities to be conducted and the time frame for completion of such activities. The schedule shows that the facility will be operational by January 1, 1993. Under the terms of the Compact, such facility will be available to accept waste generated within the state of Kansas.

The state of Kansas, as a member of the Compact, has previously been found to be in compliance with the milestones established in Section 5(e)(1) (A) and (B) of the Act. Previous milestone compliance requirements have been submitted on behalf of the state in conjunction with submittals by the Compact Commission.

As part of its compliance with the milestone established in Section 5(e)(1)(B) of the Act, the Commission submitted a detailed siting plan for the region. The siting plan established that the proposed facility will be constructed and operational by the milestone date of January 1, 1993, thereby providing for the disposal of waste generated within the member states after December 31, 1992. The legal authority of the appropriate regulatory agencies in the host state to implement the siting plan and all regulatory requirements thereunder was properly verified. The single state agency responsible for all actions was identified.

The following actions are evidence that the Commission (and its member states) are on schedule to meet the January 1, 1993 deadline for having a disposal facility operational:

1. June, 1987, developer (US ECOLOGY) for the regional facility selected by the Commission.

2. December, 1987, Nebraska designated as host state for first regional facility.

3. December, 1987, Compact member states comply with milestone requirement established in Section 5(e)(1)(B) of the Act.

4. January, 1988, Commission and developer enter into contract for development of regional disposal facility and adopt comprehensive development plan and schedule.

5. January, 1988 to November, 1988, developer conducts statewide screening to identify potential sites.

6. January, 1989, developer obtains options for land in Boyd, Nemaha and Nuckolls counties in Nebraska and begins characterization of potential sites.

7. June, 1989, site characterization field studies begin.

8. November, 1989, geologic drilling program at three potential sites substantially completed.

9. December, 1989, developer continues environmental studies of sites and begins preparation of license application to be submitted to state regulatory agency by July 1, 1990.

10. December, 1989, Governor of each member state submits certification as required by Section 5(e)(1)(C) of the Act.

In order to provide for ongoing oversight on the project, the Commission has established a Facility Review Committee to ensure the project stays on schedule and that adjustments can be made in a timely manner if required. The committee also oversees funding schedules to ensure that adequate funds are available throughout the project to the appropriate parties.

During the fall of 1989, the Kansas Department of Health and Environment conducted a survey of all generators of waste within Kansas to determine the amount and type of waste to be generated after December 31, 1992 that will require disposal at a commercial low-level radioactive waste disposal facility. A projection of waste requiring disposal for the period January 1, 1993 through December 31, 1995, is shown in Exhibit B.

Based on the project plan and the schedule and work completed to date by its contractor, the Commission is confident that the regional disposal facility will be developed, constructed and operational by the required date of January 1, 1993. All regulatory requirements are in place in the host state, and all parties are working in a cooperative manner to ensure timely operation. This will allow for each member state of the Compact to meet its responsibility under the Act to provide for the disposal of all waste generated within the state after January 1, 1993.

As Governor of the State of Kansas, consistent with Section 5(e)(1)(C) of the Act, I hereby certify an intent to meet the state's responsibility under Public Law 99–240 to provide for the management of waste generated within Kansas by having such waste disposed of at the regional low-level radioactive waste disposal facility referred to above.

Signed,

Mike Hayden,

Governor.

December 15, 1989.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dear Mr. Bernero: Section 5(e)(1)(C) of the Low-level Radioactive Waste Policy Amendments Act of 1985, (hereinafter referred to as the Act), provides that any non-sited compact region, or any State that is not a member of a compact region, that does not have an operating disposal facility in place, shall comply with the following requirement:

"(C) By January 1, 1990—

"(i) a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an Agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each nonmember State; or

"(ii) the Governor (or, for any State without a Governor, the chief executive officer) of any State that is not a member of a compact region in compliance with clause (i), or has not complied with such clause by its own actions, shall provide a written certification to the Nuclear Regulatory Commission, that such State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within such State and requiring disposal after December 31, 1992, and include a description of the actions that will be taken to ensure that such capacity exists."

The purpose of this letter is to provide written certification that the State of Louisiana will be capable of providing for the storage, disposal or management of any low-level radioactive waste generated within its borders as required by Section 5(e)(1)(C)(ii), of the Act.

The State of Louisiana is a member of the Central Interstate Low-Level Radioactive Waste Compact. The Compact has been adopted in each of its member states and has the consent of Congress (Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act, 42 U.S.C. 2021d). The Compact Commission is charged with the responsibility of ensuring that safe and efficient management capacity is provided for the waste generated within the member states. To meet its responsibilities, the Commission in 1987 selected a developer for the regional disposal facility and designated

the State of Nebraska as the host state for the facility. Subsequently, the Commission entered into a contract with its developer, US Ecology, specifying the terms and conditions for the development of the regional facility.

As a part of its contract with the Commission, US Ecology submitted a detailed work plan including cost schedule and time schedule for the development of the facility. The plan specifies that the facility will be operational no later than January 1, 1993, and that it will provide for the disposal of all Class A, B, and C waste as defined in Title 10, Code of Federal Regulations, Part 61, including hazardous waste which contains low-level radioactive components (mixed waste).

Attached to this certification is the project schedule (Exhibit A) being followed by the developer. The project schedule details the activities to be conducted and the time frame for completion of such activities. The schedule shows that the facility will be operational by January 1, 1993. Under the terms of the Compact, such facility will be available to accept waste generated within the State of Louisiana.

The State of Louisiana, as a member of the Compact, has previously been found to be in compliance with the milestones established in Section 5(e)(1) (A) and (B) of the Act. Previous milestone compliance requirements have been submitted on behalf of the State in conjunction with submittals by the Compact Commission.

As part of its compliance with the milestone established in Section 5(e)(1)(B) of the Act, the Commission submitted a detailed siting plan for the region. The siting plan established that the proposed facility will be constructed and operational by the milestone date of January 1, 1993, thereby providing for the disposal of waste generated within the member states after December 31, 1992. The legal authority of the appropriate regulatory agencies in the host state to implement the siting plan and all regulatory requirements thereunder was properly verified. The single state agency responsible for all actions was identified.

The following actions are evidence that the Commission (and its member states) is on schedule to meet the January 1, 1993, deadline for having a disposal facility operational:

1. June, 1987, developer (US Ecology) for the regional facility selected by the Commission.

2. December, 1987, Nebraska designated as host state for the first regional facility.

3. December, 1987, Compact member states comply with milestone requirement established in Section 5(e)(1)(B) of the Act.

4. January, 1988, Commission and developer enter into contract for development of regional disposal facility and adopt comprehensive development plan and schedule.

5. January, 1988 to November, 1988, developer conducts statewide screening to identify potential sites.

6. January, 1989, developer obtains options for land in Boyd, Nemaha and Nuckolls counties in Nebraska and begins characterization of potential sites.

7. June, 1989, site characterization field studies begin.

8. November, 1989, geologic drilling program at three potential sites substanially completed.

9. December, 1989, developer continues environmental studies of sites and begins preparation of license application to be submitted to state regulatory agency by July 1, 1990.

10. December, 1989, Governor of each member state submits certification as required by Section 5(e)(1)(C) of the Act.

In order to provide for ongoing oversight on the project, the Commission has established a Facility Review Committee to ensure the project stays on schedule and that adjustments can be made in a timely manner if required. The Committee also oversees funding schedules to ensure that adequate funds are available throughout the project to the appropriate parties.

During the fall of 1989, the Louisiana Department of Environmental Quality conducted a survey of all generators of waste within Louisiana to determine the amount and type of waste to be generated after December 31, 1992, that will require disposal at a commercial low-level radioactive waste disposal facility. A projection of waste requiring disposal for the period January 1, 1993, through December 31, 1995, is shown in Exhibit B.

Based on the project plan and the schedule and work completed to date by its contractor, the Commmission is confident that the regional disposal facility will be developed, constructed, and operational by the required date of January 1, 1993. All regulatory requirements are in place in the host state, and all parties are working in a cooperative manner to ensure timely operation. This will allow for each member state of the Compact to meet its responsibility under the Act to provide for the disposal of all waste generated within the state after January 1, 1993.

As Governor of the State of Louisiana, consistent with Section 5(e)(1)(C) of the Act, I hereby certify an intent to meet the state's responsibility under Public Law 99–240 to provide for the management of waste generated within Louisiana by having such waste disposed of at the regional low-level radioactive waste disposal facility referred to above.

Signed,

Buddy Roemer,

Governor.

December 26, 1989.

Mr. Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Mr. Bernero: I am enclosing the State of Maryland's certification of compliance with Section 5(e) of the Low-Level Radioactive Waste Policy Amendments of 1985.

Accordingly, I certify that the State of Maryland is capable of providing for, and commits to providing for, the management of all low-level radioactive waste generated within our borders requiring disposal after December 31, 1992. This will be accomplished by directing our generators to store their waste on site for the required interim period and by assuring other options are available for those that cannot store on site. The Appalachian States Compact is progressing steadily toward operation of a new disposal facility. The regional disposal facility, scheduled for operation in Pennsylvania by July 1995, will safely handle the entire region's low-level radioactive waste.

The Appalachian Compact region will not have an operating disposal facility by January 1, 1993. However, we anticipate meeting the deadline of January 1, 1996, for an operating facility. Therefore, a period of approximately two and one-half years following the 1993 milestone date will need to be managed in an interim fashion. Maryland will implement a follow-up program to ensure that all commitments are being met.

The Appalachian States Low-Level Radioactive Waste Compact, enacted in 1986, provides necessary authority for development of the disposal facility. Annotated Code of Maryland, Environment Article, Title 7, provides the authority for overall management of the State's low-level radioactive waste. Maryland's Department of the Environment (MDE) is authorized to implement the program and will be responsible for implementing the interim waste management plans and reporting requirements.

We have taken steps both as an individual party state and concurrently with the Appalachian Compact states to plan for interim management from 1993 through 1995. MDE has identified the sources and projected the volumes and types of low-level radioactive waste requiring management after December 31, 1992. A feasible interim management strategy for these wastes has been prepared and will be fully implemented.

The strategy, as prepared, is feasible within existing legal authorities and consistent with applicable regulatory frameworks in the State. Final regulation development for treatment, storage, and disposal facilities now are nearing completion. Detailed information supporting these steps is contained in the enclosure as part of this certification.

The plan is based on conditions existing in today's environment and on information provided by Maryland's low-level waste generators. The State of Maryland commits to implementing this interim management plan to the best of its ability. It should also be noted that while the State intends to implement and closely monitor this approach, there is no intention to assume title or liability for the waste in the interim management period from 1993 through 1995.

I am confident that this approach meets all criteria imposed by the Low-Level Radioactive Waste Policy Amendments of 1985. Should you have any question about this submittal, please do not hesitate to contact Martin W. Walsh, Jr., Secretary, Department of the Environment, at (301) 631–3084.

Sincerely,

William Donald Schaefer,

Governor.

December 22, 1989.

Director,

Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Sir or Madam: Enclosed is the Commonwealth of Massachusetts' submission pursuant to Section 5(e)(1)(c)(ii) of the Low-Level Radioactive Waste Policy Amendments Act of 1985, which complies with the 1990 Milestone requirements.

Questions regarding the submission may be referred to Carol C. Amick, Executive Director, Commonwealth Low-Level Radioactive Waste Management Board at (617) 727–2040.

Sincerely,

Michael S. Dukakis,

Governor.

December 15, 1989.

Director,

Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Sir: In fulfillment of the requirements of the Low-Level Radioactive Waste Policy Amendments Act of 1985, at Section 5(e)(1)(C)(2) of P.L. 99–240, 42 U.S.C. 2021b *et seq,* I hereby certify that the State of Maine will be capable of providing for, and will provide for, the storage, disposal or management of low-level radioactive waste generated in Maine following December 31, 1992, and requiring disposal.

In satisfaction of the 1990 Milestone requirement of the Act, I have directed the preparation of the attached Certification Plan, the provisions of which assure Maine's full compliance with state and federal law and describe the state's actions for assuring that sufficient low-level waste capacity will be available following December 31, 1992.

Maine's Certification Plan consists of five components which are individually discussed in detail, with supporting documentation, in the plan itself. The five components are:

(1) Operation of a permanent disposal facility in 1996 for low-level radioactive waste generated in Maine under the supervision of the Maine Low-Level Radioactive Waste Authority;

(2) On-site storage for low-level radioactive waste generated in the state and requiring disposal for the period from 1993 until the start-up of a permanent facility either in Maine or by means of a Compact with a host state elsewhere in the country;

(3) Operation of a centralized storage facility by the Maine Low-Level Radioactive Waste Authority by Janaury 1, 1996 in the event that on-site storage capacity is inadequate to meet the requirements of all of Maine's generators as of that date;

(4) Ongoing efforts to consummate a permanent Compact relationship with a state which plans the operation of a permanent disposal facility prior to 1996 elsewhere in the country, as in the example of Maine's January 6, 1989 Compact proposal with Texas, and ratification of such a Compact by the U.S. Congress; and

(5) Maximum utilization of on-site storage capacity beginning on Janaury 1, 1993 due to the guarantee of disposal access through December 31, 1993 which is provided by Maine's three-year contract with the Rocky Mountain Compact, and was approved by Maine's voters on November 7, 1989.

Taken together, these efforts represent Maine's commitment to manage all low-level radioactive waste requiring disposal in the period beginning January 1, 1993.

In view of ongoing uncertainties—both legal and organizational—as to the authority of individual non-agreement states, such as Maine, to compel generators of low-level and mixed radioactive waste to build additional on-site storage capacity, certain portions of the Certification Plan provide Maine's best, current appraisal of options available to manage Maine's waste stream in 1993 and thereafter. There remains, however, some possibility of future changes in Maine's final course of action, particularly in the area of mixed waste, as these institutional uncertainties are resolved by the affected federal agencies and by Congress. Consequently, the Certification Plan includes formal notice to generators in this state that Maine intends to rely on their on-site storage capabilities, and will monitor these capabilities, during the period prior to the start-up of Maine's permanent disposal facility, of a centralized storage facility or of a long-term compact relationship with a host state elsewhere in the nation.

Please direct any questions about this letter and the attached Certification Plan to Alan MacEwan, Legal Counsel, of my staff or to Stephen Ward, Public Advocate, upon whom I rely for guidance on low-level radioactive waste disposal issues.

Very truly yours,

John R. McKernan, Jr.,

Governor.

December 28, 1989.

Mr. Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Mr. Bernero: Federal law compels me to submit to the Federal government the enclosed certification by January 1, 1990. As I indicated in my letter to President Bush earlier this month, the apparent and serious flaws in the Federal Low Level Radioactive Waste Policy Act of 1980, as amended in 1985, requiring this action have not been addressed.

Despite the fact that several expert studies agree that no more than three disposal sites are required nationwide to handle the currently projected waste volume—which may continue to decline—current Federal law and policy has lead to the potential development of 12 to 15 facilities. The negative economic and environmental impacts of developing too many sites across the country must be eliminated and the number of sites must be reduced.

This letter, together with the enclosed documents, is my certification that Michigan will be capable of providing for, and will provide for, the storage of low level radioactive waste generated within Michigan and requiring disposal after December 31, 1992. This is the third milestone set for the states in the Low Level Radioactive Waste Policy Amendments Act of 1985. Michigan has successfully met the first two milestones as part of the Midwest Interstate Low Level Radioactive Waste Compact.

The third milestone requires submission of a complete license application to the Nuclear Regulatory Commission (NRC) by January 1, 1990, or a certification by me that Michigan will be capable of managing its low level radioactive waste, in the event that access is lost to the three existing disposal sites on January 1, 1993. Because Michigan will not submit a license application by January 1, 1990, we began planning for certification early in 1988.

Michigan has determined that the generators in this state would be responsible for management and storage of waste between January 1, 1993 and the date when a Michigan disposal facility becomes operational, or January 1, 1996, whichever occurs first.

A survey form was mailed to all known NRC licensees in Michigan to identify generators who would need to manage and store waste during the interim period of January 1, 1993 to January 1, 1996. Follow-up contacts were made if a generator indicated a lack of storage capacity for this waste. These generators were asked to develop and describe plans that provide for the necessary storage.

The generators identified in Michigan affirmed that they will be capable of managing and storing their waste during the interim period. Therefore, in accordance with section 5(e)(1)(C)(ii) of the Low Level Radioactive Waste Policy Amendments Act, I certify that Michigan will be capable of providing for, and will provide for, the storage of any low level radioactive waste generated within Michigan and requiring disposal after December 31, 1992.

Two documents are enclosed. The first designates the responsible state agency and individual and contains the Michigan implementation plan. The second document describes the actions that generators will take to ensure that necessary capacity exists. I shall support the allocation of sufficient resources to our responsible state agency and to state institutions generating low level radioactive waste to insure successful implementation of the plan.

The following should be noted:

(a) The certification is based on the information provided by the NRC licensees.

(b) Michigan will *not* take title to, possession of, or assume liability for waste during the interim period.

(c) The length of the interim period is dependent on operation of a Michigan disposal facility before January 1, 1996.

(d) An unforeseen accident or emergency could result in waste volumes that exceed the contingencies that licensees have incorporated into their storage plans.

(e) It is presumed that the conflicting regulatory requirements of federal agencies, pertaining to the management and disposal of mixed waste and any other requirements that potentially impact on generator storage, will be resolved by January 1, 1993.

I am confident that this certification and enclosed documentation meet the requirements for compliance with the January 1, 1990 milestone. If you have any questions

regarding our certification, please contact my staff.

Sincerely,

James H. Blanchard,

Governor.

December 18, 1989.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Mr. Director: Section 5(e)(1)(C) of the Low-level Radioactive Waste Policy Amendments Act of 1985, (hereinafter referred to as the Act), provides that any non-sited compact region, or any State that is not a member of a compact region, that does not have an operating disposal facility in place, shall comply with the following requirement:

"(C) By January 1, 1990—

"(i) a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each nonmember State; or

"(ii) the Governor (or, for any State without a Governor, the chief executive officer) of any State that is not a member of a compact region in compliance with clause (i), or has not complied with such clause by its own actions, shall provide a written certification to the Nuclear Regulatory Commission, that such State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within such State and requiring disposal after December 31, 1992, and include a description of the actions that will be taken to ensure that such capacity exists."

The purpose of this letter is to provide written certification that the state of Nebraska will be capable of providing for the storage, disposal or management of any low-level radioactive waste generated within its borders as required by Section 5(e)(1)(C)(ii), of the Act.

The state of Nebraska is a member of the Central Interstate Low-Level Radioactive Waste Compact. The Compact has been adopted in each of its member states and has the consent of Congress (Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act, 42 U.S.C. 2021d). The Compact Commission is charged with the responsibility of ensuring that safe and efficient management capacity is provided for the waste generated within the member states. To meet its responsibilities, the Commission in 1987 selected a developer for the regional disposal facility and designated the state of Nebraska as the host state for the facility. Subsequently, the Commission entered into a contract with its developer, US Ecology, specifying the terms and conditions for the development of the regional facility.

As a part of its contract with the Commission, US Ecology submitted a detailed work plan including cost schedule and time schedule for the development of the facility. The plan specifies that the facility will be operational no later than January 1, 1993, and that it will provide for the disposal of all Class A, B, and C waste as defined in Title 10, Code of Federal Regulations, part 61, including hazardous waste which contains low-level radioactive components (mixed waste).

Attached to this certification is the project schedule (Exhibit A) being followed by the developer. The project schedule details the activities to be conducted and the time frame for completion of such activities. The schedule shows that the facility will be operational by January 1, 1993. Under the terms of the Compact, such facility will be available to accept waste generated within the state of Nebraska.

The state of Nebraska, as a member of the Compact, has previously been found to be in compliance with the milestones established in Section 5(e)(1)(A) and (B) of the Act. Previous milestone compliance requirements have been submitted on behalf of the state in conjunction with submittals by the Compact Commission.

As part of its compliance with the milestone established in Section 5(e)(1)(B) of the Act, the Commission submitted a detailed siting plan for the region. The siting plan established that the proposed facility will be constructed and operational by the milestone date of January 1, 1993, thereby providing for the disposal of waste generated within the member states after December 31, 1992. The legal authority of the appropriate regulatory agencies in the host state to implement the siting plan and all regulatory requirements thereunder was properly verified. The single state agency responsible for all actions was identified.

The following actions are evidence that the Commission (and its member states) is on schedule to meet the January 1, 1993 deadline for having a disposal facility operational:

1. June, 1987, developer (US Ecology) for the regional facility selected by the Commission.
2. December, 1987, Nebraska designated as host state for first regional facility.
3. December, 1987, Compact member states comply with milestone requirement established in Section 5(e)(1)(B) of the Act.
4. January, 1988, Commission and developer enter into contract for development of regional disposal facility and adopt comprehensive development plan and schedule.
5. January, 1988 to November, 1988, developer conducts statewide screening to identify potential sites.
6. January, 1989, developer obtains options for land in Boyd, Nemaha and Nuckolls counties in Nebraska and begins characterization of potential sites.
7. June, 1989, site characterization field studies begin.
8. November, 1989, geologic drilling program at three potential sites substantially completed.
9. December, 1989, developer continues environmental studies of sites and begins preparation of license application to be submitted to state regulatory agency by July 11, 1990.
10. December, 1989, Governor of each member state submits certification as required by Section 5(e)(1)(C) of the Act.

In order to provide for ongoing oversight on the project, the Commission has established a Facility Review Committee to ensure the project stays on schedule and that adjustments can be made in a timely manner if required. The committee also oversees funding schedules to ensure that adequate funds are available throughout the project to the appropriate parties.

During the fall of 1989, the Nebraska Department of Health conducted a survey of all generators of waste within Nebraska to determine the amount and type of waste to be generated after December 31, 1992 that will require disposal at a commercial low-level radioactive waste disposal facility. A projection of waste requiring disposal for the period January 1, 1993 through December 31, 1995, is shown in Exhibit B.

Based on the project plan and the schedule and work completed to date by its contractor, the Commission is confident that the regional disposal facility will be developed, constructed and operational by the required date of January 1, 1993. All regulatory requirements are in place in the host state, and all parties are working in a cooperative manner to ensure timely operation. This will allow for each member state of the Compact to meet its responsibility under the Act to provide for the disposal of all waste generated within the state after January 1, 1993.

As Governor of the State of Nebraska, consistent with Section 5(e)(1)(C) of the Act, I hereby certify an intent to meet the state's responsibilities under Public Law 99-240 to provide for the management of waste generated within Nebraska by having such waste disposed of at the regional low-level radioactive waste disposal facility referred to above.

Signed,

Kay A. Orr,

Governor.

December 29, 1989.

Director,

Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Sirs: Please consider this letter as certification that the State of New Hampshire will provide for storage, disposal, and management of any low-level radioactive waste generated within its borders and requiring disposal after December 31, 1992 in accordance with the 1990 milestone of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA).

(1) LLRW Volume Estimates

The following is an estimate of volumes and types of waste expected to be generated after December 31, 1992:

Generator and waste type [1]	Annual waste volume (ft^3)
Univ. of NH: Byprobuct, source & spec. nuclear (plus NARM)	38
Dartmouth College: Byproduct, source & spec. nuclear	15
Kollsman Instruments: Source material	50

[1] None of this is considered mixed waste.

(2) Storage, Disposal, and Management Actions

With respect to New Hampshire's proposed storage, disposal, and management practices, New Hampshire currently has a contract with the Rocky Mountain Low-Level Radioactive Waste Board. This contract extends through December 31, 1992. Since this state's volume of low level waste is so small, New Hampshire shall continue to dispose of low-level waste by contract with out-of-state sites.

(3) Legal Authority

Actions proposed for our licensees are within the limits of New Hampshire Revised Statutes Annotated (RSA) 125–F. Responsibility for implementation of the provisions of this statute and those to Title 10, Code of Federal Regulations, Part 150 and the provisions of the Agreement entered into between the (then) Atomic Energy Commission and the State of New Hampshire on May 16, 1966 is vested within the Division of Public Health Services of the Department of Health and Human Services.

(4) Logistics of the Proposed Actions

See section 2 above.

A part of our planning for future low-level radioactive waste management includes the possibility that the Seabrook Nuclear Power Plant may be licensed. If Seabrook is eventually licensed and becomes operational, then an estimated 5,500 cubic feet of low-level radioactive waste will be generated annually. Again, we shall dispose of the low-level waste from the Seabrook Plant through contractual arrangements with sites in other states.

Sincerely,

Judd Gregg,

Governor.

December 22, 1989.

Mr. Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission, One White Flint North, 1155 Rockville, Pike, Rockville, MD 20852.

Dear Mr. Bernero: The State of New Jersey is conscientiously pursuing its obligations under the provisions of the federal "Low-Level Radioactive Waste Policy Amendments Act of 1985," Pub. L. 99–240, 99 Stat. 1842 (1986) ("Act").

In order to meet the January 1990 milestone for the governor 's certification, as provided for in section 5(e) (1) (C) (ii) of the Act, I, Thomas H. Kean, Governor of the State of New Jersey, do hereby certify that the state of New Jersey will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within the State and requiring disposal after December 31, 1992. Enclosed herewith is a description of the actions that will be taken to ensure that such capacity exists.

In making this certification, I note the following factors:

(1) The data regarding types of volumes of waste and capabilities for on-site storage by generators of low-level radioactive waste was provided to the state of New Jersey by NRC radioactive material licensees.

(2) In estimating amount, it is assumed that the current federal regulatory framework will remain unchanged, that radioactive material licensees will apply for and obtain the necessary permits, approvals, or amendments and the NRC will respond in a timely manner to their applications.

(3) This certification represents a projection of waste management plans based on current information and belief. This waste management plan is subject to alteration given change in conditions or information.

I am confident that this certification and the enclosed Interim Low-Level Radioactive Waste Management Plan meet the requirements for compliance with the January 1, 1990 milestone and the Act.

If you have any questions regarding our certification, please contact the offices of the Northeast Compact Commissioner, Mr. Richard Sullivan, at 609/497–1447.

Sincerely,

Thomas H. Kean,

Governor.

December 27, 1989.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dear Mr. Bernero: In accordance with Section 5(e)(1)(C)(ii) of the federal Low-Level Radioactive Waste Policy Act, as amended [Pub. L. 99–240], I certify that the State of New York will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within New York and requiring disposal after December 31, 1992. (For purposes of this certification, "low-level radioactive waste" does not include any radioactive waste the disposal of which is the responsibility of the federal government under the provisions of applicable federal law.)

This certification includes a description of the actions that will be taken to ensure that such capacity exists (the attached New York State Plan for Storage, Disposal, and Management of Low-Level Radioactive Waste Generated within New York after 1992), in accordance with the provisions of Section 5(e)(1)(C)(ii) and the guidance documents issued by your office on February 10 and August 9, 1989.

If you have any questions about this certification, please call Mr. John P. Spath, Program Manager, New York State Energy Research and Development Authority, at (518) 432–1405.

Sincerely,

Mario M. Cuomo,

Governor.

December 12, 1989.

Chairman Kenneth M. Carr,

United States Nuclear Regulatory Commission, One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852.

Re: Governor's Certification Pursuant to Public Law 99–240.

Dear Chairman Carr: The Low-Level Radioactive Waste Policy Amendments Act of 1985 (the Act) requires each State to provide, either unilaterally or in cooperation with other States, for the disposal of low-level radioactive waste generated within the State by December 31, 1992. (P.L. 99–240, 99 Stat. 1842.) In furtherance of this Act and with the consent of Congress, the states of Arizona, California, North Dakota, and South Dakota have joined together to form the Southwestern Low-Level Radioactive Waste Disposal Compact. The State of California is the host state under this Compact for the first 30 years. (P.L. 100–712, 102 Stat. 4773.)

The Act establishes an interim access period from January 1, 1986, to January 1, 1993. During this period, States and Compacts are allowed continued access to existing low-level radioactive waste (LLRW) disposal facilities of the Southeast Compact (Barnwell, SC); the Northwest Compact (Hanford, WA); or the Rocky Mountain Compact (Beatty, NV). For continued access, these States and Compacts are subjected to a series of milestones, penalties, and incentives intended to assure that when the interim access period ceases, LLRW would be safely managed at the State or Compact level. As to the January 1, 1990, milestone, the Act states:

"By January 1, 1990—

"(i) A complete application * * * shall be filed for a license to operate a LLRW disposal facility within each nonsited compact region * * *; or

"(ii) The governor * * * of any State * * * shall provide a written certification to the Nuclear Regulatory Commission * * *". (42 U.S.C. Section 2021e, subd. (1)(C).)

The following certification is in compliance with the latter provision:

I, George A. Sinner, Governor of the State of North Dakota, certify to the United States Regulatory Commission that the State of North Dakota will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within the State of North Dakota and requiring disposal after December 31, 1992. The attached Plan of Action describes the actions that will be taken to ensure that such capacity exists for the State of North Dakota.

In making this certification note the following:

1. The information regarding storage requirements was provided to the State of North Dakota by the licensees and/or generators.

2. It is assumed that the current federal regulatory framework will not change, that nuclear licensees will obtain the necessary permits or approvals, and the federal agencies will respond in a timely manner to their applications.

North Dakota looks forward to working with the Southwestern Compact to properly handle low-level radioactive waste requiring further treatment and/or disposal.

Sincerely,

George A. Sinner,

Governor.

December 11, 1989.

Mr. Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Mr. Bernero: Section 5(e)(1)(C) of the Low-Level Radioactive Waste Policy Amendments Act of 1985, (hereinafter referred to as the Act), provides that any non-sited compact region, or any state that is not a member of a compact region, that does not have an operating disposal facility in place, shall comply with the following requirement:

"(C) By January 1, 1990—

"(i) a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement state) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member state; or

"(ii) the Governor (or, for any state without a Governor, the Chief executive officer) of any state that is not a member of a compact region in compliance with clause (i), or has not compiled with such clause by its own actions, shall provide a written certification to the Nuclear Regulatory Commission, that such state will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within such state and requiring disposal after December 31, 1992, and incude a description of the actions that will be taken to ensure that such capacity exists."

The purpose of this letter is to provide written certification that the State of Oklahoma will be capable of providing for the storage, disposal, or management of any low-level radioactive waste generated within its borders as required by Section 5(e)(1)(C)(ii) of the Act.

The State of Oklahoma is a member of the Central Interstate Low-Level Radioactive Waste Compact. The Compact has been adopted in each of its member states and has the consent of Congress (Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act, 42 U.S.C. 2021d). The Compact Commission is charged with the responsibility of ensuring that safe and efficient management capacity is provided for the waste generated within the member states. To meet its responsibilities, the Commission in 1987 selected a developer for the regional disposal facility and designated the State of Nebraska as the host state for the facility. Subsequently, the Commission entered into a contract with its developer, US Ecology, specifying the terms and conditions for the development of the regional facility.

As a part of its contract with the Commission, US. Ecology submitted a detailed work plan including cost and time schedule for the development of the facility. The plan specifies that the facility will be operational no later than January 1, 1993, and that it will provide for the disposal of all Class A, B, and C waste as defined in Title 10, Code of Federal Regulations, Part 1, including hazardous waste which contains low-level radioactive components (mixed waste).

Attached to this certification is the project schedule (exhibit A) being followed by the developer. The project schedule details the activities to be conducted and the time frame for completion of such activities. The schedule verifies that the facility will be operational by January 1, 1993. Under the terms of the Compact, such facility will be available to accept waste generated within the State of Oklahoma.

The State of Oklahoma, as a member of the Compact, has previously been found to be in compliance with the milestones established in Section 5(e)(1)(A) and (B) of the Act. Previous milestone compliance requirements have been submitted on behalf of the State in conjuction with submittals by the Compact Commission.

As part of its compliance with the milestone established in Section 5(e)(1)(B) of the Act, the Commission submitted a detailed siting plan for the region. The siting plan established that the proposed facility will be constructed and operational by the milestone date of January 1, 1993, thereby providing for the disposal of waste generated within the member states after December 31, 1992. The legal authority of the appropriate regulatory agencies in the host state to implement the siting plan and all regulatory requirements thereunder was properly verified. The single state agency responsible for all actions was identified.

The following actions are evidence that the Commission (and its member states) are on schedule to meet the January 1, 1993 deadline for having a disposal facility operational:

1. June, 1987, developer (US Ecology) for the regional facility selected by the Commission.

2. December, 1987, Nebraska designated as host state for the first regional facility.

3. December, 1987, Compact member states comply with milestone requirement established in Section 5(e)(1)(B) of the Act.

4. January 1988, Commission and developer enter into contract for development of regional disposal facility and adopt comprehensive development plan and schedule.

5. January, 1988 to November, 1988, developer conducts statewide screening to identify potential sites.

6. January, 1989, developer obtains options for land in Boyd, Nemaha, and Nuckolls counties in Nebraska and begins characterization of potential sites.

7. June, 1989, site characterization field studies begin.

8. November, 1989, geologic drilling program at three potential sites substantially completed.

9. December, 1989, developer continues environmental studies of sites and begins preparation of license application to be submitted to state regulatory agency by July 1, 1990.

10. December, 1989, Governor of each member state submits certification as required by Section 5(e)(1)(C) of the Act.

In order to provide for ongoing oversight on the project, the Commission has established a Facility Review Committee to ensure the project stays on schedule and that adjustments can be made in a timely manner if required. The Committee also oversees funding schedules to ensure that adequate funds are available throughout the project to the appropriate parties.

During the fall of 1989, the Oklahoma State Department of Health conducted a survey of all generators of waste with Oklahoma to determine the amount and type of waste to be generated after December 31, 1992 that will require disposal at the commercial low-level radioactive waste disposal facility. A projection of waste requiring disposal for the period January 1, 1993 through December 31, 1995, is shown in Exhibit B.

Based on the project plan and the shedule and work completed to date by its contractor, the Commission is confident that the regional disposal facility will be developed, constructed, and operational by the required date of January 1, 1993. All regulatory requirements are in place in the host state, and all parties are working in a cooperative manner to ensure timely operation. This will allow for each member state of the Compact to meet its responsibility under the Act to provide for the disposal of all waste generated within the state after January 1, 1993.

As Governor of the State of Oklahoma, consistent with Section 5(e)(1)(C) of the Act, I hereby certify an intent to meet the State's responsibility under Public Law 99–240 to provide for the management of waste generated within Oklahoma by having such waste disposed of at the regional low-level radioactive waste disposal facility referred to above.

Sincerely,

Henry Bellmon,

Governor.

December 19, 1989.

Mr. Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Subject: Compliance with January 1, 1990, Milestone of Low-Level Radioactive Waste Policy Amendments of 1985.

Dear Mr. Bernero: Section 5(e) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Amendment Act) sets forth milestone requirements for continued access to regional low-level radioactive waste disposal facilities. Under Section 5(e)(1)(C), states and compacts must, by January 1, 1990, either:

1. Submit a complefe license application to the U.S. Nuclear Regulatory Commission (NRC) or an Agreement State [Section 5(e)(1)(C)(i)]; or

2. Provide to NRC a written certification by the Governor that the state will be capable of providing for, and will provide for, storage, disposal, or management of any low-level radioactive waste generated within the state and requiring disposal after 1992 [Section 5(e)(1)(C)(ii)]. States or compacts that do not meet the milestone face loss of surcharge rebates from the U.S. Department of Energy as well as denial of access by the sited states to the regional disposal facilities (Barnwell, Hanford, and Beatty).

By this letter, I certify that the Commonwealth of Pennsylvania is capable of providing for, and commits to providing for, management of all low-level radioactive waste generated within its borders and requiring disposal after December 31, 1992. This will be accomplished by directing all generators to store their waste on site for the

required interim period and assuring that other options are available for those that cannot store on site.

Pennsylvania, as host state for the Appalachian States Compact, is progressing steadily toward operation of a new disposal facility. The disposal facility, scheduled for operation by July 1995, will safely handle the entire compact's low-level radioactive waste. Because the party states of the compact will not be in a position to comply with the requirement to have an operating disposal facility by January 1, 1993, there will be a period of approximately two and one half years following the 1993 milestone date when waste from each party state may need to be managed in an interim fashion. I will implement a follow-up program to ensure that all of Pennsylvania's commitments are being met during the interim period.

Pennsylvania's Low-Level Radioactive Waste Disposal Act, enacted in 1988, provides the necessary authority for development of the disposal facility and for overall management of the Commonwealth's low-level waste. This Act authorizes the Pennsylvania Department of Environmental Resources to implement the low-level waste program, and the Department will be responsible for implementing the interim waste management plan as well.

Pennsylvania has taken steps as an individual party state and as part of the Appalachian States Compact to plan for interim management from 1993 through 1995. The steps include the following:

- Identifying sources and projecting the volume and types of low-level radioactive waste requiring management after December 31, 1992.
- Preparing an interim management strategy to handle all of the waste requiring such interim management.
- Determining that the strategy is feasible within existing legal authorities and consistent with applicable regulatory frameworks.
- Assigning responsibilities for implementation.

The information supporting each of these steps is contained in the attachment, *Implementation Plan for Interim Low-Level Waste Management, Appalachian States Compact.* The attachment is hereby incorporated in this certification. The plan is based on conditions existing in today's environment and on information provided by low-level waste generators. The Commonwealth of Pennsylvania commits to implementing this interim management plan to the best of its ability. It should also be noted that while it intends to implement and closely monitor this plan, the Commonwealth has no intention to assume title or liability for the waste in the interim management period from 1993 through 1995. Pennsylvania is confident that this approach meets all criteria imposed by Low-Level Radioactive Waste Policy Amendments Act of 1985. Should you have any questions about this submittal, please do not hesitate to contact Arthur A. Davis, Secretary, Department of Environmental Resources.

Sincerely,

Robert P. Casey,

Governor.

December 22, 1989.

I. Governor's Certification

I hereby certify that the State of Rhode Island has satisfied the January 1, 1990 Milestone Conditions of the Low-Level Radioactive Waste Policy Amendments Act of 1985, Public Law 99–240. The State of Rhode Island has entered into a contract with the Rocky Mountain Low-Level Radioactive Waste Board which guarantees the disposal capacity for Rhode Island generated low-level radioactive waste through December 31, 1992. In accordance with Section 5(e)(1)(F) of the Low-Level Radioactive Waste Policy Act, the State of Rhode Island has entered into an agreement with a compact commission of a region in which a regional disposal facility is located to provide for the disposal of all low-level radioactive waste generated within Rhode Island. By virtue of this agreement the State of Rhode Island is in compliance with Section 5(e)(1)(C) of the Low-Level Radioactive Waste Policy Act.

Furthermore, I hereby certify that in accordance with Section 5(e)(1)(C)(ii) the State of Rhode Island will be capable of providing for, and will provide for the storage, disposal, or management of any low-level radioactive waste generated within Rhode Island that requires disposal after December 31, 1992. The State of Rhode Island intends to seek a permanent solution for the disposal of Rhode Island's low-level radioactive waste. The State of Rhode Island has the authority to enter into contracts or compacts with other regions or states throughout the United States for the disposal of our low-level radioactive waste. Rhode Island has reduced our generation of low-level radioactive waste that requires disposal from over 3000 cubic feet in 1984 to under 1500 cubic feet in 1989 and intends to reduce the low-level radioactive waste that requires disposal to under 500 cubic feet by January 1, 1993. The State of Rhode Island has the existing authority (RI is a NRC agreement state) to allow our generators to increase storage capacity and has instructed its generators to begin planning to increase their storage capacities so that by January 1, 1993 each generator will have a minimum of five years storage capacity.

Attached is a description of Rhode Island's Low-Level Radioactive Waste Policy, the status of Rhode Island's generators, their source reduction programs and Rhode Island's authorities to assist generators in increasing storage.

Edward D. DiPrete,

Governor.

December 22, 1989.

Governor's Certification Pursuant to Public Law 99–240

Mr. Kenneth M. Carr

Chairman, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Mr. Carr: The Low-Level Radioactive Waste Policy Amendments Act of 1985 (the Act) requires each state to provide, either unilaterally or in cooperation with other states, for the disposal of low-level radioactive waste generated within the state by December 31, 1992 (Public Law No. 99–240, 99 Stat. 1842). In furtherance of this Act and with Congress' consent, the states of Arizona, California, North Dakota, and South Dakota have joined together to form the Southwestern Low-Level Radioactive Waste Disposal Compact. The state of California is the host state under this compact for the first 30 years (Public Law No. 100–712, 102 Stat. 4773).

The Act establishes an interim access period from January 1, 1986 to January 1, 1993. During this period, states and compacts are allowed continued access to existing low-level radioactive waste (LLRW) disposal facilities of the Southeast Compact (Barnwell, SC); the Northwest Compact (Hanford, WA); or the Rocky Mountain Compact (Beatty, NV). For continued access, these states and compacts are subjected to a series of milestones, penalties and incentives intended to assure that when the interim access period ceases, LLRW would be safely managed at the state or compact level. As to the January 1, 1990 milestone, the Act states:

"By January 1, 1990—

"(i) a complete application * * * shall be filed for license to operate a (LLRW) disposal facility within each non-sited compact region * * * ; or

"(ii) The Governor * * * of any State * * * shall provide a written certification to the Nuclear Regulatory Commission * * *" (42 U.S.C. section 2021e, subd. (1)(C).)

The following certification is in compliance with the latter provision:

I, George S. Mickelson, Governor of the state of South Dakota, certify to the U.S. Nuclear Regulatory Commission that the state of South Dakota will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within the state of South Dakota and requiring disposal after December 31, 1992. The enclosure describes the actions that will be taken to ensure that such capacity exists.

In making this certification, note the following:

1. The information regarding storage requirements was provided to the state of South Dakota by the licensees and/or generators.

2. It is assumed the current federal regulatory framework will not change, that nuclear licensees will obtain the necessary permits or approvals, and the federal agencies will respond in a timely manner to their applications.

3. The one cubic foot of mixed waste generated in the state of South Dakota falls under the U.S. Nuclear Regulatory Commission's biomedical exemption (10 CFR 20.306) or is held for decay and disposed of as hazardous waste. The amount of and management procedure for mixed waste in South Dakota are not expected to change in the foreseeable future.

Very truly yours,

George S. Mickelson,

Governor.

December 12, 1989.

The Honorable Kenneth M. Carr,
Chairman, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dear Chairman Carr: I am pleased to provide you this certification under the federal Low-Level Radioactive Waste Policy Act, as amended, in fulfillment of the third milestone specified in Section 5(e) (1) (C) of that Act regarding action a state must take by January 1, 1990.

The requirements of section 5(e) (1) (C) can be satisfied by a state either filing a complete application for a license for disposal facility by January 1, 1990 or by a written certification that the state will be capable of providing for, and will provide for, the storage management, or disposal of low-level radioactive waste (LLW) generated within the state and requiring disposal after December 31, 1992, and including a description of the actions that will be taken to ensure that such capacity exists.

Texas has made excellent progress toward filing a license application for a specific site, as discussed below. However, it now appears that such a license application will not be filed until mid-1990. Accordingly, I am submitting this letter certification, including Attachment A, in satisfaction of Section 5(e) (1) (C) (ii) of the Act.

As early as 1980, Texas recognized that the safe disposal of LIW was becoming a problem as our hospitals and research facilities began to run short of storage space and disposal facilities for the waste. The Texas Legislature responded in 1981 by passing the Texas Low-Level Radioactive Waste Disposal Authority Act. That act created the Texas Low-Level Radioactive Waste Disposal Authority with the mandate to develop, finance, and operate a disposal facility for Texas-generated LLW.

The statewide search for suitable LLW disposal areas was begun in earnest in 1982, several years before most other states had begun to seriously address the issue. In 1985, the legislature revised the Authority's act to require that preference be given in the site search to state-owned land, so that by late 1986, the Authority's Board of Directors had chosen two potential sites on state-owned properties located in far west Texas. Further refinement to the Texas act in 1987 allowed the Authority to focus its full attention on the potential sites.

The Authority has been conducting a full technical review on one of the sites—the Fort Hancock site—since early 1988. This detailed study allowed the Authority to designate, on November 16, 1989, the Fort Hancock site as the proposed Texas LLW disposal facility location. The authority is currently preparing an application for a facility operating license which will be submitted to the appropriate state regulatory agency by mid-1990. The current timetable calls for a Texas LLW disposal facility to be operational by June 1993.

I am proud of the progress that the State of Texas has made in meeting its federal and state mandated responsibilities in the area of LLW management and disposal. During the seven-year period since 1982, Texas has fully complied with the milestones of the federal act. The LLW program has been adequately funded and supported by the legislature and the Governor's Office. I understand that Texas is one of only two states that has actually identified one preferred site for a disposal facility. Our program enjoys a nationally-recognized reputation for efficiency and competence.

The attachment to this letter sets out our further commitment to take those necessary steps to ensure that LLW is safety managed in the future. Therefore, I certify that the State of Texas is capable of providing for and will provide for, the storage, disposal, or management of LLW generated and requiring disposal after December 31, 1992, and will take the actions described in the attachment to ensure such capabilities.

Sincerely,

William P. Clements, Jr.,

Governor.

December 15, 1989.

Re: Compliance with January 1, 1990, Milestone of Low-Level Radioactive Waste Policy Amendments Act of 1985.

Mr. Robert M. Bernero,
Director, Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission, Washington, D.C. 20555.

Dear Mr. Bernero: Section 5(e) the of Low-Level Radioactive Waste Policy Amendments Act of 1985 (Act) sets forth milestone requirements for continued access to regional low-level radioactive waste disposal facilities. Under Section 5(e)(1)(C), states and compacts must, by January 1, 1990, either:

1. Submit a complete license application to the U.S. Nuclear Regulatory Commission (NRC) or an Agreement State [Section 5(e)(1)(C)(i)]; or

2. Provide to NRC a written certification by the Governor that the state will be capable of providing for, and will provide for, storage, disposal, or management of any low-level radioactive waste generated within the state and requiring disposal after 1992 [Section 5(e)(1)(C)(ii)].

States or compacts that do not meet the milestone face loss of surcharge rebates from the U.S. Department of Energy as well as denial of access by the sited states to the regional disposal facilities (Barnwell, Hanford, and Beatty).

By this letter, I certify that the State of West Virginia is capable of providing for, and commits to providing for, management of all low-level radioactive waste generated within our borders and requiring disposal after December 31, 1992. This will be accomplished by directing all generators to store their waste on site for the required interim period and by assuring that other options are available for those that cannot store on site. The Appalachian States Compact is progressing steadily toward operation of a new disposal facility. The regional disposal facility, scheduled for operation in Pennsylvania by July 1995, will safely handle the entire region's low-level radioactive waste.

The party states and the Compact will not be in a position to comply with the requirement to have an operating disposal facility by January 1, 1993. However, we anticipate meeting the deadline of January 1, 1996, to have an operating facility. There will thus be a period of approximately two and one half years following the 1993 milestone date when waste from the party states will need to be managed in an interim fashion. I will implement a follow-up program to ensure that all commitments are being met.

The Low-Level Radioactive Waste Disposal Act, enacted in 1988, provides necessary authority for development of the disposal facility and for overall management of the state's low-level waste. The West Virginia Department of Health has been authorized to implement the program and will be responsible for implementing the interim waste management plan as well.

We have taken steps as an individual party state and as part of the Appalachian States Compact to plan for interim waste management from 1993 through 1995. The steps include the following:

—Identifying sources and projecting the volume and types of low-level radioactive waste requiring management after December 31, 1992.

—Preparing an interim management strategy to handle all of the waste requiring such interim management.

—Determining that the strategy is feasible within existing legal authorities and consistent with applicable regulatory frameworks.

—Assigning responsibiltiies for implementation.

The information supporting each of these steps is contained in the attachment to this letter entitled *Implementation Plan for Interim Low-Level Waste Management, Appalachian States Compact.* The attachment is hereby incorporated in this certification.

The plan is based on conditions existing in today's environment and on information provided by low-level waste generators. The State of West Virginia commits to implementing this interim management plan to the best of its ability. It should also be noted that while the State intends to implement and closely monitor this approach, there is no intention to assume title or liability for the waste in the interim management period from 1993 through 1995.

The State of West Virginia is confident that this approach meets all criteria imposed by the Low-Level Radioactive Waste Policy Amendments Act of 1985. Should you have any questions about this submittal, please do not hesitate to contact George Lilley, Jr., Ed.D., Acting Director, Division of Health.

Very truly yours,

Gaston Caperton,

Governor.

[FR Doc. 90–3359 Filed 2–12–90; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27681; File No. SR-AMEX-90-02]

Self-Regulatory Organizations; Notice of Proposed Rule Change by American Stock Exchange, Inc. Relating to Records of Settlement Hearings

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 30, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 Amex proposes to amend Exchange Rule 8 to specify that a record of a settlement disciplinary hearing may be made by tape recording rather than stenographic reporter. The proposal also provides that such records routinely need not be transcribed.

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 comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose—The purpose of the proposed rule change, which will specify that a record of a settlement disciplinary hearing may be made by tape recording rather than stenographic reporter, is to clarify the record requirement set forth in Exchange Rule 8. Rule 8 of the Amex Rules of Procedure, which applies to disciplinary proceedings, provides that a stenographic record must be made of every meeting of a Disciplinary Panel ("Panel") at which evidence or testimony is presented and requires that the record be transcribed. Historically, the Exchange also has made a stenographic record of non-contested hearings conducted solely for the purpose of allowing a Panel to consider settlement agreements reached between the Exchange and respondents charged with disciplinary violations.

The Exchange proposes to amend Rule 8 to indicate that records of settlement hearings may be made by tape rather than stenographic recording and to provide that such records need not routinely be transcribed. This proposal is prompted by budgetary concerns, given the significant cost of having a professional court reporter attend and transcribe settlement hearings where the need for a transcript is unlikely to arise. As noted above, Rule 8 refers to hearings at which evidence or testimony is presented. Evidence or testimony regarding the merits of a case is not permitted at settlement hearings. Because there are not facts or rules in dispute, settlement hearings are held only to allow Panels to review and consider Stipulations of Fact and Consents to Penalty negotiated and agreed to by the Exchange's Enforcement Department and the respondents involved. Accordingly, the existing Rule 8, read literally, does not require a stenographic record of a settlement hearing. The Exchange, nevertheless, believes it is advisable to amend the Rule to so specify and to remove any possible ambiguity.

The pertinent provisions of the Act regarding the conduct of self-regulatory organization disciplinary proceedings require only that a record of such proceedings must be kept, but the provisions do not specify tht the record must be in stenographic form or transcribed. Moreover, the need to routinely prepare transcripts of settlement hearings for purposes of possible review is limited because there is no right of appeal from a decision of a Disciplinary Panel in a settlement proceeding. In this regard, the revised rule provides that the tape recording need be transcribed only upon the request of a respondent, the Exchange, or the Panel, or if review of the Panel's determination is sought by the Board of Governors.

2. Basis—The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of sections 6(b)(5) and (7) in particular in that the proposed amendment perfects the mechanism of a free and open market and assists the Exchange in providing a fair procedure for the disciplining of members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer priod (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 Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to detemine 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-2 and should be submitted by March 6, 1990.

For the Commission, by the Divison of Market Regulation, pursuant to delegated authority.

Dated: February 7, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–3352 Filed 2–12–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27682; File No. SR–MSRB–89–13]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Arbitration

On November 16, 1989, the Municipal Securities Rulemaking Board ("MSRB" or "Board") submitted a proposed rule change (File No. SR–MSRB–89–13) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to alter and more clearly define the duties and role of the Director of Arbitration, to reconstitute the Board's Arbitration Committee to eliminate its role in reviewing the Director's case-specific decisions and to remove non-Board members.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 27548 (December 19, 1989), 54 FR 53406. The Commission received no comments on the proposal. This order approves the proposal.

In its filing with the Commission, the Board stated that the proposed rule change removes the Director of Arbitration's membership in, and reporting responsibilities to, the Arbitration Committee; gives the Board's Executive Director responsibility for appointing the Director of Arbitration; and deletes the Code provision allowing for a "Committee designee" to perform certain duties of the Director of Arbitration. The Board's Arbitration Code is being amended to more clearly reflect that the Executive Director currently is responsible for assigning the Director of Arbitration's duties and functions.

The Board also stated that its Arbitration Code currently contains specific provisions for an Arbitration Committee. That Committee is comprised of three Board members (consisting of one bank dealer representative, one public representative, and one securities firm representative), three non-Board members (also consisting of one bank dealer representative, one public representative and one securities firm representative), and the Director of Arbitration. The Board has determined to remove the Director of Arbitration from the Committee membership.

The Board stated that because it had originally contracted with the National Association of Securities Dealers, Inc. ("NASD") to handle Board arbitration cases, the Committee was empowered to review case-specific decisions made by the NASD. The Committee also was authorized to establish and maintain an arbitrator pool and to deny use of the Board's arbitration facilities.

The Board stated that from the inception of its arbitration program it has retained all policy-making authority (through its three Board members on the Arbitration Committee), and that the Board approves all Code amendments. The Board said that it has determined that the Committee's case-specific authority should be deleted from the Code and that the Committee's non-Board members should be removed, thereby eliminating the need to reference the Committee in the Code.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board. In particular, the Commission finds that the proposal is consistent with section 15B(b)(2)(C), which requires Board rules to, among other things, "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest . . . ." The Commission also finds that the proposal is consistent with section 15B(b)(2)(D), which states that the Board shall, if it deems appropriate,

> provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That File No. SR–MSRB–89–13 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: February 6, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–3353 Filed 2–12–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27680; File No. SR–MSRB–89–11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Amending the MSRB's Rule Relating to Disclosures in Connection With New Issues

On November 16, 1989, the Municipal Securities Rulemaking Board ("MSRB" or "Board") submitted a proposed rule change (File No. SR–MSRB–89–11) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to amend MSRB rule G–32 concerning disclosures in connection with new issues to clarify that commercial paper (tax-exempt and taxable) is exempt from the rule's definition of "new issue municipal security."

Notice of the proposed rule change was given in Securities Exchange Act Release No. 27519 (December 7, 1989), 54 FR 51531. The Commission received no comments on the proposal. This order approves the proposal.

MSRB rule G–32 on disclosures in connection with new issues requires a dealer that sells a new issue municipal security to deliver to the customer, no later than the settlement of the transaction, a copy of the official statement in final form prepared by or on behalf of the issuer, or if a final official statement is not being prepared by or on behalf of the issuer, a written notice to that effect. Rule G–32(c)(i) defines the term "new issue municipal securities" to mean:

> Securities of an issue that are sold by a broker, dealer or municipal securities dealer during the underwriting period, but shall not include issues of tax-exempt commercial paper.

In its filing with the Commission, the Board stated that in 1985 it revised rule G–32 to delineate more clearly the responsibilities of dealers that sell new issue municipal securities, as well as to strengthen and facilitate enforcement of the rule. The Board stated that during its deliberation of these amendments, it determined to exclude short-term commercial paper from the definition of new issue securities because issuers of those securities typically provide investors with quarterly disclosure documents although an official statement may not be prepared to accompany any specific issue of these securities. The Board concluded that the disclosure process for these issues assures that investors receive material information pertaining to their investments in these securities and, given the differences between the

disclosure practices for these issues and other types of municipal securities, the Board believed that it would not be appropriate to include these issues in the rule G–32 definition of new issue municipal securities.

The Board also stated in its filing that because the intent of the rule G–32 commercial paper exemption was to exclude all short-term commercial paper, not just tax-exempt commercial paper, it believes that the proposed rule change clarifies this issue.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board. In particular, the Commission finds that the proposal is consistent with section 15B(b)(2)(C), which requires Board rules to, among other things, "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *"

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that File No. SR–MSRB–89–11 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: February 6, 1990.

Jonathan G. Katz,

Secretary,

[FR Doc. 90–3301 Filed 2–12–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27683; File No. SR–NASD–90–4]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment to the Uniform Application for Securities Industry Registration or Transfer, Form U–4, and to the Uniform Termination Notice for Securities Industry, Form U–5

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 19, 1990 the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. 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 NASD has proposed amendments to the Uniform Application for Securities Industry Registration or Transfer ("Form U–4") and the Uniform Termination Notice for Securities Industry Registration ("Form U–5") to strengthen and clarify the language and provisions of these forms.

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 NASD 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 NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to make certain amendments to Form U–4 and to Form U–5. Over the last several years, the North American Securities Administrators Association (NASAA), the NASD, the New York Stock Exchange (NYSE) and other self-regulatory organizations accumulated a number of requested modifications to clarify and strengthen the existing provisions contained in these forms. Representatives of NASAA, the NASD and the NYSE considered the requested modifications and proposed that certain modifications be adoptd by their respective organizations. NASAA and the NASD Board of Governors have approved the modification which are the subject of this filing.

The Form U–4 is being amended to accomplish the following:

1. Clarify and make easier to read the language used in the form.

2. Provide for, in Item 11 on Page 1, the addition or deletion of those positions and examinations which have been added or deleted since the last revision of the Form U–4 in 1985.

3. Revise Item 5 on Page 4 to include clarifying language making the individual aware that in consenting to arbitrate, an arbitration award may be entered as a judgment in any court of competent jurisdiction.

4. Add a new Item 7 on Page 4 to specifically provide self-regulatory organizations with a consent to service provision to act as an adjunct to an identical provision in Form BD, the uniform application for broker-dealer registration.

5. Revise Item 8 on Page 4 to add language to strengthen the recent implementation of article III, section 27 of the Rules of Fair Practice relating to the requirement that a member provide a terminated employee with a copy of its Form U–5 and provide a specific release of liability for furnishing information relating to a termination.

The modification to Form U–5 involves the inclusion of a Disclosure Reporting Page ("DRP") similar to the DRP used in conjunction with Form U–4 as well as modifications to the Form U–5 instructions as they relate to the DRP. In addition, language has been added to remind the member of their continuing obligation under article IV, section 3 of the NASD Bylaws to amend the Form U–5 to report changes in status of a reportable matter until a final disposition is reached.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. In pertinent part, section 15A(b)(6) mandates that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, among other things. The NASD believes the proposed rule change is fully consistent with the NASD's authority to adopt appropriate qualification and registration requirements for persons associated with NASD members or applicants for NASD membership. Article IV, section 2 of the NASD By-laws authorizes the Board to prescribe the form used by any person who wishes to make application for registration with the NASD.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its 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 Comment

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 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 6, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: February 7, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-3354 Filed 2-12-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17333; 812-7307]

Templeton Funds, Inc., et al.; Notice of Application

February 6, 1990.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Templeton Funds, Inc.; Templeton Emerging Markets Fund, Inc.; Templeton Global Funds, Inc.; Templeton Global Governments Income Trust; Templeton Global Income Fund, Inc.; Templeton Growth Fund, Inc.; Templeton Income Trust; Templeton Global Opportunities Trust; Templeton Real Estate Trust; Templeton Tax Free Trust; Templeton Value Fund, Inc.; Templeton Variable Annuity Fund; Templeton Variable Products Series Fund; Chubb America Fund, Inc., on behalf of World Growth Stock Portfolio; and any registered investment company or series thereof for which Templeton, Galbraith & Hansberger, Ltd., Templeton Investment Counsel, Inc., Templeton Investment Counsel Limited, Templeton Funds Distributor, Inc., or an affiliate thereof act as investment adviser or principal underwriter (collectively, the "Funds" or "Applicants").

Relevant 1940 Act Sections: Order requested under section 6(c) that would grant an exemption from the provisions of section 12(d)(3) of the 1940 Act and Rule 12d3-1 thereunder.

Summary of Application: Applicants seek a conditional order permitting each Fund, and each of their series now or hereafter to be formed, to acquire equity and convertible debt securities issued by foreign issuers who derived more than 15% of their gross revenue from their activities as brokers, dealers, underwriters or investment advisers in their most recent fiscal year in accordance with the conditions of the proposed amendments to Rule 12d3-1 under the 1940 Act.

Filing Date: The application was filed on April 27, 1989, and was amended and restated on January 8, 1990 and February 5, 1990.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on March 5, 1990, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicants (except Chubb America Fund, Inc.), 700 Central Avenue, St. Petersburg, Florida 33733; Chubb America Fund, Inc., One Granite Place, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, at (202) 272-2856 or Jeremy N. Rubenstein, Branch Chief, at (202) 272-2847 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each Applicant is registered under the 1940 Act as a management investment company. Applicants seek relief from section 12(d)(3) of the 1940 Act and Rule 12d3-1 thereunder to invest in securities of foreign securities companies to the extent allowed by the proposed amendments to Rule 12d3-1. See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989) ("Proposing Release"). The acquisitions of the securities issued by foreign securities companies will satisfy each of the requirements of the proposed amendments. The requested relief would allow further diversification of Applicants' portfolios through investment in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as brokers, dealers, underwriters or investment advisers.

Applicants' Legal Conclusions

1. Section 12(d)(3) of the 1940 Act prohibits an investment company from acquiring any security issued by any person who is a broker, a dealer, an underwriter or an investment adviser. Rule 123d-1 provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions in the rule. Subparagraph (b)(4) of Rule 12d3-1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one that is traded in the United States markets, securities issued by many foreign securities firms do not meet this test. Accordingly, Applicants seek an exemption only from the "margin security" requirements of Rule 12d3-1.

2. The proposed amendments to Rule 12d3-1 provide an exception to the

"margin security" requirement for the equity securities of foreign securities companies that meet liquidity and other criteria comparable to those required for inclusion of securities traded in the United States on the list of over-the-counter margin stocks. See Proposing Release.

Applicants' Condition

Applicants agree to the following condition in connection with the relief requested:

The Applicants will comply with the provisions of the proposed amendments to Rule 12d3–1, and as such amendments may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonahan G. Katz,

Secretary.

[FR Doc. 90–3355 Filed 2–12–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0287]

Mid-State Capital Corp.; License Surrender

Notice is hereby given that Mid-State Capital Corporation, P.O. Box 7554, Waco, TX 76714, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Mid-State Capital Corporation was licensed by the Small Business Administration on March 4, 1985.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on January 17, 1990 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: February 2, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90–3386 Filed 2–12–90; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–0353]

Fairway Capital Corp.; Issuance of a Small Business Investment Company License

On November 30, 1989, a notice was published in the **Federal Register** (54 FR 49383) stating that an application has been filed by Fairway Capital Corporation, 285 Governor Street, Providence, Rhode Island 29006, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license to operate as a small business investment company.

Interested parties were given until close of business December 30, 1989 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01–0353 on January 31, 1990, to Fairway Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: February 5, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90–3387 Filed 2–12–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Baltimore/Washington International Airport; Baltimore, MD

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice; correction.

SUMMARY: This notice corrects errors in the dates previously published in the **Federal Register** January 8, 1990 (55 FR 689). The noise compatibility program being reviewed by the FAA will be approved or disapproved on or before June 26, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 28, 1989. The public comment period ends February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA Eastern Regional Office, Airports Division, AEA 610, Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430; telephone (718) 917–0902.

Louis P. DeRose,

Assistant Manager, Airports Division.

[FR Doc. 90–3379 Filed 2–12–90; 8:45 am]

BILLING CODE 4910–13–M

Acceptance of Noise Exposure Maps for Lanai Airport, Lanai City, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the State of Hawaii, Department of Transportation for Lanai Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Henry Sumida, Manager, Airports District Office, HNL–600, Federal Aviation Administration, Honolulu Airports District Office, P.O. Box 50344, Honolulu, Hawaii 96850–001, Telephone 808/541–1232.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Lanai Airport are in compliance with applicable requirements of part 150, effective February 1, 1990.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing

noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the State of Hawaii, Department of Transportation. The specific maps under consideration are Figures 4–1, 6–2 and 6–3 in the submission. The FAA has determined that these maps for Lanai Airport are in compliance with applicable requirements. This determination is effective on February 1, 1990. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which concultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, room 6E25, 15000 Aviation Boulevard, Hawthorne, California 90261.

State of Hawaii, Department of Transportation, Airports Division, Honolulu International Airport, Gate 31, Honolulu, Hawaii 96819.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on February 1, 1990.

Herman C. Bliss,

Manager, Airports Division, AWP–600.

[FR Doc. 90–3380 Filed 2–12–90; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Syracuse Hancock International Airport; Syracuse, NY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice; correction.

SUMMARY: This notice corrects errors in the dates previously published in the **Federal Register** January 22, 1990 (55 FR 2194). The noise compatibility program being reviewed by the FAA will be approved or disapproved on or before June 27, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 29, 1989. The public comment period ends February 27, 1990.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA Eastern Regional Office, Airports Division, AEA–610, Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430; telephone (718) 917–0902.

Louis P. DeRose,

Assistant Manager, Airports Division.

[FR Doc. 90–3381 Filed 2–12–90; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–90–8]

Petitions for Exemption; Summary and Disposition

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 of 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: March 5, 1990.

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 February 7, 1990.

Deborah Swank,

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

Petitions for Exemption

Docket No.: 26036
Petitioner: Donald H. Tompkins
Sections of the FAR Affected: 14 CFR Section 121.383(c)
Description of the Relief Sought: To allow petitioner to continue to serve as a pilot in air carrier operations past March 30, his 60th birthday.

Docket No.: 25058
Petitioner: Gallup Flying Service
Sections of the FAR Affected: 14 CFR Section 43.3(g)
Description of the Relief Sought: To allow petitioner to remove and install seats in Cessna models 206, 210, 310, 340, and 414.

Docket No.: 23907
Petitioner: Bolivar Aviation

Sections of the FAR Affected: 14 CFR Section 141.65
Description of the Relief Sought: To Extend Exemption No. 4045B to allow Bolivar Aviation to recommend graduates of its FAA approved certification courses for flight instructor and airline transport pilot certificates and ratings without taking the FAA's written tests.

Docket No.: 23685
Petitioner: Department of the Navy, Marine Corps Air Station, Beaufort, SC
Sections of the FAR Affected: 14 CFR Sections 101.23(b) and 101.23(c)
Description of the Relief Sought: To allow use of Missile Plume Simulator GTR–18 Class B Fireworks "Smokey Sam," within established controlled firing areas at Marine Corps Air Station Beaufort and Beaufort County Airport, South Carolina.

Docket No.: 26094
Petitioner: United Express
Sections of the FAR Affected: 14 CFR Section 121.337(b) (1 thru 8)
Description of the Relief Sought: To allow United Express to operate five Short Brothers Model SD 3–60 aircraft that are not equipped with permanently installed cockpit oxygen systems.

Docket No.: 26014
Petitioner: Aloha Airlines, Inc. and Hawaiian Airlines, Inc.
Sections of the FAR Affected: 14 CFR Section 91.70(a)
Description of the Relief Sought: To allow the petitioners to operate at indicated airspeeds greater than 250 knots when operating between 3 and 12 miles of the state of Hawaii below 10,000 feet mean sea level.

Docket No.: 25381
Petitioner: Ohio University
Sections of the FAR Affected: 14 CFR Section 91.31(a)
Description of the Relief Sought/ Disposition: To allow the operation of Beechcraft Bonanza, Model A–36, Serial Number 1491, beyond certain limitations presented in the pilot's operating handbook for this aircraft. The petition specifically requested relief from the limitation which prohibits operation of the aircraft under icing conditions.
DENIAL, January 25, 1990, Exemption No. 5142

Docket No.: 18114
Petitioner: Federal Express Corporation
Sections of the FAR Affected: 14 CFR Sections 121.547(c) and 121.583(a)
Description of the Relief Sought/ Disposition: To carry a reporter, photographer, or journalist aboard its B–747 and DC–8 airplanes without complying with the passenger-carrying requirements of Part 121 of the FAR, subject to conditions and limitations.
GRANT, January 5, 1990, Exemption No. 2600G

Docket No.: 25565
Petitioner: Horizon Air Industries, Inc.
Sections of the FAR Affected: Special Federal Aviation Regulation (SFAR) No. 38–2
Description of the Relief Sought/ Disposition: To permit the application of the Section 121.9 in the conduct of operations with 19-passenger Swearingen (SA227) airplane at Horizon.
DENIED, December 12, 1990, Exemption No. 5130

Docket No.: 25652
Petitioner: Cochise Community College
Sections of the FAR Affected: 14 CFR Part 141, Appendix H, paragraph (3)(c)(1) and (3)
Description of the Relief Sought/ Disposition: To allow students to enroll in the ground curriculum of the petitioner's Part 141 Flight Instructor Airplane Certification Course and Flight Instructor-Instrument Airplane Rating Course prior to completing the flight portion of the Commercial Pilot-Airplane Certification Course and Instrument-Airplane Rating Course.
DENIED, November 6, 1990, Exemption No. 5111

Docket No.: 26013
Petitioner: Horizon Air Industries, Inc.
Sections of the FAR Affected: 14 CFR Section 135.225(e)(1)
Description of the Relief Sought/ Disposition: To allow petitioner's pilots to take off under instrument flight rules (IFR) at any Canadian civil airport listed in its operations specifications when the visibility minimum of any airport is less than 1 statute mile but not less than the minimums prescribed by Transport Canada, subject to conditions and limitations.
PARTIAL GRANT, December 8, 1989, Exemption No. 5123

Docket No.: 26116
Petitioner: Trans Continental Airlines
Sections of the FAR Affected: 14 CFR 121.337(f)
Description of the Relief Sought/ Disposition: To extend compliance deadline for installing portable protective breathing equipment on its four Douglas DC–6 and three CV–440 airplanes until May 31, 1990.
GRANT, January 31, 1990, Exemption No. 5144

Docket No.: 25671
Petitioner: Rocky Mountain Helicopters, Inc.
Sections of the FAR Affected: 14 CFR Section 135.63(c)
Description of the Relief Sought/ Disposition: To allow petitioner's pilots to provide emergency helicopter hospital service without preparing a load manifest for multiengined helicopters. It would also exempt them from preparing the load manifest in duplicate.
DENIED, August 14, 1989, Exemption No. 5087

Docket No.: 23336
Petitioner: Simulator Training, Inc.
Sections of the FAR Affected: 14 CFR 61.58(c)(1)
Description of the Relief Sought/ Disposition: To extend Exemption No. 4797 which allows petitioner to conduct the entire 24-month pilot-in-command proficiency check in a simulator subject to certain conditions.
GRANT, November 21, 1989, Exemption No. 4797E

Docket No.: 25969
Petitioner: Eastern Airlines, Inc.
Sections of the FAR Affected: 14 CFR 45.13(b)
Description of the Relief Sought/ Disposition: To allow the removal of aircraft engine identification plates and the placement of the same data plate on a different engine assembly.
DENIED, January 29, 1990, Exemption No. 5143

[FR Doc. 90–3382 Filed 2–12–90; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Alameda County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Alameda County, California.

FOR FURTHER INFORMATION CONTACT: Mr. C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915. Telephone: 916/551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an environmental impact statement (EIS) on a proposal to replace a 1.5-mile section of I–880 in the City of Oakland, California which was destroyed during

the earthquake that struck the San Francisco Bay Area on October 17, 1990. The proposed project will reestablish continuity of I–880 between the I–880/I–980 junction to the I–880/I–80/I–580 junction near the San Francisco-Oakland Bay Bridge toll plaza.

In addition to the No Build Alternate, various design concepts within three alternate corridors are being considered. They are as follows:

• Existing I–880 corridor commonly referred to as the "Cypress Corridor." Design concepts include an elevated structure combination.

• The SP (Southern Pacific Railroad) corridor. Design concepts include a single-level elevated facility and a combination elevated/at-grade facility on various alignments within the corridor.

• The I–980/I–580 corridor. Design concepts include widening the existing freeways and separate, single-level elevated structures along both sides of the existing freeways.

The proposed scoping process includes the distribution of the Notice of Preparation to each responsible and trustee agency pursuant to the California Environmental Quality Act, publication of the Notice of Intent in the **Federal Register**, and a scoping meeting to be held at 7 p.m. on February 28, 1990 at Lowell Middle School, 991–14th Street, Oakland. This scoping meeting will be advertised in advance in local newspapers.

A series of public meetings will also be held during the course of the environmental studies to inform and receive input from the public. A draft environmental impact statement will be circulated for public and agency review and comment followed by a formal public hearing. Public notice will be given of the time and place of the meetings and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 90–3341 Filed 2–12–90; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 7, 1990.

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, Public Law 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.

Financial Management Service

OMB Number: 1510–0048.
Form Number: None.
Type of Review: Extension.
Title: Minority Bank Deposit Program Certification Form for Admission.
Description: The increased interest of Financial Institutions to participate in the minority Bank Program, answers the needs of these Financial Institutions to certify for admission into the Program which is provided by this form.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 33.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: Other (once every 3 years).
Estimated Total Reporting Burden: 17 hours.

Clearance Officer: Mary MacLeod (301) 436–5300, Financial Management Service, Room 500–A, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90–3366 Filed 2–12–90; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

February 6, 1990.

The Department of Treasury has made revisions and resubmitted 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, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0008.
Form Number: W–2, W–2P, W–2C, W–2AS, W–2CM, W–2GU, W–2VI, W–3, W–3c, W–3PR, W–3SS.
Type of Review: Resubmission.
Title: Wage and Tax Statements.
Description: Employers report income and withholding information on Form W–2. Payers report pension, annuity, retirement, and IRA distributions on Form W–2P. Forms W–2AS, W–2GU, W–2VI, and W–2CNMI are the U.S. Possessions versions of Form W–2. The Form W–3 series is used to transmit W–2's to SSA. Individuals use Form W–2 to prepare their income tax return.
Respondents: Individuals or households, State of local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 6,192,000.
Estimated Burden Hours Per Response:
W–2: 28 minutes
W–2P: 18 minutes
W–2AS: 20 minutes
W–2GU: 20 minutes
W–2VI: 19 minutes
W–3: 25 minutes
W–3c: 20 minutes
W–3PR: 18 minutes
W–3SS: 19 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6800, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90–3296 Filed 2–12–90; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

February 6, 1990.

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, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0201.
Form Number: 5308.
Type of Review: Extension.
Title: Request for Change in Plan/Trust Year.
Description: Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 480.
Estimated Burden Hours Per Response: 42 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 339 hours.

OMB Number: 1545–0534.
Form Number: 5303.
Type of Review: Revision.
Title: Application for Determination for Collectively Bargained Plan.
Description: IRS uses Form 5303 to get information needed about the finances and operation of employee benefit plans set up by employers under a collective bargaining agreement. The information obtained on Form 5303 is used to make a determination on whether the plan meets the requirements to qualify under section 401(a) and whether the related trust qualifies for exemption under section 501(a) of the Code.
Respondents: State or local governments, Businesses or other for-profit.
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Response:
Recordkeeping: 23 hours, 41 minutes.
Learning about the law or the form: 2 hours, 22 minutes
Copying, assembling, and sending the form to IRS: 1 hour, 4 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 119,025 hours.

OMB Number: 1545–0685.
Form Number: 1363.
Type of Review: Extension.
Title: Export Exemption Certificate.
Description: The form is used by air carriers of property by air to justify the tax-free transport of property. It is used by IRS as proof of tax exempt status of each shipment.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 100,000.
Estimated Burden Hours Per Response:
Recordkeeping: 2 hours, 52 minutes
Learning about the law or the form: 12 minutes
Preparing and sending the form to IRS: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 332,000 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Mangement and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 90–3297 Filed 2–12–90; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

February 6, 1990.

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, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0059.
Form Number: 1303.
Type of Review: Extension.
Title: Ship's Stores Declaration.
Description: Customs Form 1303 is used by the importing carrier to list articles to be retained on board the vessel such as sea stores, ship's stores, or bunker coal or bunker oil.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 8,000.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 26,000 hours.
Clearance Officer: Dennis Dore, (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Mangement and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 90–3298 Filed 2–12–90; 8:45 am]
BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a three-year extension of an unnumbered form entitled "Bureau of Education and Cultural Affairs Grant Application Cover Sheet" (OMB controlled Number 3116–0173). Estimated burden hours per response is one. The cover sheet is used to provide information necessary for complete grant review. Respondents will be required to respond only one time.

DATES: Comments must be received by March 15, 1990.

Copies: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485–7503; and OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Bureau of Educational and Cultural Affairs Grant Application Cover Sheet.

Form Number: Unnumbered.

Abstract: USIA's Bureau of Educational and Cultural Affairs uses this form to gather various types of information necessary for adequate grant panel review. The cover is also designed to assist program officers in grant monitoring once an award has been made. Grants are awarded by USIA in the furtherance of educational and cultural programs conducted under the authority of the Mutual Education and Cultural Exchange Act of 1961.

Proposed Frequency of Responses:
No. of Respondents—600.
Recordkeeping Hours—0.
Total Annual Burden—600.

Dated: February 2, 1990.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89–3318 Filed 2–12–89; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

RIN 2900–AE 38

Loan Guaranty: Percentage To Determine Net Value

AGENCY: Veterans Benefits Administration.

ACTION: Notice.

SUMMARY: This notice provides information to participants in the Department of Veterans Affairs (VA) loan guaranty program concerning the percentage to be used in determining the net value of a property to the Secretary under the provisions of 38 CFR 36.4301. The percentage applicable for Fiscal Year 1990 is 11.45 percent.

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (202) 233–3668.

SUPPLEMENTARY INFORMATION: VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, et seq. The formulas for determining whether VA will offer the lender an election to convey the property to the VA are set forth at 38 CFR 36.4320. A key component of this is the "net value" of the property to the Government, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration and resale. Under the definition, VA will review each year the average operating expenses incurred for properties acquired under 38 CFR 36.4320 which were sold during the preceding three fiscal years and the average administrative cost to the government associated with the property management activity. This section provides that VA will annually update the percentage and publish a notice of the new percentage in the Federal Register. For Fiscal Year 1989, the percentage was 10.63 percent. For Fiscal Year 1990, the percentage will be 11.45 percent, based upon the operating expenses incurred for Fiscal Years 1987, 1988 and 1989. Accordingly, VA will subtract 11.45 percent from the fair market value of the property to be liquidated in order to arrive at the "net value" of the property to VA. The new percentage will be used in "net value" calculations made by VA on or after February 13, 1990.

Dated: December 12, 1990.

R.J. Vogel,

Chief Benefits Director.

[FR Doc. 90–3327 Filed 2–12–90; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Proposed Amendment of Systems Notice; Additional Routine Use Statement

Notice is hereby given that the Department of Veterans Affairs (VA) is considering adding a new routine use statement to the system of records entitled, "Patient Medical Records—VA" (24VA136) which is set forth on pages 780–782 of the **Federal Register** publication, "Privacy Act Issuances, 1987 Compilation, Volume V" and amended at 53 FR 49818, December 9, 1988.

Pub. L. 99–272, The Veterans' Health Care Amendments of 1986, established an income-based means test for determining eligibility for hospital, nursing home, and outpatient medical care in VA facilities for nonservice-connected veterans. Veterans with incomes in excess of the means test income levels may obtain care in VA facilities if resources and facilities are available and if they agree to pay a copayment to VA. Veterans with incomes in excess of the means test income levels who do not agree to pay copayments to the VA are not eligible for VA medical care and may be treated only on the basis of a humanitarian emergency.

In those cases where an individual agrees to pay a copayment in order to be eligible for medical care and fails to do so, the individual is notified and given an opportunity to pay the indebtedness. As part of VA's debt collection efforts, where a veteran after notification of the indebtedness fails to make payment, VA will disclose information related to the indebtedness to the Internal Revenue Service (IRS) for the purpose of seeking reimbursement of the debt from the individual's income tax return. Prior to such disclosures, VA will notify the debtor of the proposed referral to IRS to allow final due process and the last opportunity to pay the debt. The routine use is proposed to permit the disclosure

of information related to the indebtedness to the IRS for the purpose of seeking reimbursement when the individual fails to make payment on the debt.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received before March 15, 1990, will be considered. All written comments received will be available for public inspection only in room 132 of the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until March 15, 1990.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the Federal Register by VA, the routine use statement included herein is effective March 15, 1990.

Approved: January 30, 1990.

Edward G. Derwinski

Secretary.

Notice of System of Records

In the system identified as 24VA136, "Patient Medical Records-VA" appearing on pages 780–782 of the Federal Register publication, "Privacy Act Issuances, 1987 Compilation, Volume V" and amended at 53 FR 49818, December 9, 1988, the following addition is made:

24VA136

SYSTEM NAME:

Patient Medical Records-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

29. The name of a veteran, or other beneficiary, other information as is reasonably necessary to identify such individual, and any information concerning the individual's indebtedness by virtue of a person's participation in a medical care and treatment program administered by VA, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of indebtedness arising from such program by the withholding of all or a portion of the person's Federal income tax refund. These records may be disclosed as part of a computer matching program to accomplish these purposes.

[FR Doc. 90–3328 Filed 2–12–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 30
Tuesday, February 13, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

Meeting Agenda

TIME AND DATE: Monday, February 12, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

**Choking Hazard Options*

The staff will brief the Commission on regulatory options available to the Commission to address choking hazards associated with toys and other children's articles. This is a continuation of the briefing on this subject held on Thursday, February 8, 1990.

*The Commission by unanimous vote decided that agency business required holding this meeting without the normal seven day advance notice.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–3498 Filed 2–9–90; 1:47 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Closed Meeting

February 7, 1990.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–4109), 5 U.S.C. 552b:

DATE AND TIME: February 14, 1990, 8:30 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Project No. 2545, Washington Power Company

(2) Project Nos. 2404–008 and 2404–009, Alpena Power Company

(3) Project No. 9282, Winslow H. MacDonald

(4) Project No. 1413, Island Park Resorts, Inc.

(5) Project No. 6572, Indian Falls Hydro, Inc.

(6) Project No. 3071, Rapidan Development Ltd.

(7) Project 2161, Rhinelander Paper Company

(8) Project No. 7178, Arbuckle Mountain Hydro Partners

(9) Project No. 7477, Burt Dam Power Company

(10) Project No. 9000, STS Consultants, Ltd., Morrow Dam

(11) Project No. IN85–5–000, Herbert D. Patrick

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357–8400.

Lois D. Cashell,

Secretary.

[FR Doc. 90–3421 Filed 2–8–90; 4:48 pm]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Meeting

February 7, 1990.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–49), 5 U.S.C. 552B:

DATE AND TIME: February 14, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 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 Reference and Information Center.

Note: The agenda format has been revised to incude new agenda prefixes: CAH, CAE, H, E, PR, PF and PC. All parts of the consent agenda will continue to be called and voted on as a single group. Consent items which are called separately at the request of a member of the Commission will be called at the end of that part of the regular agenda for the applicable substantive area (for example, CAH–5 would be considered after the last regular Hydro agenda item).

Consent Agenda—Hydro, 909th Meeting—February 14, 1990, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 7497–005, Metropolitan Sewerage District of Buncombe County, North Carolina

CAH–2.
Project No. 2716–018, Virginia Electric and Power Company

CAH–3.
Project No. 8291–004, North Star Hydro, Ltd.

CAH–4.
Project No. 10635–001, Town of Summersvile, West Virginia

CAH–5.
Project No. 2971–005, Allegheny Electric Cooperative
Project No. 7914–007, Allegheny Hydropower, Inc.
Project No. 8908–007, Borough of Brownsville, Pennsylvania, Washington County Board of Commissioners, and Pennsylvania Renewable Resources, Inc.
Project No. 4675–007, Borough of Charleroi, Pennsylvania, Washington County Board of Commissioners, and Pennsylvania Renewable Resources, Inc.
Project No. 4474–009, Borough of Cheswick, Pennsylvania, and Allegheny Valley North Council of Governments
Project No. 7660–005, Borough of Point Marion, Pennsylvania, and Noah Corporation
Project No. 7307–005, City of Grafton, West Virginia
Project No. 6939–009, City of Jackson, Ohio
Project Nos. 6901–006 and 6902–009, City of New Martinsville, West Virginia
Project No. 3218–005, City of Orrville, Ohio
Project No. 4017–006, City of Pittsburgh, Pennsylvania
Project No. 10098–002, City of Point Pleasant, West Virginia, and WV Hydro, Inc.
Project No. 9999–003, City of St. Marys, West Virginia, and WV Hydro, Inc.
Project Nos. 7568–004 and 7909–005, Allegheny County, Pennsylvania
Project No. 9042–004, Gallia Hydro Partners
Project Nos. 7399–007, 8990–003 and 8654–005, Noah Corporation
Project Nos. 3490–006 and 7041–006, Potter Township, Pennsylvania
Project No. 6998–003, Upper Mississippi Water Company, Inc.
Project No. 10332–002, WV Hydro, Inc.

CAH–6.
Project No. 4639–010, Christine Falls Corporation
Project Nos. 4900–030, 5000–018, 9685, 9709–014 and 9821–023, Trafalgar Power, Inc.

CAH–7.
Project No. 9885–004, Environmental Energy Company

CAH–8.
Project No. 8662–007, Nockmaxin Hydro Associates
CAH–9.
Project No. 3194–007, Joseph M. Keating
CAH–10.
Project No. 8863–004, Northeast Hydrodevelopment Corporation
CAH–11.
Docket No. RM87–33–002, Hydroelectric Relicensing Regulations Under the Federal Power Act
CAH–12.
Project No. 137–002, Pacific Gas and Electric Company

Consent Agenda—Electric

CAE–1.
Docket No. ER90–56–000, Minnesota Power & Light Company
CAE–2.
Docket No. ER90–116–000, Puget Sound Power & Light Company
CAE–3.
Docket No. ER90–80–000, Doswell Limited Partnership
CAE–4.
Docket No. ER89–672–001, Public Service Company of Indiana
CAE–5.
Docket No. ER85–477–006, Southwestern Public Service Company
CAE–6.
Docket No. EL89–50–001, Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Company
Docket No. EL89–51–001, Lubbock Power & Light Company of the City of Lubbock, Texas, and the Cities of Brownfield, Floydada, and Tulia, Texas v. Southwesern Public Service Company
CAE–7.
Docket No. ER90–26–002, American Electric Power Service Corporation
Docket No. ER89–470–003, AEP Generating Company
CAE–8.
Docket No. ER76–205–006, Southern California Edison Company
CAE–9.
Docket No. EL89–43–001, Boston Edison Company v. The Town of Concord, Massachusetts
CAE–10.
Docket No. EL84–560–023, Union Electric Company
CAE–11.
Docket No. EL89–26–000, Southern California Edison Company v. Arizona Public Service Company
Docket No. FA89–265–000, Arizona Public Service Company
CAE–12.
Docket No. FA85–63–002, Long Island Lighting Company
CAE–13.
Omitted
CAE–14.
Docket No. QF88–189–001, HL Power Company

Consent Agenda—Gas and Oil

CAG–1.
Docket Nos. RP90–59–000 and 001, Northwest Pipeline Corporation
CAG–2.
Docket No. RP88–69–003, Stingray Pipeline Company
CAG–3.
Docket No. RP90–72–000, Carnegie Natural Gas Company
CAG–4.
Docket No. TA90–1–27–000, North Penn Natural Gas Company
CAG–5.
Docket No. TM90–3–18–000, Texas Gas Transmission Corporation
CAG–6.
Docket No. TQ90–1–82–000, Viking Gas Transmission Company
CAG–7.
Docket No. TQ90–5–4–000, Granite State Gas Transmission, Inc.
CAG–8.
Docket No. RP90–47–000, Colorado Interstate Gas Company
CAG–9.
Docket Nos. RP90–25–003, 004, TM90–2–42–002 and 003, Transwestern Pipeline Company
CAG–10.
Docket Nos. TA89–1–17–000 and 001, Texas Eastern Transmission Corporation
CAG–11.
Docket Nos. RP88–94–000, 001, 010, 014, 015, 019, 020 and RP89–189–000, Natural Gas Pipeline of America
CAG–12.
Docket No. RP90–63–000, Bayou Interstate Pipeline System
CAG–13.
Docket No. RP90–68–000, Pelican Intersate Gas System
CAG–14.
Docket Nos. RP87–73–006 and RP90–22–003, Algonquin Gas Transmission Company
CAG–15.
Docket No. RP90–46–001, ANR Pipeline Company
CAG–16.
Docket No. RP90–54–001, ANR Pipeline Company
CAG–17.
Docket No. RP89–135–004, Arkla Energy Resources
CAG–18.
Docket No. RP89–230–004, El Paso Natural Gas Company
CAG–19.
Docket Nos. RP90–50–003 and TM90–4–37–002, Northwest Pipeline Corporation
CAG–20.
Docket No. TA87–1–37–014, Northwest Pipeline Corporation
CAG–21.
Docket No. RM87–5–003, Northern Border Pipeline Company, Ozark Gas Transmission System and Tenneco Gas
Docket No. MG88–41–001, Superior Offshore Pipeline Company and Texas Sea Rim Pipeline, Inc.
CAG–22.
Docket No. OR89–2–001, Trans Alaska Pipeline system
Docket No. IS89–7–002, Amerada Hess Pipeline Corporation
Docket No. IS89–8–002, ARCO Pipe Line Company
Docket No. IS89–10–002, BP Pipelines, Inc.
Docket No. IS89–11–002, Exxon Pipeline Company
Docket No. IS89–12–002, Mobil Alaska Pipeline Company
Docket No. IS89–13–002, Phillips Alaska Pipeline Corporation
CAG–23.
Docket No. RP90–2–001, Williston Basin Interstate Pipeline Company
CAG–24.
Docket No. RP90–6–001, El Paso Natural Gas Company
CAG–25.
Docket No. RP89–196–002, Northwest Pipeline Corporation,
CAG–26.
Docket No. RP89–225–001, South Georgia Natural Gas Company
CAG–27.
Docket Nos. RP86–41–008 and RP87–14–008, Algonquin Gas Transmission Company
CAG–28.
Docket Nos. CP82–487–017, RP84–62–001 and RP84–93–008 (Phase II), Williston Basin Interstate Pipeline Company
CAG–29.
Docket Nos. CP82–487–018 and TA87–4–49–017 (Phase V), Williston Basin Interstate Pipeline Company
CAG–30.
Docket Nos. CP82–487–019, RP84–62–002, RP84–93–009, TA84–2–49–002 and TA85–1–49–004 (Phase II and III), Williston Basin Interstate Pipeline Company
CAG–31.
Docket No. CP82–487–024, Williston Basin Interstate Pipeline Company
CAG–32.
Docket Nos. RP88–67–024, RP88–81–012 and RP88–221–008, Texas Eastern Trasmission Corporation
CAG–33.
Docket No. ST89–4756–000, Supenn Pipeline
CAG–34.
Docket No. ST89–4368–000, SNG Intrastate Pipeline Inc.
CAG–35.
Docket No. ST89–3406–000, K–M Mississippi, Inc.
CAG–36.
Docket No. CP73–184–006, Colorado Interstate Gas Company, a Division of Colorado Interstate Gas Company
Docket No. CI73–485–005, CIG Exploration, Inc.
CAG–37.
Docket No. CI87–290–000, El Paso Production Company
Docket No. CP87–553–000, El Paso Natural Gas Company
CAG–38.
Docket No. CI85–513–012, Tenngasco Gas Supply Company, *et al.*, v. Southland Royalty Company, *et al.*
CAG–39.
Docket No. GP89–49–000, New York State Departemnt of Environmental Conservation, Section 108 NGPA Determination, National Fuel Gas Supply Corporation, Potter No. SC–419 Well, FERC No. JD 83–27247
CAG–40.
Docket No. GP89–38–001, Corinne B. Grace, Complainant v. El Paso Natural Gas Company, Respondent
CAG–41.
Docket No. CP89–252–002, Mississippi Valley Gas Company v. Gulf Fuels Inc. and ANR Pipeline Company

CAG–42.
Docket No. CP88–266–007, Viking Gas Transmission Company
CAG–43.
Docket No. CP88–265–001, Stingray Pipeline Company
CAG–44.
Docket No. CP78–123–030, Northwest Alaskan Pipeline Company
Docket No. RP90–16–001, Northwest Alaskan Pipeline Company
Docket No. CP78–124–015, Northern Border Pipeline Company
Docket No. CP79–400–006, United Gas Pipe Line Company
Docket No. CP79–396–009, Northern Natural Gas Company, Division of Enron Corp. and Natgas (U.S.) Inc.
Docket No. CP90–93–002, Natgas (U.S.) Inc.
Docket No. CI89–348–002, Natgas (U.S.) Inc.
Docket No. RP87–34–001, Northwest Alaskan Pipeline Company
Docket No. RP89–109–001, United Gas Pipeline Company
Docket No. CP88–699–002, Northern Natural Gas Company, Division of Enron Corp.
CAG–45.
Docket Nos. CP87–57–010, CP87–166–008, CP87–316–006, CP87–386–006 and CP87–406–004, Florida Gas Transmission Company
CAG–46.
Docket No. CP85–806–012, Texas Eastern Transmission Corporation
CAG–47.
Docket No. CP82–433–005, Northwest Pipeline Corporation
CAG–48.
Docket No. CP88–825–001, Northwest Pipeline Corporation
CAG–49.
Docket No. CP89–267–001, Atlantic Richfield Company and Intalco Aluminum Corporation
CAG–50.
Docket No. CP87–458–002, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–51.
Docket No. CP88–99–009, Transwestern Pipeline Company
CAG–52.
Docket Nos. CP89–1580–000 and CP86–578–025, Northwest Pipeline Corporation
Docket No. G–17350–008, Pacific Gas Transmission Company
CAG–53.
Docket Nos. CP78–545–007, CP79–129–002, CP80–164–004, ANR Pipeline Company
Docket No. CP78–132–010, ANR Storage Company
Docket No. CP78–527–005, Great Lakes Gas Transmission Company
Docket No. CP78–433–005, Michigan Consolidated Gas Company-Interstate Storage Division
CAG–54.
Docket No. CP89–1864–000, CNG Transmission Corporation
CAG–55.
Docket No. CP90–174–000, Midwestern Gas Transmission Company
CAG–56.
Docket Nos. CP90–552–000, CP90–553–000, CP90–576–000, CP90–593–000 and CP90–594–000, Colorado Interstate Gas Company
CAG–57.
Docket No. CP90–603–000, Texas Eastern Transmission Corporation
CAG–58.
Docket No. CP89–1808–000, Transco Energy Ventures Company
CAG–59.
Docket No. CP86–317–006, Panhandle Eastern Pipe Line Company
CAG–60.
Docket No. RP89–157–000, Valley Gas Transmission Inc.
CAG–61.
Docket No. RP88–256–001, West Texas Gas, Inc.
CAG–62.
Docket No. RP86–135–000, Caprock Pipeline Company
CAG–63.
Omitted
CAG–64.
Docket No. CP89–1119–000, Texas Gas Transmission Corporation

Hydro Agenda

H–1.
Project No. 1417–012, Central Nebraska Public Power and Irrigation District
Project No. 1835–025, Nebraska Public Power District. Order on petitions for interim license conditions.

Electric Agenda

E–1.
Docket Nos. EC90–10–000, ER90–143–000, ER90–144–000, ER90–145–000 and EL90–9–000, Northeast Utilities Service Company. Order on petition for declaratory order, rate filings and application for authorization to dispose of facilities.
E–2.
Docket No. QF90–8–000, Pinellas County, Florida. Order on application for qualifying status of a Small Power Production Facility and petition for waiver.

Gas and Oil Agenda

I. Pipeline Rate Matters

PR–1.
(A) Docket Nos. RP84–94–003, RP85–66–001, CP86–720–002 and RP90–9–001, Trailblazer Pipeline Company. Rehearing of order accepting rate settlement.
(B) Docket No. RP84–53–000, Ozark Gas Transmission Company. Remand concerning rate base methodology.
PR–2.
Docket Nos. IS88–24–000, IS89–2–000, IS89–3–000 and IS89–5–000, Texas Eastern Products Pipeline Company. Concerning whether to terminate oil pipeline proceeding.

II. Producer Matters

PR–1.
Reserved

III. Pipeline Certificate Matters

PC–1
Docket No. CP88–136–012, Texas Eastern Transmission Corporation. Order on rehearing of blanket certificate authorizing a transportation assignment program.
PC–2
Docket No. CP88–651–000, Northwest Pipeline Corporation. Order on application for certificate authorization to provide open access storage.
PC–3
Docket Nos. CP88–171–000 and 001, Tennessee Gas Pipeline Company
Docket Nos. CP88–94–000, 001, CP88–194–000 and 001, National Fuel Gas Supply Corporation
Docket Nos. CP88–92–000 and 001, Transcontinental Gas Pipeline Corporation
Docket Nos. CP88–195–000, 001, 002, and 005, PennEast Gas Services Corporation, CNG Transmission Corporation and Texas Eastern Transmission Corporation
Docket Nos. CP87–131–002 and CP87–132–002, Texas Eastern Transmission Corporation. Order on an application to construct and operate a portion of the Niagara spur loop line project proposed by Tennessee Gas Pipeline Company.

Lois D. Cashell,
Secretary.

[FR Doc. 90–3422 Filed 2–8–90; 4:48 pm.]
BILLING CODE 6717–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 12, 19, 26, and March 5, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 12

Monday, February 12

3:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1)

Wednesday, February 14

2:00 p.m.
Briefing on Status of Industry's Implementation of Unresolved Safety Issues (Public Meeting)

Thursday, February 15

9:00 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule to Prohibit Agreements Related to Employment that Would Restrict the Free Flow of Information to the Commission (Tentative) (postponed from February 8)

Week of February 19—Tentative

Tuesday, February 20

2:00 p.m.
Annual Briefing on Medical use of Byproduct Material (Public Meeting)

Wednesday, February 21

1:00 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.

Briefing by Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

Week of February 26—Tentative

Thursday, March 1

10:00 a.m.

Briefing on Recommended Action for Substandard Parts (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 5—Tentative

Thursday, March 8

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.

Dated: February 8, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–3503 Filed 2–9–90; 2:49 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 55, No. 30
Tuesday, February 13, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, 59, and 70

[Docket No. PY-90-001]

Increase In Fees and Charges

Correction

In proposed rule document 90-2699 beginning on page 3963 in the issue of Tuesday, February 6, 1990, make the following correction:

1. On page 3963, in the third column, in the fourth complete paragraph, in the fourth line insert "Federal employee retirement fringe costs increased 12%," between "percent," and "and".

2. On the same page, in the same column, in the last line, the last word "costs" should read "expenses".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[BQC-064-F]

RIN 0938-AC64

Medicaid Program; State Plan Requirements and Other Provisions Relating to State Third Party Liability Programs

Correction

In rule document 90-947 beginning on page 1423 in the issue of Tuesday, January 16, 1990, make the following corrections:

§ 433.138 [Corrected]

1. On page 1432, in the third column, in § 433.138(k), in the second line, "process" should read "processing".

2. On the same page, in the same column, in § 433.138(k)(4), in the 10th line, "of" should be removed.

§ 433.139 [Corrected]

3. On page 1433, in the first column, in § 433.139(b)(3)(i), in the third line, "service" should read "services".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket Nos. H-004E, F, G, H, I, and J]

Occupational Exposure to Lead

Correction

In rule document 90-1746 beginning on page 3146 in the issue of Tuesday, January 30, 1990, make the following correction:

On page 3166, in the third column, under part 1910, in the last line of the authority citation above "59 U.S.C. 553" should read "5 U.S.C. 553".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, 71, 72, 75, and 90

RIN 1219-AA48

Air Quality, Chemical Substances, and Respiratory Protection Standards; Extension of Comment Period; Public Hearings

Correction

In proposed rule document 90-1632 beginning on page 2535 in the issue of Thursday, January 25, 1990, make the following correction:

On page 2536, in the second column, in the first complete paragraph, the fourth sentence should read "Due to the scope and complexity of the issues involved in this rulemaking and in response to further requests from the mining community, MSHA is organizing the comment periods on this rulemaking to allow all parties sufficient time to prepare their comments and participate in the series of forthcoming public hearings."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

31 CFR Part 2

National Security Information

Correction

In rule document 90-891 beginning on page 1644 in the issue of Wednesday, January 17, 1990, make the following correction:

§ 2.36 [Corrected]

On page 1657, in the third column, in § 2.36 in the next to last line of the introductory text "3/22'" should read "3/32'".

BILLING CODE 1505-01-D

federal register

Tuesday
February 13, 1990

Part II

Department of Transportation

Coast Guard

46 CFR Parts 32, 35, 78, 97, 108, 109, 167, 169, 170, 171, 185, 196
Stability Design and Operational Regulations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 32, 35, 78, 97, 108, 109, 167, 169, 170, 171, 185, 196

[CGD 89-037]

RIN 2115-AD33

Stability Design and Operational Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the stability design and operational regulations for inspected vessels to incorporate requirements of recently adopted amendments to the Safety of Life at Sea Convention of 1974 (SOLAS). These amendments come into force on April 29, 1990. They contain requirements concerning draft indicators, on board computers to calculate stability, periodic stability tests, the closing of loading doors before going to sea, and the stability of new passenger ships after damage. With certain exceptions, the requirements proposed in this notice would apply to all new and existing vessels. These proposed regulations are intended to minimize the potential for vessel capsizing, such as recently occurred to the British vessel HERALD OF FREE ENTERPRISE, as well as other vessel casualties caused by inadequate damage stability and related operational considerations.

DATES: Comments on this notice must be received on or before April 16, 1990.

ADDRESSES: Comments should be submitted in writing to the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 89-037), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. The comments and materials referenced in this notice will be available for examination and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, except federal holidays, at the Marine Safety Council (G-LRA-2), Room 3600, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ms. P.L. Carrigan, Office of Marine Safety, Security, and Environmental Protection (G-MTH-3), Room 1308, U.S. Coast Guard Headquarters, Washington, DC 20593-0001, (202) 267-2988.

SUPPLEMENTARY INFORMATION:

Requests For Comments

Interested persons are invited and encouraged to participate in this proposed rulemaking by submitting written views, data or arguments. As is discussed in this preamble, it is the goal of the Coast Guard to propose regulations that will best address both the safety and operational needs of vessels. However, due to the variety of vessels affected by this proposed rulemaking, it is difficult to adequately address and analyze the effect that the proposed regulations would have on all vessles. Therefore, the Coast Guard seeks input on all aspects of the proposed regulations from vessel owners, operators, architects, builders, consumers, and others involved with the affected vessels.

Persons submitting comments should include their names and addresses, identify this notice (CGD 89-037), identify the specific section of the proposed regulations to which each comment applies, and include supporting documents or sufficient detail to indicate the reason for each comment. Receipt of comments will be acknowledged if a stamped self-addressed post card or envelope is enclosed with the comments. All comments received before the expiration of the comment period will be considered before further action is taken on this proposal. No public hearing is currently planned for this notice. However, one may be held at a time and place to be set in a later notice in the **Federal Register** if written requests for a hearing are received and the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in the drafting of this notice are Ms. P.L. Carrigan, Project Manager, Officer of Marine Safety, Security and Environmental Protection and Mr. W. Register, Project Counsel, Office of the Chief Counsel.

Background

Origin of Proposed Requirements

The United States is a member of the International Maritime Organization (IMO) and is signatory to the Safety Of Life At Sea Convention of 1974 (SOLAS). As such, the U.S. is obligated to enforce the requirements of SOLAS and its amendments. In October 1988, at the 56th session of the Maritime Safety Committee of the IMO, a series of stability related amendments to SOLAS were adopted. These amendments relate to the stability of passenger ships after damage, the use of draft marks and indicators, optional use of stability computers, periodic determination of lightship characteristics, the use of stability information, and the closing of loading doors before going to sea. These amendments come into force on April 29, 1990.

All of the amendments, except the amendment concerning the stability of passenger vessels after damage, were initiated by the United Kingdom following the tragic capsizing of the English Channel ferry, HERALD OF FREE ENTERPRISE, in the spring of 1987, where nearly 200 people lost their lives. The amendment on residual stability of passenger vessels after damage had previously been under consideration in the IMO Subcommittee on Stability and Load Lines and on Fishing Vessel Safety. However, the international concern for the HERALD OF FREE ENTERPRISE disaster provided the impetus to promote rapid adoption of all of the amendments at IMO.

Proposed Damage Stability Requirement

Since the first SOLAS Convention in 1913, the United States has actively pursued meaningful damage stability requirements for passenger vessels, which would afford passengers and crew time to safely leave a stricken ship. Prior to the recently passed damage stability amendment, SOLAS required only that vessels be designed to maintain a metacentric height (GM) of at least 2 inches in the upright condition and less than 7 degrees of heel at equilibrium after damage. Current U.S. regulations (46 CFR 171.080) are similar, but provide additional authority for the Coast Guard to require an approved range of stability for vessels that heel more than 7 degrees after the assumed damage. These minimum requirements were sufficient for conventional passenger vessels designed with larger freeboards and deeper drafts as was previously common, because their range of stability was large. Today, however, vessels are being built with new hull designs and interior arrangements of watertight boundaries, lower bulkhead decks, and an increased number of decks above the bulkhead deck. Such changes in vessel design have decreased the residual stability significantly. The damage stability survival criteria in the new SOLAS amendment are necessary measures which will assure adequate residual stability on new vessels in reasonably assumed damage situations.

In November 1987, the Coast Guard began a control verification program to verify that foreign flag cruise ships embarking U.S. passengers in U.S. ports comply with the subdivision and

stability requirements in SOLAS. Over 15 of these ships were checked and found to comply with the minimum requirements. During the verification program, the Coast Guard encouraged the owners of foreign flag passenger ships scheduled for construction prior to the effective date of the new SOLAS damage stability amendment to voluntarily comply with this new amendment, which is included in this NPRM as proposed § 171.080(e). Some owners found their ships did not comply; however, they readily made the design changes necessary to meet the higher level of safety. These changes have proved to be easily accommodated in the design stage of these foreign flag passenger ships.

Proposed Periodic Determination Of Lightship Characteristics

The Coast Guard does not closely monitor draft and lightship characteristics of vessels after delivery. However, some stability tests done after major alterations have confirmed that unaccounted for weight growth, such as was observed in the case of the HERALD OF FREE ENTERPRISE, can occur on cargo and industrial vessels as well as passenger vessels. Modifications and minor changes are often made without regard to weight variations and can result in a degradation of vessel stability. The proposed requirement for periodic verification of lightship characteristics, as proposed § 170.210, should adequately address situations where weight changes result in inadequate stability.

Because of the importance of this proposal, it would be applied to all vessels except those with stability established through the use of a simplified stability test or an estimated center of gravity. Smaller vessels that are evaluated with a simplified stability test are employed in operations that result in little or no weight change over time and therefore, would not need periodic testing to assure adequate stability. This proposal would also not address vessels, mainly tank vessels, whose operation is such that their stability is evaluated by an estimated center of gravity pursuant to 46 CFR 170.200.

Operations Requirements

This rulemaking also proposes to adopt new SOLAS provisions on optional use of a computer as an adjunct to the required stability book, operational procedures for doing on board stability calculations, requirements concerning draft marks and indicators, and provisions concerning the closing of loading doors.

The proposed provision allowing for the use of a computer system as an optional adjunct to the required stability book is already a part of Coast Guard policy. Currently, the Coast Guard reviews stability computer systems for acceptance as an adjunct to the required hard copy stability book, by running test cases to compare accuracy of the computer system against the stability book. A system that is accepted for use as an adjunct is then mentioned in the vessel's stability letter.

The proposed requirement for draft marks already exists for large passenger vessels, mobile offshore drilling units, oceanographic research vessels and all other vessels greater than 50 gross tons. This proposed requirement would not be applied to vessels whose stability is determined through the use of a simplified stability test. These latter vessels are not given operational guidance that depends on vessel draft and therefore, do not need draft marks. Requiring draft marks or indicators on the few vessels that need such marks or indicators but do not already have them should help prevent overloading and aid in determining compliance with existing stability regulations and applicable stability criteria.

The proposed requirements for stability verification and closing of loading doors prior to departing are already a part of good seamanship practice and would be applied to all vessels. These requirements should help prevent stability casualties caused by improper loading or stowage on vessels and unintentional flooding through loading doors.

Vessel Casualties

Internationally known casualties such as the HERALD OF FREE ENTERPRISE, EUROPEAN GATEWAY, and DONA PAZ have brought much attention to the issue of vessel stability and passenger safety. The English passenger/cargo ferry, HERALD OF FREE ENTERPRISE, sank within five minutes from a primary cause of unintentional flooding through open loading doors. Because of the lack of vessel damage stability, there was no time for passengers and crew to abandon the vessel, and as a result, 193 people died. The lack of knowledge regarding the actual loading of the vessel and the vessel's resulting stability condition added to the severity of the casualty.

The EUROPEAN GATEWAY also sank within minutes following a collision from a primary cause of rapid flooding through open watertight doors. The rapid loss of the vessel was a direct result of the lack of residual stability when damaged. Six of the seventy persons aboard the EUROPEAN GATEWAY died. If this casualty had occurred in deeper waters, where help was not immediately available, the results could have been catastrophic.

The casualty involving the Phillipine ferry, DONA PAZ, was also initiated by a collision, but this casualty was aggravated by overloading of the vessel and the lack of lifesaving equipment. This casualty took a very high toll; more than three thousand people died. If the provisions of this proposed rulemaking had been applied to the DONA PAZ, EUROPEAN GATEWAY, or HERALD OF FREE ENTERPRISE, the severity of the casualties would have been greatly reduced and many of those who died in these catastrophic casualties would still be alive.

As a part of this proposed rulemaking, data on vessel casualties under U.S. jurisdiction involving tank vessels, cargo and miscellaneous vessels, passenger vessels, mobile offshore drilling units, oceanographic research vessels, and nautical school vessels was reviewed to ascertain types of casualties which might be avoided or mitigated by the requirements proposed in this rulemaking.

Data concerning 148 casualties was retrieved for the period 1981–1988 (partial). These casualties resulted in 15 deaths, 6 reported injuries, and more than $42 million in associated property damage. In most cases, more than one cause contributed to the vessel casualty. From this casualty review, the Coast Guard has determined that in approximately 85% of the casualty cases, adherence to the requirements proposed in this rulemaking would have avoided or mitigated the circumstances leading up to the casualty. The remaining casualties were principally of such a nature that existing regulations, if followed, would most probably have prevented the casualties from ever occurring.

Discussion of Proposed Requirements

The proposed requirements to calculate stability and close loading doors would apply to all new and existing vessels. The proposal for the periodic determination of a vessel's lightweight characteristics would apply to all new and existing vessels, except those vessels for which stability is determined from a simplified stability test or from an estimated lightweight center of gravity. The provisions of the new amendments requiring draft indicators or draft marks would apply to all new and existing vessels except those vessels for which stability is determined from a simplified stability

test. Finally, new passenger vessels would be subject to new damage stability survival criteria in subchapter S, § 171.080. Specific discussion of each proposed change in the regulations follows:

Draft marks and draft indicating systems.
Tank Vessels—§32.05–1
Large Passenger Vessels—§ 78.50–10
Cargo and Miscellaneous Vessels—§ 97–40–10
Mobile Offshore Drilling Units—§ 108.661(e)
Public Nautical School Ships—§ 167.55–1
Sailing School Vessels—§ 169.755
Small Passenger Vessels [1]—§ 185.602(e)
Oceanographic Research Vessels—§ 196.40–10

This proposed revision would require that all vessels have draft marks, and that vessels with draft marks not easily readable due to vessel design or operational constraints also have a reliable draft indicating system to determine the bow and sterm drafts. Large passenger vessels, mobile offshore drilling units, oceanographic research vessels, and all other vessels greater than 50 gross tons are already required to have draft marks. Vessels excepted from the draft marks requirement would be those that use the simplified stability test since these vessels are not given stability information that is dependent on draft marks. Compliance with this proposed requirement would help prevent overloading and improper stowage of cargo and help in the determination that the vessel meets all applicable stability requirements.

Actions required to be logged.
Tank Vessels—§35.07–15 b(4) and c(4)
Large Passenger Vessels—§ 78.37.5 a(7) and a(8)
Cargo and Miscellaneous Vessels—§ 97.35–5 a(4) and a(5)
Mobile Offshore Drilling Units—§ 109.433 (k)
Oceanographic Research Vessels—§ 196.35–5 a(4) and a(5)

This proposed revision would add a logging requirement for the verification of vessel compliance with applicable stability and loading door closure requirements to the summary listing of logging requirements in each affected subchapter, as applicable.

Verification of vessel compliance with applicable stability requirements.
Tank Vessels—§ 35.20–7
Large Passenger Vessels—§ 78.17–22
Cargo and Miscellaneous Vessels—§ 97.15–7
Mobile Offshore Drilling Units—§ 109.227
Public Nautical School Ships—§ 167.65–42
Sailing School Vessels—§ 169.840
Small Passenger Vessels [2]—§ 185.315
Oceanographic Research Vessels—§ 196.15–7.

This new section would require the master to verify, and log as applicable, that the vessel is in compliance with any applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. Compliance with these requirements would help prevent casualties due to overloading and improper stowage of cargo and the accompanying loss of vessel stability.

Loading doors.
Large Passenger Vessels—§ 78.17–33
Cargo and Miscellaneous Vessels—§ 97.15–17
Public Nautical School Ships—§ 167.65–38
Small Passenger Vessels [3]—§ 185.335
Oceanographic Research Vessels—§ 196.15–18.

This new section would require the master to assure, and log as applicable, the closure of all loading doors in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel before getting underway. Compliance with this requirement would reduce the probability of a casualty due to unintentional flooding through loading doors in these locations.

Stability Requirements For All Inspected Vessels.

Stability booklet.—§ 170.110 (c) and (f)

The proposed revision to § 170.110(c) would require that the information in the stability book on loading restrictions take into account the entire range of operating trims and operating drafts. The proposed revision to § 170.110(c) would also require that the information in the stability book contain an effective procedure for supervising and reporting the opening and closing of all loading doors.

The proposed revision to § 170.110(f) would allow use of a stability computer as an optional adjunct to the required stability book. The Coast Guard, as a matter of longstanding practice, has been accepting stability computers as an adjunct to the required trim and stability book.

Lightweight verification.—§ 170.210

This section would require verification that a vessel's lightweight characteristics have not changed more than a given amount due to undocumented modifications. The owner would be responsible for conducting a deadweight survey at least every 5 years and for certifying to the Coast Guard that the vessel's lightweight has not changed, or if it has, for having a new stability test performed. These proposed requirements would apply to all vessels except those using an estimated lightweight center of gravity or a simplified stability test.

Damage stability standards for passenger vessels with Type I or Type II subdivision—§ 171.080 (d) and (e)

The proposed rules would establish minimum damage stability survival criteria for new passenger vessels that would provide a reasonable probability of not capsizing when subjected to flooding scenarios in existing U.S. regulations and SOLAS. They would require that survival craft be able to be safely deployed from a vessel after damage and that a vessel be designed not to capsize after damage in a moderate sea when subjected to a moderate wind.

This proposal would be applicable to all passenger vessels constructed after April 29, 1990, that are subject to 46 CFR 171.080, including vessels on domestic routes not subject to SOLAS. The need to require survival after damage is not a function of international service or route. The potential hazard that this proposal addresses, the potential for capsizing in a moderate sea after reasonable assumed damage, is present on both domestic as well as international voyages. The application of requirements to all services and routes is consistent with the current requirements of this section.

Draft Evaluation

This proposed rulemaking is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the DOT regulatory policies and procedures (DOT Order 2100.5 of May 22, 1980). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed under ADDRESSES. Copies may also be obtained by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

The marine industry would incur an estimated first year cost of $6.2 million and a subsequent annual cost of $6.0 million as a result of this rulemaking. Although this cost may be sizeable for

[1] References section numbers as used in the Small Passenger Vessel Inspection and Certification; Notice of Proposed Rulemaking; 54 FR 4412 dated Monday, January 30, 1989.

[2] *Ibid.*
[3] *Ibid.*

some segments of the industry, the need for and potential benefits of the proposed regulations are considered to outweigh the anticipated costs involved.

The primary benefits of the proposed regulations relate to increasing the accuracy of the available stability information and vessel survivability after damage thereby producing a safer vessel and reducing the number of stability related casualities and resulting lives lost, associated injuries, and property damage. The minimum potential benefits of these proposed regulations are estimated to be $7.3 million annually. However, this estimate does not take into account the potential substantial additional benefits derived from averting a catastrophic casualty, such as occurred with the HERALD OF FREE ENTERPRISE casualty. When taking into account major casualties such as the HERALD OF FREE ENTERPRISE, the potential benefits of these proposed regulations, in terms of lives saved, would far outweigh associated costs.

Environmental Impact

This rulemaking has been reviewed by the Coast Guard and it has been determined that it is not likely to have a significant impact on the environment. This proposed rulemaking will have no effect upon the manner in which potential pollutants or hazardous materials are carried on board vessels. Improved vessel stability should reduce the number of uncontrolled releases of pollutants or hazardous materials into the environment resulting from vessel casualties. However, based on a review of historical data, the Coast Guard considers the benefit to the aquatic environment to be insignificant. An environmental impact statement is not necessary. A draft finding of no significant impact is to be placed in the public docket for this rulemaking during the public comment period. At the close of the public comment period, the Coast Guard expects to complete the finding of no significant impact.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard is required to consider whether this rule would have a significant economic impact on a substantial number of small entities. The small entities addressed in this rulemaking are primarily small passenger vessels. Most of the proposed requirements would either not affect small entities or have only a major impact. The few new small passenger vessels affected by the proposed damage stability criteria could easily accommodate the design and construction requirements with minimal effort and cost. The placement of draft marks or indicators on the few vessels that would need them would result in only minor expense. Small passenger vessels using the simplified stability test would be exempt from the draft marks requirement. The lightweight verification requirement would not be applied to those vessels using the simplified stability test. The logging requirements would have minimal cost on the small passenger vessels that do have log books. Based on the essentially minor impact of the proposed requirements to the small passenger vessel fleet, the Coast Guard has determined that this proposed rulemaking would not have a significant impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the regulations being developed would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This rulemaking contains information collection requirements in the following sections of 46 CFR: 35.20–7, 78.17–22, 78.17–33, 97.15–7, 97.15–17, 109.227, 167.65–43, 167.65–38, 169.840, 170.110(c), 170.210, 171.080, 185.315, 185.335, 196.15–7, 196.15–18.

The information collection requirements have been submitted to the Office of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) Persons desiring to comment on these regulations should submit their comment to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under ADDRESSES.

Regulatory Identification Number

A regulatory information number (RIN) is assigned to each regulatory action listed on 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 32

Marine Safety, Vessels.

46 CFR Part 35

Marine Safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 78

Marine Safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 97

Marine Safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Marine Safety, Vessels.

46 CFR Part 109

Marine Safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 167

Marine Safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 169

Marine Safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 170

Marine Safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 171

Marine Safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 185

Marine Safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 196

Marine Safety, Reporting and recordkeeping requirements, Vessels.

Proposed Rules

In consideration of the foregoing, the Coast Guard proposes to amend 46 CFR chapter I as follows:

SUBCHAPTER D—TANK VESSELS

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

1. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Section 32.05–1 is amended by revising paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d); and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 32.05-1 Draft marks and draft indicating systems—TB/ALL.

(a) All tank vessels must have the draft of the vessel marked plainly and legibly upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

PART 35—OPERATIONS

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

Authority: 46 U.S.C. 3102, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

4. Section 35.07-10 is amended by redesignating paragraphs (b)(4) through (b)(9) as paragraphs (b)(5) through (b)(10) and by adding new paragraphs (b)(4) and (c)(4) to read as follows:

§ 35.07-10 Actions required to be logged—TB/ALL.

* * * * *

(b) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 35.20-7.

* * * * *

(c) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 35.20-7.

5. Part 35 is amended by adding a new section to read as follows:

§ 35.20-7 Verification of vessel compliance with applicable stability requirements—TB/ALL.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine and enter a statement in the log book that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

SUBCHAPTER H—LARGE PASSENGER VESSELS

PART 78—OPERATIONS

6. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 8105; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243; 3 CFR, 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

7. Part 78 is amended by adding a new section to read as follows:

§ 78.17-22 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine and enter a statement in the log book that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

8. Part 78 is amended by adding a new section to read as follows:

§ 78.17-33 Loading doors.

(a) The master shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) Loading doors include all weathertight ramps, bow visors, and openings used to load personnel, equipment, and stores, located in the collision bulkhead, the side shell, or the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

9. Section 78.37-5 is amended by redesignating paragraphs (a)(7) through (a)(13) as paragraphs (a)(9) through (a)(15) and by adding new paragraphs (a)(7) and (a)(8) to read as follows:

§ 78.37-5 Actions required to be logged.

* * * * *

(a) * * *

(7) Verfication of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 78.17-22.

(8) Loading doors. Every closing and any opening when not docked. See § 78.17-33.

* * * * *

10. Section 78.50-10 is amended by revising paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d); and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 78.50-10 Draft marks and draft indicating system.

(a) All vessels must have the draft of the vessel marked plainly and legibly upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints

or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 97—OPERATIONS

11. The authority citation for part 97 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–75 Comp., p.793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 227; 49 CFR 1.46.

12. Part 97 is amended by adding a new section to read as follows:

§ 97.15–7 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine and enter a statement in the log book that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

13. Part 97 is amended by adding a new section to read as follows:

§ 97.15–17 Loading doors.

(a) The master shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) Loading doors include all weathertight ramps, bow visors, and openings used to load personnel, equipment, cargo, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

14. Section 97.35–5 is amended by redesignating paragraphs (a)(4) through (a)(10) as paragraphs (a)(6) through (a)(12) and by adding new paragraphs (a)(4) and (a)(5) to read as follows:

§ 97.35–5 Actions required to be logged.

* * * * *

(a) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 97.15–7.

(5) Loading doors. Every closing and any opening when not docked. See § 97.15–17.

* * * * *

15. Section 97.40–10 is amended by revising paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d); and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 97.40–10 Draft marks and draft indicating systems.

(a) All vessels must have the draft of the vessel marked plainly and legibly upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

SUBCHAPTER I-A—MOBILE OFFSHORE DRILLING UNITS

PART 108—DESIGN AND EQUIPMENT

16. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306, 5115; 49 CFR 1.46.

17. Section 108.661 is amended by adding new paragraph (e) to read as follows:

§ 108.661 Unit markings: Draft marks.

* * * * *

(e) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

PART 109—OPERATIONS

18. The authority citation for part 109 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115, 6101, 10104; 49 CFR 1.46.

19. Part 109 is amended by adding a new section to read as follows:

§ 109.227 Verification of vessel compliance with applicable stability requirements.

(a) The master or person-in-charge shall determine and enter a statement in the log book that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, operating manual, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be, at the following times:

(1) Prior to transitioning from the transit condition to the operating condition;

(2) Prior to transitioning from the operating condition to the transit condition;

(3) Prior to significant changes in deck load or ballast;

(4) At other times as required by the vessel's trim and stability book or operating manual; and

(5) At all other times necessary to assure the safety of the vessel.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for a six month period.

20. Section 109.433 is amended by redesignating paragraphs (k) through (m) as paragraphs (l) through (n) by adding new paragraph (k) to read as follows:

§ 109.433 Log book entries.

* * * * *

(k) After loading and prior to getting underway and at all other times necessary to assure the safety of the vessel, a statement verifying vessel

compliance with applicable stability requirements.

* * * * *

SUBCHAPTER R—NAUTICAL SCHOOLS

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

21. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

22. Section 167.55–1 is revised to read as follows:

§ 167.55–1 Draft marks and draft indicating systems.

(a) All vessels must have the draft of the vessel marked plainly and legibly upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

(c) In cases where the keel does not extend forward or aft to the location of the draft marks, due to a raked stem or cut away skeg, the draft must be measured from a line projected from the bottom of the keel forward or aft, as the case may be, to the location of the draft marks.

(d) In cases where a vessel may have a skeg or other appendage extending locally below the line of the keel, the draft at the end of the vessel adjacent to such appendage must be measured to a line tangent to the lowest part of such appendage and parallel to the line of the bottom of the keel.

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

23. Part 167 is amended by adding a new section to read as follows:

§ 167.65–42 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine and enter a statement in the log book that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

24. Part 167 is amended by adding a new section to read as follows:

§ 167.65–38 Loading doors.

(a) The master shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) Loading doors include all weathertight ramps, bow visors, and openings used to load personnel, equipment, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

PART 169—SAILING SCHOOL VESSELS

25. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; section 169.117 also issued under the authority of 44 U.S.C. 3507.

26. Part 169 is amended by adding a new section to read as follows:

§ 169.755 Draft marks and draft indicating systems.

(a) All vessels must have the draft of the vessel marked plainly and legibly upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

(c) In cases where the keel does not extend forward or aft to the location of the draft marks, due to a raked stem or cut away skeg, the draft must be measured from a line projected from the bottom of the keel forward or aft, as the case may be, to the location of the draft marks.

(d) In cases where a vessel may have a skeg or other appendage extending locally below the line of the keel, the draft at the end of the vessel adjacent to such appendage must be measured to a line tangent to the lowest part of such appendage and parallel to the line of the bottom of the keel.

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

27. Part 169 is amended by adding a new section to read as follows:

§ 169.840 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine and enter a statement in the log book that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

SUBCHAPTER S—SUBDIVISION AND STABILITY

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

28. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

29. Section 170.110 is amended by revising paragraph (c) and adding a new paragraph (f) to read as follows:

§ 170.110 Stability booklet.

* * * * *

(c) Each stability book must contain sufficient information to enable the master to operate the vessel in compliance with applicable regulations in this subchapter. Information on loading restrictions used to determine compliance with applicable intact and damage stability criteria must encompass the entire range of operating drafts and the entire range of the operating trims. Information must include an effective procedure of supervision and reporting of the opening and closing of all loading doors.

* * * * *

(f) On board electronic stability computers may be used as an adjunct to the required booklet, but the required booklet must contain all necessary information to allow for the evaluation of the stability of any condition that can be evaluated by use of the computer.

30. Section 170.210 is added to read as follows:

§ 170.210 Lightweight verification.

(a) Except as provided in paragraph (b) of this section, verification of a vessel's lightweight displacement and longitudinal center of gravity is required as follows:

(1) Unless otherwise authorized by the Commandant, at intervals not exceeding five years the owner must conduct a deadweight survey to determine the lightweight displacement and longitudinal center of gravity.

(2) An authorized Coast Guard representative must be present at each deadweight survey conducted under this section.

(3) If a deviation from the previously approved lightweight displacement and longitudinal center of gravity exceeds two percent of the lightweight displacement or one percent of LBP (length between perpendiculars), the owner must conduct a stability test in accordance with part 170, subpart F. The deadweight survey required in paragraph (a)(1) of this section must be repeated as part of this required stability test unless the entire stability test including the deadweight survey is completed on the same day.

(4) If the deviation from the lightweight displacement and longitudinal center of gravity does not exceed the values in paragraph (a)(3) of this section, the owner must certify to the Commanding Officer of the Marine Safety Center that the lightweight characteristics have not changed. The Commanding Officer of the Marine Safety Center may accept the certification or require the owner to provide supporting calculations for review and approval.

(b) Periodic lightweight verification is not required for the following:

(1) Vessels to which the simplified stability test of § 171.030 was applied; or

(2) Vessels with an estimated lightweight center of gravity determined in accordance with § 170.200.

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

31. The authority citation for part 171 continues to read as follows:

Authority: 43 U.S.C. 3306, 5515; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

32. Section 171.080 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 171.080 Damage stability standards for vessels with Type I or Type II subdivision.

* * * * *

(d) Damage survival for vessels constructed prior to April 29, 1990. A vessel is presumed to survive assumed damage if it meets the following conditions in the final stage of flooding:

* * * * *

33. Section 171.080 is amended by redesignating paragraph (e) as paragraph (f) and by adding new paragraph (e) to read as follows:

§ 171.080 Damage stability standards for vessels with Type I or Type II subdivision.

* * * * *

(e) Damage survival for vessels constructed on or after April 29, 1990. A vessel is presumed to survive assumed damage if it is shown by calculations to meet the conditions set forth in paragraphs (e)(1) through (e)(5) of this section in the final stage of flooding and the conditions set forth in paragraphs (e)(6) and (e)(7) of this section in each earlier stage of flooding as specified:

(1) Each vessel must have positive righting arms for at least 15 degrees beyond the final angle of equilibrium.

(2) Each vessel must not have any opening through which progressive flooding can occur within 15 degrees of the angle of equilibrium unless the vessel can meet all survival criteria prescribed in this section after progressive flooding. Openings fitted with effective weathertight closures must be considered as progressive flooding locations if the openings lead to spaces frequented by passengers or the crew.

(3) Each vessel must have an area under each righting arm curve of at least 2.82 foot-degrees (0.015 meter-radians), measured from the angle of equilibrium to the small of the following angles:

(i) The angle at which progressive flooding occurs; or

(ii) 22 degrees from the upright in the case of one compartment flooding or 27 degrees from the upright in the case of two compartment flooding.

(4) Each vessel must have a maximum righting arm within 15 degrees of the angle of equilibrium of at least 0.13 feet (0.04 meters) greater than each of the following heeling arms, but in no case less than 0.33 feet (0.10 meters):

(i) Passenger heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) Each passenger weighs 165 pounds (75 kilograms);

(B) Each passenger occupies 2.69 square feet (0.25 square meters) of deck area; and

(C) All passengers are distributed on available deck areas towards one side of the vessel on the decks where muster stations are located and in such a way that they produce the most adverse heeling moment.

(ii) Asymmetric passenger escape routes heeling moment divided by vessel displacement if the vessel has asymmetric passenger escape routes where the heeling moment is calculated assuming:

(A) Each passenger weighs 165 pounds (75 kilograms):

(B) Each passenger occupies 2.69 square feet (0.25 square meters) of deck area; and

(C) All passengers are distributed on available deck areas in a manner that accounts for the use of any asymmetric passenger escape routes to get to the decks where muster or embarkation stations are located and in such a way that they produce the most adverse heeling moment.

(iii) Launching of survival craft heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) All survival craft, including davit-launched liferafts and rescue boats,

fitted on the side to which the vessel heels after sustained damage are swung out if necessary, fully loaded and ready for lowering;

(B) Persons not in the survival craft that are ready out for lowering are centered about the center line so that they do not provide additional heeling or righting moments; and

(C) Survival craft on the side of the vessel opposite to which the vessel heels remain stowed.

(iv) Wind pressure heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) A wind pressure of 2.51 pounds per square foot (120 Newtons per square meter);

(B) The wind acts on an area equal to the projected lateral area of the vessel above the waterline corresponding to the intact condition; and

(C) The wind lever arm is the vertical distance from a point at one-half the mean draft, or the center of area below the waterline, to the center of the lateral area.

(5) Each vessel must have an angle of equilibrium that does not exceed the following:

(i) 7 degrees for one compartment flooding; or

(ii) 12 degrees for two compartment flooding.

(6) Each vessel must have a maximum angle of equilibrium that does not exceed 15 degrees during each earlier stage of flooding.

(7) Each vessel must have a maximum righting arm of at least 0.16 feet (0.05 meters) and positive righting arms for a range of at least 7 degrees during each earlier stage of flooding. Only one breach in the hull and only one free surface need be assumed when meeting the requirements of this paragraph.

* * * * *

SUBCHAPTER T—SMALL PASSENGER VESSELS

Part 185 which was proposed to be revised at 54 FR 4412, January 30, 1989, would be further amended as follows:

PART 185—OPERATIONS

34. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2104, 3306, 6101, 7701, 8105; 49 CFR 1.46.

35. Part 185 is amended by adding a new section to read as follows:

§ 185.315 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requiremetns in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

(c) If a log book is required by § 185.280 or § 185.282, then the master must enter a statement verifying that the vessel complies with the applicable stability requirements.

36. Part 185 is amended by adding a new section to read as follows:

§ 185.335 Loading doors.

(a) The master shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors maybe open provided that the master determines that the safety of the vessel is not impaired.

(b) Loading doors include all weathertight ramps, bow visors, and openings used to load personnel, equipment, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) If a log book is required by § 185.280 or § 185.282, then the master shall make the following entries:

(1) The time and door location of every closing of the loading doors; and

(2) Any opening of the doors in accordance with paragrpah (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

37. Section 185.602 is amended by adding a new paragraph (e) to read as follows:

§ 185.602 Hull markings.

* * * * *

(e) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and sterm drafts can be determined.

SUBCHAPTER U—OCEANOGRAPHIC RESEARCH VESSELS

PART 196—OPERATIONS

38. The authority citation for part 196 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

39. Part 196 is amended by adding a new section to read as follows:

§ 196.15–7 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine and enter a statement in the log book that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

40. Part 196 is amended by adding a new section to read as follows:

§ 196.15–18 Loading doors.

(a) The master shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) Loading doors include all weathertight ramps, bow visors, and

openings used to load personnel, equipment, cargo, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

41. Section 196.35–5 is amended by redesignating paragraphs (a)(4) through (a)(11) as paragraphs (a)(6) through (a)(13) and by adding new paragraphs (a)(4) and (a)(5) to read as follows:

§ 196.35–5 Actions required to be logged.

* * * * *

(a) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 196.15–7.

(5) Loading doors. Every closing and any opening when not docked. See § 196.15–18.

* * * * *

42. In § 196.40–10, by revising paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d); and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 196.40–10 Draft marks and draft indicating systems.

(a) All vessels must have the draft of the vessel marked plainly and legibly upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

Dated: November 20, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–3307 Filed 2–12–90; 8:45 am]

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Tuesday
February 13, 1990

Part III

Department of Education

34 CFR Part 363

The State Supported Employment Services Program; Proposed Rule

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 363

The State Supported Employment Services Program

AGENCY: Department of Education.

ACTION: Notice of Intent to Regulate.

SUMMARY: The Secretary of Education provides notice that the Department intends to amend the regulations implementing the State Supported Employment Services Program authorized under title VI, part C of the Rehabilitation Act of 1973, as amended, in order to clarify certain program requirements and make other changes that are needed to increase program effectiveness and flexibility.

DATES: All comments, suggestions, or recommendations in response to this notice must be received on or before April 16, 1990.

ADDRESSES: All comments concerning this notice should be addressed to Nell C. Carney, Commissioner, Rehabilitation Services Administration, Department of Education, Mary E. Switzer Building, Room 3325, 330 C Street, SW., Washington, DC 20202–2899.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Isbister, Rehabilitation Services Administration, Department of Education, Mary E. Switzer Building, Room 3228, 330 C Street, SW., Washington, DC 20202–2899, telephone (202) 732–1297.

SUPPLEMENTARY INFORMATION: Final regulations for this program were published on August 14, 1987. In the preamble to the regulations, the Secretary stated that, because the State Supported Employment Services Program is a new kind of rehabilitation program with which neither the Department nor States have much experience, the Department would consider within the next two years whether to solicit additional public comment on the need for regulatory revision. The Secretary now believes it is appropriate to solicit this kind of public comment.

The Department is publishing this notice of intent to regulate to give interested parties an opportunity to comment on five issues of program concern that it believes may require regulatory revision, prior to the publication of specific proposed regulations. The Department is also interested in soliciting public comment on any other regulatory provisions that may need revision in order to increase program effectiveness and flexibility.

(1) *Twenty hours per week work requirement.* The statutory definition of "supported employment" includes a requirement that individuals with severe handicaps who receive supported employment services be able to perform competitive work. Current program regulations define "competitive work" to require that each individual work an average of at least 20 hours per week for each pay period, beginning at the time of job placement by the vocational rehabilitation (VR) State agency.

Some providers of supported employment services have expressed concern that this particular work requirement excludes from eligibility certain populations of individuals with severe handicaps, such as the chronically mentally ill or the traumatically brain-injured, who would otherwise be appropriate candidates for supported employment but for their inability to meet a 20-hour work requirement at the time services are initiated.

The Secretary is considering whether to amend the definition of "competitive work" to reduce the work requirement. Among the options under consideration are whether to make the average 20 hours per week work requirement applicable at the time an individual makes the transition from VR State agency support to extended services from other providers, rather than an initial placement requirement, and whether to require fewer hours of work at the time VR services are initiated, for example 10 hours per week.

(2) *Availability of post-transition on post-closure services from the VR State agency.* VR agency support under the State Supported Employment Services Program is limited to providing training and traditionally time-limited post-employment services. Under the current program regulatory definition of "traditionally time-limited post-employment services," supported employment services can no longer be provided by the VR State agency once an individual has made the transition to extended services made available by another service provider under a cooperative agreement. Transition must occur no later than 18 months after the initiation of services by the VR State agency.

Occasionally, following transition, an individual may require, in order to maintain a supported employment placement, one or more discrete, short-term services that are not available under a cooperative agreement with an extended services provider but that would be available from the VR State agency. The Secretary is considering whether to provide authority in regulations for this kind of limited post-transition re-intervention by the VR State agency.

The purpose of any regulatory revision would be to make available to supported employment clients the same kind of post-closure services (traditional title I post-employment services) that are available under the title I program to individuals who have been successfully rehabilitated in placements other than supported employment.

(3) *Definitions of "on-going support services" and "extended services."* The Secretary is considering clarifying the current regulatory definition of "on-going support services" and adding to the regulations a definition of "extended services" to clarify the use of the two terms. "On-going support services" is a required component of supported employment. It refers to the job skill training and other support services that are needed on a regular basis by supported employment clients if they are to perform competitive work. The one exception is that supported employment clients who are chronically mentally ill are not required to receive "on-going support services" that include job skill training, but they must receive other kinds of support services.

On-going support services are provided by both the VR State agency during the maximum 18-month period of its support as well as by an extended service provider following transition.

"Extended services" refers to the on-going support services that are furnished by providers other than the VR agency (from other State, Federal or private programs) after the 18-month period of VR agency support has elapsed.

(4) *Clarification of the exemption of the chronically mentally ill from the job skill training services requirement.* The intent of current regulations is to exclude all individuals who are chronically mentally ill and who are receiving services under the State Supported Employment Services Program from the requirement that program beneficiaries receive job skill training services at least twice monthly at the job site throughout the term of employment. This intent is reflected in the preamble to the final regulations which states: "The Secretary believes that individuals with severe handicaps, with the exception of the chronically mentally ill, would be inappropriate candidates for supported employment if they did not receive job skill training at least twice monthly."

However, the regulations do not recognize that individuals with chronic

metal illness served under this program may receive either transitional employment services if the employment outcome may not be permanent or regular supported employment services leading to a permanent employment outcome, or both. Thus, current regulations only clearly exempt from the job skill training requirement individuals with chronic mental illness who are receiving transitional employment services.

The Secretary is considering amending the definition of "on-going support services" to make it clear that individuals with chronic mental illness who are receiving regular supported employment services are also exempt from the job skill training requirement.

(5) *Clarification of job skill training services.* Current regulations require that all individuals with severe handicaps served under this program, with the exception of the chronically mentally ill, receive job skill training services. The regulations, however, do not define this term. The Secretary is considering adding to the regulations a definition of "job skill training services" to clarify that it includes, in addition to training in the specific functions of the job, related training services to address behavioral and other problems that affect job performance.

Note: Supported employment services are also provided under the State Vocational Rehabilitation Services Program (34 CFR part 361) and under the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects (34 CFR part 380).

Therefore, any regulatory revisions in part 363 of requirements that are common to these two other programs would also result in changes to parts 361 and 380.

(Authority: 29 U.S.C. 795 j–q)

Dated: December 14, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–3309 Filed 2–12–90; 8:45 am]

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February 13, 1990

Part IV

Department of Health and Human Services

Public Health Service

42 CFR Part 90

Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 90

RIN 0905-AC84

Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: On August 24, 1988 ATSDR published in the **Federal Register** (53 FR 32259) a notice of proposed rulemaking of a new regulation dealing with the conduct of ATSDR health assessments and health effects studies. The notice proposed a new regulation at 42 CFR part 90 to set forth procedures for ATSDR to conduct health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9604(i)) and the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6939a(c)), as well as health effects studies under CERCLA. The regulation also includes, among other things, procedures for persons to request ATSDR to conduct health assessments, provisions for the notification of parties of the results of health assessments and health effects studies, and provisions for cost recovery accounting.

ATSDR received several comments in response to the notice of proposed rulemaking and as a result has made a number of revisions in the regulation and preamble.

EFFECTIVE DATE: February 13, 1990.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Atlanta, Georgia 30333, 404-639-0610, FTS 236-0610.

SUPPLEMENTARY INFORMATION: The primary purpose of this regulation is to set forth general procedures which ATSDR will follow in determining when and how to conduct health assessments and related health effects studies. The Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499), which amended CERCLA, greatly expanded the responsibilities and mandates of ATSDR. ATSDR is now authorized to conduct a wide range of health-related activities at sites where hazardous substances are or have been released.

These activities include conducting (1) health assessments at all sites on, or proposed for inclusion on, the Environmental Protection Agency's (EPA) National Priorities List (NPL), (2) health assessments in response to requests from interested persons, and (3) a wide variety of health effects studies to determine whether there exists at a particular site or sites a risk to human health as a result of exposure to hazardous substances. This regulation also applies to ATSDR's health assessment activities conducted pursuant to RCRA.

In response to the notice of proposed rulemaking (53 FR 32259), ATSDR received comments on the proposed regulation from the following: American Industrial Health Council, American Petroleum Institute, Chemical Manufacturers Association, Edison Electric Institute, Motor Vehicle Manufacturers Association, Syntex (U.S.A.), Inc., and Texaco. ATSDR has made a number of revisions in the regulation based upon these comments.

Several commenters stated that the proposed regulation should be revised to provide additional mechanisms for ATSDR to notify potentially responsible parties and others of its intention to conduct a health assessment at a particular site. The regulation specifies notification requirements according to how the health assessment is initiated. If the health assessment is required for a site because the site is proposed for inclusion on the NPL, ATSDR assumes that potentially responsible parties (PRPs) and the community will know that a site of interest to them has been proposed to be included on the list. In this case, ATSDR believes no formal notification of intent to conduct a health assessment for a site proposed to be added to the NPL is necessary.

If, however, ATSDR decides to conduct a health assessment in response to a petition from the public, the Agency will notify specific parties in writing as stated in the proposed regulation. These parties include EPA, appropriate State and local environmental and health agencies, the requestor of the health assessment, and the owner or operator of the facility of concern, if that information is readily available to ATSDR.

In addition, the regulation specifies that ATSDR, at its discretion, may notify other parties—those with a direct interest in the site or who might have information necessary to complete a health assessment. A large percentage of petitioned health assessments involve sites which have not been proposed to be added to the NPL. Normally, much information about such sites, such as the identity of PRPs, is unavailable. For petitioned sites where PRPs have been identified, ATSDR will notify by mail these and other parties of its intent to conduct a health assessment when the Agency believes such parties have information essential to the conduct of a health assessment for the site.

Generally, ATSDR's position is that it would be an inefficient and unnecessary use of limited resources to routinely notify, either specifically or through individual announcements in the **Federal Register**, other parties of ATSDR's intention to conduct health assessments at the hundreds of sites for which it has such responsibility. However, ATSDR will publish on a quarterly basis in the **Federal Register** a notice of non-NPL sites for which it has decided to conduct health assessments.

In addition, at least one commenter requested that PRPs be routinely notified at the time ATSDR receives a request to conduct a health assessment. The commenter felt the PRPs might be able to provide ATSDR with information which would be helpful in making its decision to conduct a health assessment in response to the request. Generally, ATSDR believes that information provided by the requestor or government agencies will be sufficient to allow ATSDR to make a decision whether to conduct a health assessment in response to a request from the public. However, ATSDR is changing § 90.5(b) of the proposed regulation to allow the Agency to request, where appropriate, information from other parties concerning sites which are the subject of a request.

The preamble to the proposed regulation stated that the regulation was not intended to provide a detailed scientific statement of the factors ATSDR will consider when conducting a health assessment. The preamble also stated that ATSDR intended to issue a general scientific policy document which would discuss the scientific process and factors ATSDR will consider in performing health assessments. Several of the commenters urged ATSDR to immediately release this scientific policy document. In addition, several commenters said that ATSDR should develop and publish criteria to guide the Agency in making decisions about issuing health advisories and how and when to conduct health effects studies.

ATSDR has developed a draft guidance document for the conduct of health assessments. ATSDR plans to submit this document to its Board of

Scientific Counselors at its next meeting for review. After the Board has reviewed and commented on this document, ATSDR will publish it in the Federal Register for public review and comment.

ATSDR intends in the future to develop guidance documents regarding public health advisories and health effects studies. Once developed, these documents will also be submitted for review by the Board and then the public.

ATSDR has also added a new § 90.7 to clarify the criteria it will utilize when determining whether to conduct a health effects study at a particular site.

Several commenters recommended that PRPs be notified of the availability of completed ATSDR health assessments. Section 90.11 of the regulations specifies the ATSDR will provide a report of the results of a health assessment to EPA, appropriate State and local government agencies, those requesting ATSDR to conduct the health assessment, and PRPs, where their identity is readily available to ATSDR. In addition, the reports of health assessments will be available to the general public upon request. In response to the comments in this area, ATSDR will publish in the Federal Register on a quarterly basis a report of the health assessments completed during the previous three months and which are available to the public. ATSDR believes that these measures will address the need of parties to be informed in a concise manner of the availability of health assessment reports without overburdening ATSDR and the public with detailed and cumbersome notification procedures.

Two commenters suggested that ATSDR adhere strictly to the sequence of health assessments and health effects studies set forth in section 104(i) of CERCLA. Among other things, section 104(i)(6) directs ATSDR to conduct health assessments at all sites on, or proposed for inclusion on, the NPL, as well as authorizes the Agency to conduct health assessments in response to requests from the public. This section specifies that one purpose of a health assessment is to determine the need for health effects studies, such as an epidemiological study, registry, or health surveillance program. Section 104(i)(7) furthermore states that on the basis of a health assessment, ATSDR may decide to conduct a pilot study to determine the desirability of conducting a full-scale epidemiological or other health effects study.

ATSDR will generally follow the sequential approach outlined in sections 104(i) (6), (7), (8), and (9) of CERCLA (health assessment, and where appropriate, followed by a pilot study, epidemiological study, registry, and health surveillance program). However, ATSDR recognizes that instances arise where the public health is not served by a strict adherence to this sequential approach. For instance, circumstances at a particular site may necessitate the immediate commencement of a pilot study or other activity prior to the completion of a health assessment for the site. This approach is consistent with the language and intention of CERCLA. ATSDR does not interpret the sequential approach set forth in section 104(i) of CERCLA to constitute the exclusive manner in which ATSDR is to fulfill its public health responsibility. ATSDR generally will follow this sequential approach; however, it is necessary to retain flexibility in responding to emergency or other unique circumstances in an appropriate manner.

Two commenters recommended that ATSDR redefine the term "health effects studies" so as to exclude from this definition registries and health surveillance programs. These commenters argued that section 104(i) of CERCLA establishes a difference between "health effects studies" like epidemiological studies on one hand and registries and health surveillance programs on the other hand. In addition, these commenters also argue that by including registries and health surveillance programs within the definition of "health effects studies," ATSDR improperly concludes that the costs of such programs are recoverable from responsible parties under section 107 of CERCLA.

The primary purpose of this regulation is not to define what ATSDR activities at Superfund sites are subject to cost recovery actions. The parameters for cost recovery actions are set by CERCLA and EPA in its National Contingency Plan. Rather, ATSDR seeks to establish procedures, through this regulation, for how it will conduct health assessments and health effects studies.

Moreover, ATSDR has found it feasible to follow the same procedures, outlined in this regulation, when conducting the activities included in the definition of "health effects studies," such as epidemiologic studies, registries, and health surveillance programs. ATSDR does not interpret section 104(i) of CERCLA to preclude the inclusion of these activities and others from being considered "health effects studies." The term "health effects studies" is not defined in CERCLA and appears only in section 107(a)(4)(D). Although section 104(i) does make separate reference to epidemiologic studies, registries, and health surveillance programs, there is no indication in CERCLA or its statutory history that each of these various activities of ATSDR cannot be considered "health effects studies."

Furthermore, we believe that the costs of ATSDR registries and health surveillance programs are fully recoverable from responsible parties. Accordingly, ATSDR will pursue, on a case-by-case basis in appropriate circumstances, recovery of the costs of these and other health effects studies and health assessment.

Several commenters suggested that ATSDR make draft health assessments available for public comment. ATSDR is currently conducting a pilot study of the impact and effectiveness of providing a public comment period for health assessments. As part of this study, ATSDR has released several draft final health assessments for public comment. ATSDR is not legally required to provide a public comment period for health assessments. However, if the provision of a public comment period allows for meaningful input without unduly delaying the completion of health assessments in accordance with statutory deadlines, ATSDR may allow for public comment as a policy matter. Therefore, a routine public comment period for health assessments is not included in the current regulation.

One commenter suggested that ATSDR rely only upon previously gathered data when conducting a health assessment. For most sites, ATSDR does rely primarily on data provided by EPA, supplemented occasionally by additional information provided by State and local governments, PRPs, and members of the local community. In rare instances, little or no information is available on a site for which ATSDR is required to conduct a health assessment. For this reason ATSDR has reserved the right in this regulation to arrange for the gathering of additional information, where necessary, about a site.

One commenter recommended that ATSDR allow responsible parties to comment on a decision by the Agency to bring additional individuals onto a site to facilitate the conduct of a health assessment or health effects study. A decision to bring additional individuals, such as contractors or representatives of other governmental agencies, onto a site is strictly an internal management decision for which outside comment would not be appropriate.

ATSDR has also made several changes in § 90.13 of the regulation, which dealt with administrative record requirements. So as not to confuse these requirements with the administrative

record requirements of EPA as established by section 113(k) of CERCLA (42 U.S.C. 9613(k)), references in the regulation have been changed from "administrative record" to "recordkeeping requirements." In addition, a new § 90.13(f) has been added to state clearly that ATSDR does not intend to establish or imply a standard of judicial review of health assessments or health effects studies. Since the reports of health assessments and health effects studies contain only agency opinion and recommendations which are not binding on any parties, there is no judicial review of these reports. See *Industrial Safety Equipment Association, Inc.* v. *Environmental Protection Agency*, 837 F.2d 1115 (D.C. Cir. 1988). Also, a decision to conduct a health assessment or a health effects study is retained for agency discretion.

One commenter suggested that the regulation contain definitions for "pilot study of health effects," "registry," and "health surveillance program." The definition for registry and health surveillance program may be found in ATSDR's Policies and Procedures for Establishing a National Registry of Persons Exposed to Hazardous Substances. The definition for pilot study is given in a **Federal Register** notice announcing the availability of funds to States to conduct pilot and epidemiologic studies (54 fR 22488 (1989)). Given the fact that definitions of these terms are included in public documents, ATSDR does not feel there is a need to include them in the regulations.

Paperwork Reduction Act

This final rule contains information collections which have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned control number 0920–0204. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: ATSDR Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities.

Description: Information submitted by respondents is used by ATSDR staff to evaluate the need for a health assessment, and to plan the health assessment, if one is needed.

Description of Respondents: Individuals or households, State and local governments, business or other for-profit organizations, non-profit institutions, and small businesses.

Estimated Annual Reporting and Recordkeeping Burden:

Regular citation	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
90.4	100	Once	.5 hours	50

We received no public comments on the estimated public reporting burden, and it remains the same as that contained in the proposed rule.

Cost Regulatory Analysis

One commenter also suggested that ATSDR should consider the regulation to be a "major" rule, thereby requiring the Agency to conduct a regulatory impact analysis. The Secretary has determined, in accordance with Executive Order 12291, that this regulation will not constitute a "major" rule and is therefore not subject to the regulatory impact analysis of the Order. A "major" rule is any regulation that is likely to result in:

—An annual effect on the economy of $100 million or more;
—A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
—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.

The regulation is strictly procedural in nature and does not institute any new substantive requirements. The costs of health assessments or health effects studies are not expected to reach the $100 million annual threshold requiring the conduct of an impact analysis. Finally, the cost of litigation arising out of Superfund sites, costs cited by the commenter as a rationale for developing a regulatory impact statement, are not considered to be costs attributable to the procedures outlined in the regulation. Rather, such costs arise out of the actions of responsible parties at a site. Accordingly, this regulation does not constitute a "major" rule necessitating the preparation of a regulatory impact analysis.

Because of the strictly procedural nature of the regulation, it will not have a significant economic impact on a substantial number of small entities. The rule does not impose any reporting requirements on small entities and will not result in any added financial burdens for such entities. Accordingly, the preparation of a regulatory flexibility analysis is not required.

List of Subjects in 42 CFR Part 90

Administrative practice and procedure, Hazardous substances, Public health.

For the reasons stated in the preamble, subchapter H, consisting of part 90, is added, as set forth below, to title 42 of the Code of Federal Regulations.

James O. Mason,
Assistant Secretary for Health.

Approved: November 16, 1989.

Louis W. Sullivan,
Secretary.

SUBCHAPTER H—HEALTH ASSESSMENTS AND HEALTH EFFECTS STUDIES OF HAZARDOUS SUBSTANCES RELEASES AND FACILITIES

PART 90—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Sec.
90.1 Purpose and applicability.
90.2 Definitions.
90.3 Procedures for requesting health assessments.
90.4 Contents of requests for health assessments.
90.5 Acting on requests.
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90.8 Conduct of health assessments and health effects studies.
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90.10 Notice and comment period.
90.11 Reporting of results of health assessments and health effects studies.
90.12 Confidentiality of information.
90.13 Recordkeeping requirements.

Sec.
90.14 Documentation and cost recovery.

Authority: 42 U.S.C. 9615; 42 U.S.C. 6939a(c).

§ 90.1 Purpose and applicability.

The provisions of this part set forth the policies and procedures of the Agency for Toxic Substances and Disease Registry (ATSDR) with respect to its conduct of health assessments and health effects studies under section 104(i) of Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, and section 3019 of the Resource Conservation and Recovery Act. These provisions apply to ATSDR, as well as its contractors, agents, and those carrying out health assessments and health effects studies pursuant to agreements with ATSDR, such as other Federal agencies and States.

§ 90.2 Definitions.

"Administrator" means the Administrator of the Agency for Toxic Substances and Disease Registry or designee.

"ATSDR" means the Agency for Toxic Substances and Disease Registry, Public Health Service, U.S. Department of Health and Human Services.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*, Pub. L. 96–520), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499).

"EPA" means the U.S. Environmental Protection Agency.

"Facility" is defined in 42 U.S.C. 9601(9).

"Hazardous substance" is defined in 42 U.S.C. 9601(14). In addition, the term includes any pollutant or contaminant which the Administrator determines is appropriate for the purposes of carrying out his or her responsibilities under CERCLA.

"Health assessment" means the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects.

"Health effects study" means research, investigation, or study performed by ATSDR or other parties pursuant to an agreement with ATSDR to evaluate the health effects of exposure to hazardous substances at specific sites. This term includes, but is not limited to, epidemiological studies, exposure and disease registries, and health surveillance programs. This term does not include health assessments.

"Owner or operator" is defined in 42 U.S.C. 9601(20).

"Peer review" means review for scientific quality by a panel consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected by the Administrator of ATSDR on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, Indian tribe, or any interstate body.

"Pollutant or contaminant" is defined in 42 U.S.C. 9601(33).

"Public health advisory" is a statement by ATSDR containing a finding that a release poses a significant risk to human health and recommending measures to be taken to reduce exposure and eliminate or substantially mitigate the significant risk to human health.

"Release" is defined in 42 U.S.C. 9601(22).

§ 90.3 Procedures for requesting health assessments.

(a) ATSDR will accept requests to perform health assessments for a particular facility or release from any person or group of persons.

(b) All requests to ATSDR to perform health assessments should be addressed to: Assistant Administrator, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Atlanta, GA. 30333.

§ 90.4 Contents of requests for health assessments.

(a) Each request for a health assessment shall contain:

(1) The name, address (including zip code), and telephone number of the requestor;

(2) The organization or group the requestor represents, if any;

(3) The name, location, and description of the facility or release of concern;

(4) A statement providing information that individuals have been exposed to a hazardous substance and that the probable source is a release, or sufficient information to allow the Administrator to make such a finding;

(5) A statement requesting ATSDR to perform a health assessment.

(b) At his or her discretion, consistent with the requirements of CERCLA, the Administrator may decide not to require the preceding information be submitted with a request for a health assessment.

(c) Each request for a health assessment should include, where possible:

(1) Any other information pertaining to the facility or release, such as the nature and amount of the hazardous substances of concern or the identities of parties believed to be potentially responsible for the release;

(2) Potential pathways for human exposure, including a description of the media contaminated (e.g. soil, groundwater, air, etc.);

(3) The demographic nature and proximity of the potentially affected human population; and

(4) Other Federal, State, or local governmental agencies which were notified or that investigated the facility or release.

(d) This data collection has been reviewed and approved by OMB in accordance with the Paperwork Reduction Act and assigned the control number 0920–0204.

§ 90.5 Acting on requests.

(a) Upon receipt of a request for a health assessment submitted under this part, ATSDR will determine, in its discretion, whether or not there is a reasonable basis to justify conducting a health assessment. ATSDR will base this determination on, among other factors:

(1) Whether individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release;

(2) The location, concentration, and toxicity of the hazardous substances;

(3) The potential for further human exposure;

(4) The recommendations of other governmental agencies; and

(5) The ATSDR resources available and other ATSDR priorities, such as its responsibilities to conduct other health assessments and health effects studies.

(b) Where appropriate, ATSDR will request information from other Federal, State, and local governmental agencies, as well as other persons, pertaining to a facility or release which is the subject of a request from the public to ATSDR to conduct a health assessment.

(c) The requestor will be notified in writing of ATSDR's determination that either a health assessment will be performed, a health assessment will not be performed, or that further information

concerning the facility or release is required before a decision can be made whether a health assessment will be performed.

(d) If a health assessment is not initiated in response to a request from the public, ATSDR shall provide a written explanation to the requestor of why a health assessment is not appropriate.

§ 90.6 Notification of determination to conduct a health assessment in response to a request from the public.

(a) Following a determination by ATSDR to conduct a health assessment in response to a request from the public, ATSDR shall notify in writing, at a minimum, the following parties of its intent to perform a health assessment:

(1) The U.S. Environmental Protection Agency;

(2) The appropriate State government environmental agency;

(3) The appropriate State and local health departments;

(4) The requestor;

(5) The owner or operator of the facility of concern, if their identity is readily available to ATSDR.

In addition, ATSDR will notify, in writing or by telephone, other potentially responsible parties, if their identity is readily available to ATSDR.

(b) At its discretion, ATSDR may notify any other persons which it feels may be affected by the release or have information pertaining to the release.

§ 90.7 Decision to conduct health effects study.

(a) ATSDR may decide, in its discretion, based upon the results of a health assessment or other available information, to conduct a health effects study for a particular site or sites. Such a decision may, in appropriate circumstances, be made prior to the completion of a health assessment for a site or sites. When deciding whether to conduct a health effects study, ATSDR will consider such factors as the results and recommendations of a health assessment for the site or sites and the need for additional information to determine whether individuals have been exposed to hazardous substances, the degree to which such exposure has occurred, and any possible health effects resulting from such exposure.

(b) Should ATSDR decide, in its discretion, to conduct a health effect study, it will notify the parties as specified in § 90.6.

§ 90.8 Conduct of health assessments and health effects studies.

(a) Any interested person or persons may submit data or information to ATSDR for it to consider in its conduct of a health assessment or a health effects study. In performing a health assessment or a health effects study, ATSDR will consider data and information it has independently generated or received from other parties, such as EPA, other Federal agencies, State and local governmental agencies, businesses, citizen organizations, and community groups.

(b) ATSDR may determine it is necessary to conduct a site visit in connection with a health assessment or health effects study. The ATSDR representative may allow the participation of any person in the site visit which he or she, at his or her discretion, determines will aid in the conduct of the health assessment or health effects study.

(c) In the event that the information necessary to perform a health assessment or health effects study is not readily available from other sources, ATSDR may arrange for sampling or additional data gathering at a facility or release for the limited purpose of determining the existence of current or potential health problems.

§ 90.9 Public health advisory.

ATSDR may issue a public health advisory based on the findings of a health assessment, health effects, study, or other ATSDR involvement.

§ 90.10 Notice and comment period.

Following internal review by ATSDR and external peer review of a draft final report of the results of a health effects study, ATSDR will publish a notice that the draft final report is available for public review and comment. At a minimum, the notice shall be published in at least one newspaper of general distribution in the local where the site is located. The notice shall describe how copies of the draft final report of the health effects study can be obtained and set a reasonable time period for interested persons to submit comments concerning the study. ATSDR may, at its discretion, respond in writing to comments it receives.

§ 90.11 Reporting of results of health assessments and health effects studies.

(a) ATSDR shall provide a report of the results of a health assessment or health effects study to EPA, the appropriate State and local governmental agencies, any person requesting ATSDR to conduct the health assessment, and parties potentially responsible for the release, if their identity is readily available to ATSDR. In addition, such reports shall be available to the general public upon request.

(b) In the event that ATSDR or its representatives conduct medical examinations of individuals in the course of a health effects study and the examination reveals a positive significant medical finding, the individual, and a physician if designated by the individual, will be promptly notified of that significant medical finding by ATSDR.

(c) A summary of the findings of all medical examinations for each individual will be sent by ATSDR to that individual.

(d) All studies and results of research conducted under this part (other than health assessments) shall be reported or adopted only after appropriate peer review.

§ 90.12 Confidentiality of information.

(a) ATSDR shall consider any medical information in individually identifiable form to be confidential information and shall release such information only in accordance with the Privacy Act (5 U.S.C. 552a) or other applicable Federal law.

(b) As provided under section 104(e)(7) of CERCLA, any records, reports, or information obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to ATSDR by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which any officer, employee, or representative of ATSDR has access under this part if made public would divulge information entitled to protection under the Trade Secrets Act (18 U.S.C. 1905), such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out statutorily mandated duties.

(c) In submitting data to ATSDR, a person may designate the data which such person believes is entitled to protection under paragraph (b) of this section and submit such designated data separately from other data submitted under this part. A designation under this paragraph shall be made in writing to the Administrator. However, should ATSDR at any time question such designation, not less than 15 days notice to the person sumitting the information shall be given of the intention to remove such trade secret designation from such

information. The person may submit a request to the Administrator to reconsider this intention and may provide additional information in support of the trade secret designation. The Administrator shall notify the person in writing of the decision which will become effective no sooner than 15 days after the date of such notice.

§ 90.13 Recordkeeping requirements.

(a) ATSDR shall maintain a record of all health assessments and health effects studies. The Administrator shall, at his or her discretion, determine the contents of the record. At a minimum, the record shall include:

(1) The final ATSDR report of the health assessment or health effects study;

(2) Nonconfidential data and other information upon which that report is based or which was considered by ATSDR;

(3) Nonconfidential data or other information submitted by interested persons pertaining to the health assessment or health effects study;

(4) The protocol for the health effects study;

(5) A list of the individuals responsible for external peer review of the report of a health effects study, their comments, and ATSDR's response to the comments; and

(6) For health effects study, the notice announcing the availability of a draft final report for public review and comment, all comments received in response to the notice, and any responses to the comments by ATSDR.

(b) The record may contain a confidential portion which shall include all information determined to be confidential by the Administrator under this part.

(c) The Administrator may determine other documents are appropriate for inclusion in the record for health assessments or health effects studies.

(d) Predecisional documents, including draft documents, are not documents upon which ATSDR bases its conclusions in health assessments or health effects studies, and are not usually included in the record for health assessments or health effects studies.

(e) The record for ATSDR health assessments and health effects studies will be available for review, upon prior request, at ATSDR headquarters in Atlanta, Georgia.

(f) Nothing in this section is intended to imply that ATSDR's decisions to conduct health assessments or health effects studies, or the reports of health assessments or health effects studies, are subject to judicial review.

§ 90.14 Documentation and cost recovery.

(a) During all phases of ATSDR health assessments and health effects studies, documentation shall be completed and maintained to form the basis for cost recovery, as specified in section 107 of CERCLA.

(b) Where appropriate, the information and reports compiled by ATSDR pertaining to costs shall be forwarded to the appropriate EPA regional office for cost recovery purposes.

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Part V

Environmental Protection Agency

Asbestos; Publication of Identifying Information; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62085; FRL-3687-9]

Asbestos; Publication of Identifying Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides summaries of the information submitted to EPA by manufacturers and processors of certain asbestos products in accordance with the Asbestos Information Act of 1988 (the Act). It also explains how individuals may obtain more or all of the information submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 1988, the President signed into law the Asbestos Information Act of 1988, Pub. L. 100-577 (the Act), which requires former and current manufacturers and processors of certain asbestos products to submit information identifying their products to EPA and requires EPA to organize and publish the submitted information. EPA issued a notice in the **Federal Register** of April 18, 1989 (54 FR 15622), which explained how and where these manufacturers and processors were to submit the information required by the Act. On August 7, 1989, EPA issued a notice in the **Federal Register** (54 FR 32430) which established a deadline of October 6, 1989, for these manufacturers and processors to submit to EPA the information required by the Act. On September 20, 1989, EPA issued a notice in the **Federal Register** (54 FR 38736) which informed submitters of information under the Act that EPA will not accept claims of business confidentiality.

II. Summaries of Information Submitted to EPA

Most of the manufacturers which submitted information to EPA provided a summary of the required information in the order that the Agency requested in Unit II of the April 18, 1989 **Federal Register** notice. EPA requested summaries from the manufacturers, because the Agency anticipated that the total amount of information submitted would be too voluminous to publish easily. That has proven to be the case. Therefore, EPA has decided to publish in this **Federal Register** notice only summaries of the information submitted. Instructions on how to obtain any or all additional information submitted to EPA are available in Unit III of this notice.

In some cases, EPA has reorganized the submitted information into a uniform summary format for inclusion in this **Federal Register** notice. However, the substance of the information submitted to EPA has not been altered.

Summaries of the information submitted to EPA before November 17, 1989 are included below in alphabetical order by name of manufacturer:

1. The Amtico Division of American Biltrite Inc.

(a) *Name and address of manufacturer.* The Amtico Division of American Biltrite Inc., 3131 Princeton Pike, Lawrenceville, NJ 08648. Prior to American Biltrite's purchase of the assets for producing vinyl asbestos tile and asphalt tile in Hamilton Township, NJ from Bonafide Mills Inc. on January 1, 1961, Bonafide Mills manufactured vinyl asbestos tile, asphalt tile (containing asbestos), and sheet vinyl flooring utilizing an "asbestos felt backing" at this same location. American Biltrite Inc. has no records regarding dates or patterns of vinyl asbestos tile manufactured by Bonafide Mills prior to American Biltrite's purchase on January 1, 1961. Prior to American Biltrite's purchase of the assets for producing sheet vinyl flooring in Norwood, MA from New London Mills in 1974, New London Mills manufactured sheet vinyl flooring utilizing an "asbestos felt backing" at this same location. American Biltrite has no records regarding dates or patterns of sheet vinyl flooring produced by New London Mills prior to American Biltrite's purchase in 1974.

(b) *Years of manufacture.* 1961 through 1980.

(c) *Types or classes of products.* Vinyl asbestos floor tile, asphalt tile (containing asbestos), and sheet vinyl flooring (utilizing an asbestos felt backing).

(d) *Other identifying characteristics.* Vinyl asbestos floor tile (produced January 1, 1961 through early December 1985) was available in a variety of colors, patterns, and surface textures. Many of the same colors, patterns, and surface textures produced prior to December 1985, which contained asbestos, have subsequently been produced in the non-asbestos tile construction after December 1985 and have the same visual appearance as the former asbestos-containing tile.

Asphalt tile containing asbestos (produced January 1, 1961 through 1970) was also marketed as plastic asphalt floor tile. It was available in a variety of colors, patterns, and surface textures, including: travatile, dot, cork, and marbleized.

Sheet vinyl flooring (produced January 1, 1962 to 1968, and 1974 through 1980) utilized an "asbestos felt backing" (flooring felt containing asbestos) bonded to the under side of the vinyl sheet flooring. It was available in a variety of colors, patterns, and surface textures; among the styles were: Casa Royale, Sun Court, Sunfire, Serenata, Natural State, Forum, Chatam Square, Royal Clan, Suntide, Contessa, and Kings Inn.

(e) *Additional information.* Additional information is available.

2. Armstrong World Industries, Inc.

(a) *Name and address of manufacturer.* Armstrong World Industries, Inc., formerly known as Armstrong Cork Company, P.O. Box 3001, Liberty and Charlotte Streets, Lancaster, PA 17604. Predecessors: Forms + Surfaces, Inc., Box 5215, Santa Barbara, CA 93150; and The W. W. Henry Company, 5608 Soto Street, Huntington Park, CA 90255.

(b) *Years of manufacture.* 1909 through April 1987.

(c) *Types or classes of products.* Thermal system insulation material, fire-resistant vapor barrier and adhesive for cork, resilient floor tile, lining felt and backing for sheet vinyl, asphalt "cutback" floor tile adhesive, acoustic cement, and decorative wall treatment.

(d) *Other identifying characteristics.* Nonpareil High Pressure Covering, Block, and Cement (produced 1909 to 1932 by Armstrong) were high temperature thermal system insulations for pipe covering and block and cement. These products were last offered more than 50 years ago. The only formula information available to Armstrong is that which is taken from the United States Patent Office documents.

LT Cork Covering (produced with asbestos 1956 to 1959 by Armstrong) was a low temperature thermal system cork insulation. It was a wrap-around insulation consisting of wedge-shaped cork segments cemented to a laminate consisting of aluminum foil and asbestos paper. It is unique in its appearance and can be easily distinguished visually by its physical structure.

Armaspray (produced 1966 to 1968 by Armstrong) was a spray-on thermal system insulation.

CC Navy Sealer (LT Sealer) (produced approximately 1942 to 1962 by Armstrong) was a fire-resistant vapor barrier and adhesive for cork. CC Navy Sealer was light tan in color and had a trowel and brush consistency; LT Sealer was white and had a trowel and brush consistency.

Vinyl Composition Tile (produced with asbestos 1954 to June 1981 in a commercial grade and 1954 to 1982 in a residential grade by Armstrong) was a resilient floor tile made of non- friable material. Visual identification may be possible using designated pattern book volumes.

Rubber Tile (produced with asbestos 1955 to 1966 by Armstrong) was a resilient floor tile made of non-friable material. Visual identification may be possible using designated pattern book volumes.

Asphalt Tile (produced 1931 to 1972 by Armstrong) was a resilient floor tile made of non-friable material. Visual identification may be possible using designated pattern book volumes.

Hydrocord (produced 1955 to 1983 by Armstrong) was a lining felt and backing for sheet vinyl made of non-friable material.

S–89 (produced with asbestos 1965 to January 1983 by Armstrong) was an asphalt "cutback" floor tile adhesive. It was non-friable, black in color, and had a dried consistency of a heavy-bodied tar.

S–90 (produced with asbestos 1934 to January 1983 by Armstrong) was an asphalt "cutback" floor tile adhesive. It was non-friable, black in color, and had a dried consistency of a heavy-bodied tar.

Acoustic Cement, also known as 314 Acoustic Cement, (produced as an asbestos-containing material 1945 to 1953 by Armstrong) was an adhesive for acoustical tile installation. It was used for chemical bonding of the acoustic ceiling tiles to a structural member.

"Bonded Bronze" Panels (produced 1970 to 1971 by Forms + Surfaces) used a commercially available asbestos cement board as a backing material and had an end use as decorative wall treatment. Forms + Surfaces was not the manufacturer of the asbestos cement board and, therefore, the type and percentage of asbestos and other formula information is unknown.

#232 Asphalt Cutback Adhesive (produced with asbestos November 1965 to April 1987 by The W. W. Henry Company) was a floor tile adhesive. It was a non-friable asphalt cutback adhesive, black in color with a dried consistency of a heavy- bodied tar. Formula information for #232 Asphalt Cutback Adhesive is as follows: 63% asphalt by weight, 5% chrysotile asbestos, and 32% solvent.

(e) *Additional information.* Additional information is available.

3. The BFGoodrich Company

(a) *Name and address of manufacturer.* The BFGoodrich Company, 3925 Embassy Parkway, Akron, OH 44313.

(b) *Years of manufacture.* Approximately 1945 through 1963.

(c) *Types or classes of products.* Floor tile.

(d) *Other identifying characteristics.* Self-explanatory by class description.

(e) *Additional information.* No additional information is available.

4. The Celotex Corporation

(a) *Name and address of manufacturer.* The Celotex Corporation, P.O. Box 31602, Tampa, FL 33631–3062. Predecessors: Panacon Corporation, Briggs Manufacturing Corporation, Philip Carey Corporation, Smith & Kanzler Company, Glen Alden Corporation, and Philip Carey Manufacturing Company.

(b) *Years of manufacture.* 1906 through 1984.

(c) *Types or classes of products.* Surfacing material, thermal system insulation (pipe coverings and block, cements, accessory products), and miscellaneous materials (boards, other).

(d) *Other identifying characteristics.* Spraycraft surfacing material (produced 1969 to 1971) was 35% asbestos, 60% mineral wool, 2.5% white cement, 2.5% clay.

The following were pipe covering and block products:

85% Magnesia (produced 1906 to 1961) was 85% magnesia, 11 to 15% asbestos (filter molded);

Super Light 85% Magnesia (produced 1951 to 1958) contained normal carbonate magnesium, 15% asbestos (precision molded);

Alltemp (produced 1954 to 1958) was 60% perlite, 20% magnesia plastic, 10% bentonite clay, 10 to 12% asbestos;

Careytemp (produced 1958 to 1969, asbestos removed 1969) was 90% perlite, 6 to 7% asbestos and binders;

Paper Pipe Products (produced 1906 to the early 1970's) contained approximately 60% asbestos, 25% organic fiber, 15% silicate. Product names: Aircel, Careycel, Carocel, Defendex, Excel, Glosscell, Multi-Ply.

Asbestos Sponge contained 60% asbestos, 2 to 3% asbestos sponge, organic felt, and silicate.

Fyrex contained 60+% asbestos, organic material, and silicate.

Other Pipe Coverings (produced 1906 to February 1967): Tempcheck—20% magnesium plastic, 60% diatomaceous earth, 20% asbestos; Hi-temp #19—80% diatomaceous earth, 20% asbestos; Hi-temp #12 and #15—60% diatomaceous earth, 20% magnesia plastic, 20% asbestos; Careytemp Aluminum Jacketed and Traced Pipe Insulation—Careytemp with aluminum or stainless steel jacket; Careytemp 2000—93.6% diatomaceous earth, 6.4% asbestos; Dual Careytemp—2% bentonite clay, 17% starch, 19% phenolic resin, 10% asbestos; 62% perlite.

The following were cement products:

707 Cement (produced 1906 to 1960) contained 43% asbestos, 57% ground gypsum;

Super 606 Cement (produced 1906 to 1960) contained 20% bentonite, 10% kaolin clay, 10% asbestos, 60% mineral wool;

100 Cement (produced 1906 to 1967) contained 55% asbestos, 50% gypsum;

303 Cement (produced 1906 to 1967) contained 55% asbestos, 35% gypsum, 10% kaolin clay;

Careytemp Finishing Cement (produced 1966 to 1968) contained cement, bentonite clay, perlite, 22% asbestos, limestone, silica, wetting agent;

MW–0 Cement (produced 1950 to 1952) contained 70% mineral wool, 10% asbestos, 20% bentonite clay;

MW–0 Cement (produced 1940 to 1967) contained 90% mineral wool, 10% asbestos;

LF–0 Asbestos Cement (exact date manufacture began is unknown; manufactured up to 1967) contained 60 to 70% asbestos, kaolin clay, hardeners;

Vitricel Cement (#10 and #19) (produced 1940 to 1967) contained 15 to 25% asbestos, 50% cement/slate flour;

A–01 Cement (produced 1906 to 1967) contained 100% asbestos;

7M–0 Asbestos Shorts Cement (produced 1950 to 1977, brokered) contained 100% asbestos.

The following are accessory products:

45-pound Asbestos Waterproof Jacket (produced 1906 to 1982) contained 85% asbestos, asphalt, organic paper fillers;

Asbestos Rope and Wick (produced 1925 to 1945) contained 85% asbestos, 15% cotton fiber;

Asbestos Papers and Roll Boards (produced 1906 to February 1982) contained 60 to 80% asbestos, organic fiber, silicate;

Asbestos Tank Jackets (produced 1906 to 1945) contained 60% asbestos, 25% organic fiber, 15% silicate;

Thermalite (produced 1906 to 1937) contained 85% asbestos, 15% sodium silicate;

Firefoil Board and Panel (produced 1940 to 1960) contained 60% asbestos, 25% organic fiber, 15% silicate;

Vitricel Asbestos Sheets (produced 1941 to 1960) contained 60% asbestos, organic fiber, silicate, waterproofing solution;

Thermotex-B (produced 1906 to 1984) contained 14% asbestos, asphalt and mineral stabilizer;

228 Fibrated Emulsion (manufacture began 1906, exact date manufacture stopped is unknown) contained bentonite clay, asphalt, 3.6% asbestos;

Insulation Seal (produced 1930 to 1984) contained 20% asbestos, asphalt cutback, naphtha, mineral spirits;

Fire Resistant Insul Seal (years of production unknown) contained 20% asbestos, asphalt and chlorinated solvent;

Fibrous Adhesive (1906 to 1984) contained 85% sodium silicate, 15% asbestos;

BTU Cement (produced 1930 to 1965) contained 25 to 30% asbestos, asphalt cutback;

Careytemp Adhesive (produced 1961 to 1968) contained 80% silicate, 15% asbestos, 4.8% diatomaceous earth, 2% wetting agent.

The following are miscellaneous materials:

Thermo-bord (produced 1925 to 1969) contained non-asbestos insul covered with A–C sheets (20% asbestos);

Industrial A–C Boards (produced 1925 to 1970) contained 78% cement, 22% asbestos;

Cemesto Board (produced 1930's to early 1960's) was similar to Thermo-bord;

Marine Panel (produced 1941 to 1950) contained Aircel and asbestos cement (60% asbestos);

Millboards (produced 1906 to February 1982) had various formulations: 65 to 97% asbestos and cement, clay, or starch;

Careyduct (produced 1940 to 1955) contained 60 to 85% asbestos, 15 to 40% starch;

Carey Asphalt Floor Tiles (produced 1930's to 1975) contained 40% asbestos, 60% asphalt and sand;

Careyduct Adhesive (produced 1940 to 1955) contained 15% asbestos, 85% sodium silicate;

Ceiling Tiles (produced 1960 to 1975) contained 1.5 to 3% asbestos, 70 to 72% mineral wool, 18% clay, 7% starch, and 1 to 2% wax.

(e) *Additional information.* No additional information is available.

5. Congoleum Corporation

(a) *Name and address of manufacturer.* Congoleum Corporation, P.O. Box 3127, Trenton, NJ 08619.

(b) *Years of manufacture.* 1947 through 1983.

(c) *Types or classes of products.* Counter tops, asphalt tile, vinyl asbestos tile, 6 foot sheet flooring, sheet flooring with asbestos felt.

(d) *Other identifying characteristics.* Counter tops (produced 1952 to 1960) were available in a variety of patterns and styles, including: Vinyl Top, Nairon Top, Viscount, and Marble.

Asphalt Tile (produced 1952 to 1971) was available in a variety of patterns and styles, including: Gala, Corkette, Tweed Texture, Featherveining, and Sequin.

Vinyl Asbestos Tile (produced 1959 to 1975) was available in a variety of patterns and styles, including: Thru Style, Grandview, Corinthian, Selected Color Series, Cameo, Samara, Fontenay, Shelburne, Regalwood, Sunburst, Bedford Slate, Canyon Stone, English Brick, Park Ridge, Sonoma, Caribbean, Catalina, Woodgrain, Cimarron, Parthenon, Capella, Orion, El Camino, Featherveln, Brushwood, Sparklewood, Gala, Vinylstone, Romanaire, Rondelle, Dominique, Woodgrain, Travertine, Ranch Tile, Corsicana, Corinthian, Dominique, Carillon, Manorwood, Aztec, San Paulo, Libra, Capella, Venus, Orion, Fontenay, Ventura, and Shelburne.

Tile (produced 1952 to 1962) was available in a variety of patterns and styles, including: Standard, Venetian, Designer, Bermuda Hues, Tiffany Vinyl Tile, Translucent Vinyl Tile, Vinyl Dynasty Tiles and Tile Inserts, Berylstone, Sequin, Venetian, and Marble.

Asbestos Sheet Flooring (produced 1974 to 1977; 1981 to 1983) was available in a variety of patterns and styles, including: Ultraflor, Ultraflor Majestic, Ultraflor Regal, Reflection, Fashionflor, Prestige, Dynasty, Pavillion, Spring, Highlight, Cushionflor Supreme, Villager, Pacemaker, Profile, and Flor-Ever.

6 Foot Sheet Flooring (produced 1952 to 1954) was available in a variety of patterns and styles, including: Vinylflor, Berylstone, Marble, and Picnic.

Sheet Flooring with Asbestos Felt (produced 1965 to 1980) was available in a variety of patterns and styles, including: Pebble, Brick, Colony Square, Georgian Marble, Persian Tile, Casa Grande, Town & Country, Williamsburg Brick, The Rembrandt, The Stuart, The Degas, The Goya, Caliente, Hampstead Brick, Royal Court, Westbury, Fairmont, Topaz, La Mesa, Colonnade, Majesty, Espana, Pennhurst, Camelot, Italian Terrazzo, and Willowbrook.

(e) *Additional information.* Additional information is available.

6. Eagle-Picher Industries, Inc.

(a) *Name and address of manufacturer.* Eagle-Picher Industries, Inc., 580 Walnut Street, Cincinnati, OH 45202. Corporate Predecessors: The Eagle-Picher Company, The Eagle-Picher Lead Company.

(b) *Years of production.* 1930 through 1971.

(c) *Types or classes of products.* Insulating cement, insulating and finishing cement,

(d) *Identifying characteristics.* Super "66" asbestos-containing insulating cement, formerly called Eagle "66," was manufactured from 1930 to August 1971. Super "66" was an insulating cement which dried to a grayish-white color with dark mineral wool fiber nodules of generally uniform size (¼" to ½"), evenly dispersed through the binder, and compressible and resilient when pressed between the fingers. Super "66" was formulated as follows: 42 to 67% granulated mineral wool (dark) fiber nodules by weight; 22 to 33% (1931 to 1963) and 44 to 52% (1963 to 1971) bentonite clay by weight; 8 to 10% (1931 to 1963) and 3 to 4% (1964 to 1971) chrysotile asbestos fibers by weight; less than 5% other ingredients by weight.

One-Cote Insulating and Finishing Cement was manufactured from 1960 to August 1971. One-Cote was a hydraulic setting insulating and finishing cement which dried to a smooth, white to off-white, hard finish with high compressive strength and abrasion resistance. It contained dark mineral wool fiber nodules of generally uniform size (⅛" to ⅜"), evenly disbursed through the binder, and compressible and resilient when pressed between the fingers. One-Cote was formulated as follows: 19 to 31% granulated mineral wool (dark) fiber nodules by weight; 27 to 33% portland cement by weight; 5 to 18% (1960 to 1966) and 23 to 35% (1967 to 1971) bentonite clay by weight; 24 to 30% (1960 to 1966) and 7 to 14% (1967 to 1971) diatomaceous earth by weight; 5 to 6% (April 1960 to 1967) and 2 to 5% (1968 to August 1971) chrysotile asbestos fibers by weight (product did not contain asbestos prior to April 1960 or after August 1971); less than 4% other ingredients by weight.

Eagle-Picher has developed an extensive set of analytical procedures and testing protocols specifically designed for precise identification of distinguishing characteristics of Eagle-Picher's Super "66" and One-Cote in the laboratory setting. For further information and assistance in performing the analytical procedures

contact James A. Ralston at the address provided above in 6(a).

(e) *Additional information.* No additional information is available.

7. Fibreboard Corporation

(a) *Name and address of manufacturer.* Fibreboard Corporation, 1000 Burnett, Galaxy Office Park, Concord, CA 94520. Formerly Fibreboard Paper Products and Pabco Corporation.

(b) *Years of production.* 1920 to 1971.

(c) *Types or classes of products.* Block, pipe- covering, and cement thermal insulation, thermal insulating cement, floor covering, cement products, roof paint, floor- coating asphalt saturated felts or roll roofings with asbestos- containing base sheets, caulking compounds, plastic cements, gypsum board, taping and finishing compounds, insulating tape, and gaskets and packings.

(d) *Identifying characteristics.* Prasco, a block, pipe-covering, and cement thermal insulation manufactured from about 1928 to 1957, contained 85% diatomaceous earth and binders and about 15% asbestos (color: yellow or red).

85% magnesia block, pipe-covering, and cement thermal insulation manufactured from about 1928 to 1966, contained about 85% or more basic magnesium carbonate and 15% or less asbestos (color: white).

Caltemp (or Caltherm), a block, pipe-covering, and cement thermal insulation manufactured from about 1952 to 1968, contained about 88% calcium silicate and about 12% asbestos (color: pink until mid-1960's, then white or gray).

Supercaltemp, a block, pipe-covering, and cement thermal insulation manufactured from the late 1960's until 1971, contained calcium silicate and other non-asbestos material increasing from about 88% to 96½%, and asbestos material decreasing from about 12% to 3½% (color: white or gray).

FI thermal insulating cement, manufactured from about 1963 to 1966, contained about 95% calcium silicate and binders and about 5% asbestos (color: pink until mid-1960's, then white or gray).

No. 127 thermal insulating cement, manufactured from about 1966 to 1971, contained about 95% calcium silicate and binders and about 5% asbestos (color: white or gray).

Aircell or asbestos paper insulation, manufactured prior to 1948, was composed of asbestos paper and sodium silicate (color: grayish).

Kaylo, LK Insulation, and Pyrocal, block and pipe-covering thermal insulation, under rebrand agreements and specifications for Owens-Corning Fiberglas, Armstrong Contracting and Supply, and PPG Industries, respectively, were manufactured 1960 to 1971, 1964 to 1971, and 1968 to 1971.

Pabco Floron floor covering, manufactured from about 1952 to 1954, contained about 15% asbestos.

Colorok, Stormlap, Pabflex, and Stonite asbestos-cement products, manufactured from about 1948 to 1963, contained portland cement and about 15–20% asbestos.

Alumishield roof paint, manufactured from about 1946 to 1968, and Gripdeck floor-coating, manufactured from about 1942 to 1968, contained paint vehicles, pigments, and about 5 to 10% asbestos.

Asphalt-saturated felts or roll roofings, manufactured sporadically from 1920 to 1968 at various locations, may have had asbestos-containing base sheets.

Caulking compounds, plastic cements, and roof coatings manufactured until 1968 may have contained about 5 to 10% asbestos.

Flamecurb gypsum board, manufactured from about 1951 to 1960, contained a small percentage of asbestos.

Gypsum board and lath, manufactured for a few months in 1954, contained 0.2 to 0.3% asbestos.

Taping and finishing compounds, manufactured from about 1951 to 1960, contained about 5 to 10% asbestos.

Insulating tape manufactured in the 1940's may have contained some asbestos.

Gaskets, packings, and a product called Asbestofelt manufactured by a predecessor prior to 1948 may have contained some asbestos, and said predecessor may have sold some asbestos- cement roofing, siding, refractories, textiles, paper, millboard, or other materials manufactured by others which may have contained some asbestos.

(e) *Additional information.* Additional information is available.

8. The Flintkote Company

(a) *Name and address of manufacturer.* The Flintkote Company, 100 The Embarcadero, Third Floor, San Francisco, CA 94105.

(b) *Years of manufacture.* 1945 through 1982.

(c) *Types or classes of products.* Vinyl asbestos floor tile, floor tile cements.

(d) *Other identifying characteristics.* Vinyl Asbestos Floor Tile (produced 1945 to November 1980) was manufactured and sold in hundreds of patterns and color combinations. The amount of chrysotile fiber contained in the product varied, but generally ranged from 5 to 25%. No physical or chemical testing protocol is known for Flintkote floor tile, however, it can be identified through visual inspection by persons knowledgeable in the trade.

GF–8/R–14–C Floor Tile Cements (produced 1945 to approximately 1982) contained chrysotile. The amount of chrysotile fibers contained in these products ranged from approximately 5 to 11%. No physical or chemical testing protocol is known for Flintkote floor tile cements.

9. GAF Building Materials

(a) *Name and address of manufacturer.* GAF Building Materials Corporation, 1361 Alps Road, Wayne, NJ 07470. Predecessor: The Ruberoid Company.

(b) *Years of manufacture.* 1928 through 1981.

(c) *Types or classes of products.* Pipe covering, asbestos paper and millboard products, and insulating cements.

(d) *Other identifying characteristics.* Calsilite (produced from approximately 1944 to June 1947 for the U.S. Navy; from July 10, 1947 to March 7, 1949 by Ruberoid on an experimental basis; from March 7, 1949 to 1967 by Ruberoid on a commercial basis; in 1967 by Aniline & Film Corporation on a commercial basis; and from 1968 to October 1971 by GAF Corporation on a commercial basis) was a pipe covering and block insulation. Calsilite was a lightweight, hard, calcium silicate insulation designed to withstand temperatures up to 1250 °F. Calsilite pipe covering was manufactured in 3 foot lengths and in varying thicknesses. It was available in half-sectional pieces, and, at various times, in three-segmental and regular segmental shapes, for assembly around a pipe in single or double layers. Pipe covering normally was provided with standard weight cotton or canvas jackets applied with silicate of soda. No "T's," elbows or joints were produced. Flat Calsilite blocks were manufactured, at various times, in 18" or 36" lengths, in widths from 3" to 36", and in thicknesses up to 4". Six-inch wide curved segmental blocks, capable of contouring more easily for insulation of large pipes and circular vessels, also were available. Calsilite was manufactured by a "pan-molding" method until 1964 when Ruberoid began using a "filter-press" method or process.

Pan-molded Calsilite was grayish-white and relatively smooth, with some small holes. Calsilite filter press was grayish-white with screen marks on the outer surfaces. Calsilite-Hi, developed in or around 1960, could withstand temperatures up to 1,800 °F. In the mid-

to-late 1960's, Ruberoid developed Calsilite SS, an "inhibited" product designed specifically to prevent stress corrosion and cracking of stainless steel piping. In addition to formula changes made in connection with product development, the Calsilite formula was adjusted often in order to compensate for changes in the quality and availability of raw materials.

Asbestos Paper and Millboard Products (produced by Ruberoid from 1928 to 1967, by General Aniline & Film Corporation in 1967, and by GAF Corporation from 1968 to 1981). Asbestos paper was designed to be used alone or in the manufacture of other products. It was manufactured in various thicknesses, according to customer specifications. Asbestos paper had a temperature limit of 250 °F. Its primary constituent was chrysotile asbestos, generally a mixture of grades 5 to 7. Other constituents included sulphite pulp, diatomaceous earth, and starch, although in the early years of manufacture this product may have consisted only of chrysotile and starch (which was sometimes in the form of tapioca).

Rollboard was an asbestos paper product, consisting of plies of asbestos paper bonded together without glue to create thicknesses varying from 1/16" to 1/8". Rollboard had a temperature limit of 250 °F.

Millboard was a stiffer product than asbestos paper or rollboard and was manufactured in sheets of varying thicknesses according to customer specifications. Millboard consisted generally of chrysotile asbestos, (usually grades 5D, 5R, and 6D), sulphite pulp and often other constituents, bonded with portland cement and/or starch. In later years, at least as early as 1974, latex was added as a binder.

Corrugated asbestos paper was designed to be used alone or in the manufacture of other products. It was made in three types: ¼" thickness per ply (4 plies per inch); ⅛" thickness per ply (6 plies per inch); and 1/16" thickness per ply (8 plies per inch). It was manufactured by adhering 36" to 37½" wide flat sheets of asbestos paper (usually 6 lb. paper) with silicate of soda to sheets of the same paper which had been corrugated using characteristic "Roman Arch" shaped corrugations, 26 to 28 to the inch. Its constituents were those of the asbestos paper from which it was constructed. Corrugated asbestos paper was sold in 250 and 500 square foot rolls.

Air Cell was a corrugated asbestos paper product manufactured from 1928 to approximately 1958. It was constructed of layers to the thickness specified by the customer of 36 or 37½" wide flat asbestos paper which was adhered to corrugated asbestos paper with silicate of soda. The corrugations of this product had a characteristic "Roman Arch" shape. As of 1938, the corrugated paper component had 28 corrugations per lineal foot. Each ply was ¼" thick and air cell came in three standard thicknesses—2-ply, 3-ply, and 4-ply. Air cell pipe covering, sheets and blocks were sold. Often a canvas, cloth, or pyroxiline jacket was applied to the outer surface of air cell pipe covering with an adhesive, usually a starch or cereal paste. 2½ brass lacquered bands were provided for each canvas-jacketed section of air cell pipe covering to hold it to the pipe. With the pyroxiline jacket, three 1" wide black japan bands were supplied with each section. Air cell had a temperature limit of 250° to 350 °F. Prior to 1935, air cell may have been sold only under the name "Celasbestos," which was available in 5, 6, 7, and 8-ply versions and well as 1–4 ply versions.

Watocell was a corrugated asbestos paper product manufactured as Watcocel from 1928 to 1934, as Supercell from 1935 to 1942, and as Watcocell from 1942 to 1960. In 8-ply per inch Watcocell, the corrugations were 1/16" thick; in 6-ply, the corrugations measure about ⅛" thickness. Watcocell was sold in rolls, sheets, and blocks. Watcocell's temperature limit was 250 °F.

Imperial insulation was manufactured from at least 1936 to approximately 1960. It had a temperature limit of 500° to 700 °F. Imperial paper consisted of two plies of flat asbestos paper which were passed through an indenting roll resulting in a waffle-like appearance with closely spaced square indentations.

Imperial pipe covering was wound on a mandrel to achieve the desired thickness and canvas-covered. In early years of production, layers of Imperial may have been stapled together or stitched with strands of wire rather than wound on a mandrel. Imperial sheets and blocks were made of layers of Imperial paper glued to the desired thickness with a fireproof glue, such as silicate of soda. This product was sold with a canvas, asphalted felt, or pyroxylin jacket.

Aristo Insulation was listed for sale in and around 1940, but the years of manufacture of Aristo Insulation are unknown. It was a corrugated asbestos paper product with carefully measured indentations and 23 to 25 laminations per inch of thickness. Its temperature limit was 700° to 750 °F. The asbestos paper used in this product was treated with a surface treatment, possibly Bennett size. This product was sold in a standard thickness of one inch, but often was used in thicknesses up to and exceeding three inches. Standard canvas and waterproof jackets were available for this product.

Sponge felt was manufactured from 1936 to approximately 1960. It consisted of asbestos sponge paper made by imbedding small pieces of sponge into asbestos paper. Its temperature limit was 750 °F. It was sold in 36" wide rolls, sheets, and blocks which were produced in the same manner as Imperial products.

Woolfelt, a wool or rag felt insulation manufactured from 1928 to approximately 1959, did not contain asbestos, but was sometimes sold with an asbestos paper liner or backing paper. Tar-lined woolfelt was sold with a tar paper liner which did not contain asbestos. Twin-purpose woolfelt was sold with a liner of asphalt coated asbestos paper.

Anti-Sweat Pipe Covering was manufactured until approximately 1958, and intended exclusively for residential use on cold water pipes. At least as early as 1936 this product was composed of an inner layer of asphalt-saturated asbestos paper followed by a ½" layer of woolfelt, two layers of asphalt- saturated asbestos paper, another ½" layer of woolfelt, and two final layers of asphalt-saturated asbestos paper. The outermost layer had a flap extending at least 3 inches beyond the longitudinal joint. GAF does not know whether a jacket was ever provided with this product. This product was sold in 36" wide rolls and had a temperature limit of 50 °F.

Frost-Proof Pipe Covering was apparently constructed of a layer of felt made from cattle, goat, or other animal hair with layers of asphalt-saturated asbestos paper and a layer of woolfelt. Its years of manufacture, appearance, and temperature limit are unknown to GAF.

Range Boiler Jacket consisted of a series of plies of corrugated asbestos paper built up to the required thickness on mandrels that were the same size as the range boilers the product was designed to fit. The corrugated paper used was a coarse variety with 4 plies per inch of thickness. These jackets were furnished in two sections—upper half and lower half. Five extra-wide bands were provided to attach the jacket to the range boiler. The outside surface was painted or covered with canvas. GAF does not know the years of manufacture of this product.

115 Insulation Cement was a chrysotile asbestos product which, in some instances, was produced at Ruberoid/GAF's Vermont facility and in

other instances was purchased from various other asbestos suppliers and resold. Some of the product purchased from other suppliers may have been milled again at Ruberoid/GAF's Vermont facility prior to resale. Asbestos insulation cements produced at GAF's Vermont facility could generally be distinguished from asbestos insulation cements produced by other manufacturers inasmuch as the Vermont product was a slip chrysotile asbestos rather than a cross vein asbestos and was generally of a lower grade and contained a greater percentage of impurities, such as dirt and rock particles. It is believed that this product was sold from at least as early as 1937 to 1975. It is believed that the "115" designation was employed from approximately 1950 to 1975 and the designation "Grade B" was also employed in years prior to 1950. The basic ingredients of this cement product were: chrysotile determined to pass the 0–0– 1–15 Quebec test, and impurities (dirt, rock, earth). The particular formulas utilized by entities which purchased this product for construction are not known by GAF, but this product was normally mixed with portland cement, water, and/or other substances.

214 Insulation Cement was also a chrysotile asbestos product which, in some instances, was produced at GAF's Vermont facility and in other instances was purchased from various other asbestos suppliers and resold. Some of the product purchased from other suppliers may have been milled again at Ruberoid/GAF's Vermont facility prior to resale. Ruberoid/GAF's Vermont product was a lower grade cement which contained a greater percentage of impurities, such as dirt and rock particles, making it lightly mottled and giving it an overall darker appearance. It is believed that this product was sold from at least as early as 1937 to 1975. It is believed that the "214" designation was employed from approximately 1950 to 1975 and the designation "Grade BB" was also employed in years prior to 1950. The basic ingredients of this cement product were: chrysotile determined to pass the 0–0–2–14 Quebec test, and impurities (dirt, rock, earth). The particular formulas utilized by entities which purchased this product for construction are not known by GAF, but this product was normally mixed with portland cement, water and/or other substances.

Calsilite Insulation Cement was a combination of chrysotile asbestos fiber, ground Calsilite pipe covering or block, and portland and other cements. It is believed that this product was made with Vermont-produced asbestos and thus contained certain impurities, such as rock, dirt and earth particles. This product was never widely or frequently sold. To the extent that such sales took place, they ceased completely in or around 1960.

Grade AA Insulating Cement was manufactured by Ruberoid using a high grade of pure asbestos fiber together with suitable binding materials that had low conductivity. It was designed to yield a hard, durable surface. Its temperature limit was 1,200 °F.

Grade A Insulating Cement was a factory-prepared cement consisting of fibers which were not as long as those used in the better grade AA, together with suitable binding materials. Its temperature limit was 1,000 °F.

Grade H F—Hard Finish—was a hard finish cement designed to be used as a final protective coating over other coats of cement. It had a smooth, glossy, hard finish. Grade HF was recommended to be applied in a ¼" thick layer. It had a temperature limit of 1,500 °F and was a prepared cement manufactured by Ruberoid.

Grade H. T.—High Temperature—Cement was designed to withstand temperatures of 1,600° to 1,800 °F. This material was not designed to be used for finishing purposes.

Grade 203 Insulating Cement was a 100% chrysotile cement which had a screen test of approximately 0–0–1–16 which made it the lowest grade cement sold by Ruberoid/GAF.

Satin Finish Cement consisted of 87% chrysotile, 10% portland cement, and 3% Medusa cement.

Grade A–11 Insulating Cement consisted of vermiculite, chrysotile, and binding substances. It was recommended for temperatures up to 1,500 °F, or 1,800 °F if the applicator did not intend to reclaim the material. Grade A–11 was designed to be an insulation material, not a finishing cement.

Coverkote was designed to be a weatherproofing coating for insulated surfaces, rather than an insulating cement. It was a combination of emulsified asphalt and 25 to 28% chrysotile. It was a black plastic material particularly designed for protection of insulation on large tanks and vessels and for insulated equipment such as smoke breechings and ducts. The temperature limit for Coverkote was 400 °F.

Rock Wool Cement was apparently available from Ruberoid in the late 1940's and early 1950's. It consisted of a mixture of rock wool and chrysotile asbestos and had a temperature limit of 1,500 °F.

(e) *Additional information.* Additional information is available.

10. General Refractories Company

(a) *Name and address of manufacturer.* General Refractories Company, Valley Forge Corporate Center, 2661 Audubon Road, Valley Forge, PA 19403. General Refractories Company purchased certain assets from Ohio Lime Company, located in Woodville, OH in August 1967 and formed OLC.

(b) *Years of manufacture.* 1955 through 1973.

(c) *Types or classes of products.* Hydraulic setting insulating castable, paste-like silicate cement, acoustical plaster, decorative spray coating.

(d) *Other identifying characteristics.* Litecast 30 (produced 1962 to 1968; 1970 to 1973 by General Refractories Company) was a hydraulic setting insulating castable. Constituent composition of Litecast 30 by weight of each constituent: 40% expanded Perlite Grade P–38; 23% chrysotile asbestos 7K 15; 36% Lumnite Cement; and 1% bentonite. Litecast 30 was shipped dry in 30 lb. valve type bags. It was mixed with water, then cast or sprayed onto a furnace surface for use in the aluminum and petrochemical industry. Litecast 30 was manufactured at the Company's facilities in Sproul, PA and in Troup, TX.

Fibrous Adhesive (produced 1955 to 1972 by General Refractories Company) was a paste-like silicate cement used to hold refractory insulating block to which General added 14% chrysotile asbestos. Constituent composition of Fibrous Adhesive by weight of each constituent: 86% Sodium Silicate; 14% chrysotile asbestos. Fibrous Adhesive was sold in 1 gallon, 32 gallon, or 55 gallon drums, 24 or 36 drums per pallet.

Mute Acoustical Plaster (produced from October 1961 to May 1964 by OLC) contained approximately 15% asbestos. It was packaged for sale in 10 lb. Kraft paper sewn end bags with blue lettering.

Decorative Spray Coating, "DSC," (produced from approximately February 1969 to January 1973 by OLC) contained 16.4% asbestos, consisting of asbestos short fibers, purchased from Cary of Canada. DSC was packaged in 50 lb. bleached Kraft paper bags with red lettering. Total production of DSC was a little over 300 tons.

(e) *Additional information.* No additional information is available.

11. Georgia-Pacific Corporation

(a) *Name and address of manufacturer.* Georgia-Pacific

Corporation, 133 Peachtree Street, N.E., P.O. Box 105605, Atlanta, GA 30348. Predecessor: Bestwall Gypsum Company.

(b) *Years of manufacture.* 1956 through 1977.

(c) *Types or classes of products.* Acoustical plaster, joint compounds, textures, and specialty products.

(d) *Other identifying characteristics.* Trowel Applied Acoustical Plaster was manufactured from 1956 to 1959. It was off-white in color, if not painted, and was applied on smooth or textured surfaces, normally ceilings. The components of this product were approximately 2.5% asbestos; 28% gypsum; and 70% pumice.

Machine Applied Acoustical Plaster was manufactured from 1958 to 1963. It was off-white in color, if not painted, and was applied on smooth or textured white surfaces; normally ceilings. The components of this product were approximately 25 to 30% asbestos; 13 to 15% clay, and 50 to 60% perlite.

Dry Mixed Joint Compound was manufactured from 1956 to 1977. It was off-white in color, if not painted, and was applied on smooth or textured white surfaces. Normally, it was applied over bedding or taping compounds over joints, fastener heads, corners, and entire areas of a gypsum board on interior walls and ceiling surfaces. The components of this product were approximately 2.5 to 7% asbestos; 50 to 90% calcium carbonate (limestone); or 80 to 90% calcium sulfate (gypsum); 5 to 20% mica; and 2 to 6% casein and/or vinyl binder(s).

Wet Mixed Joint Compound was manufactured from 1963 to 1977. It was off-white in color, if not painted, and was applied on smooth or textured surfaces. Normally the texture was applied as a taping, finishing, or texturing material over joints, fastener heads, corners and entire areas of gypsum board in walls and ceilings. The components of this product were approximately 1.5 to 5% asbestos; 45 to 70% calcium carbonate (limestone); or 45 to 70% calcium sulfate (gypsum); 5 to 10% mica; 2 to 5% vinyl binder(s); and 30 to 40% water.

Textures were manufactured from 1956 to 1974. The color appeared white to off-white with aggregate particles providing a rough surface. Normally the texture was applied as a decorative finish over drywall, sprayed-on or trowel applied. The components of this product were approximately 2 to 12% asbestos; 25 to 90% calcium carbonate (limestone), or 25 to 90% calcium sulfate (gypsum); 5 to 15% clay; 4 to 30% expanded perlite; 10 to 15% expanded vermiculite; 2% shredded expanded polystyrene; 2 to 9% casein, vinyl and/or starch binder(s); and 7 to 15% mica.

Patching was manufactured from 1956 to 1975. This product was off-white, unless painted, and smooth. It was normally applied to repair plaster cracks and holes in wall and ceiling surfaces. The components of this product were approximately 2% asbestos, and 98% calcium sulfate (gypsum).

Spackling was manufactured from 1956 to 1971. This product was off-white and smooth. It was normally applied to patch fine cracks in plaster surfaces. The components of this product were approximately 5% asbestos; 70% calcium carbonate (limestone); 16% mica; and 2 to 4.5% casein or vinyl binder(s).

Laminating Compound was manufactured in 1969. It was white to off-white in color, and was normally applied between two layers of gypsum board in special multi-layer applications. The components of this product were approximately 4% asbestos; 80% calcium carbonate (limestone); and 2 to 8% vinyl binder(s).

Drywall Adhesive was manufactured in 1972. It was white to off-white in color; and was normally applied between gypsum board and framing member. The components of this product were approximately 1% asbestos; 80% calcium carbonate (limestone); and 2 to 8% organic binder(s).

(e) *Additional information.* No additional information is available.

12. H. K. Porter Co., Inc.

(a) *Name and address of manufacturer.* H. K. Porter Co., Inc., Porter Building, Pittsburgh, PA 15219. (Predecessor of Emhart Glass of Laclede Christy Clay Products Company, P.O. Box 580, Owensville, MO 65066.)

(b) *Years of manufacture.* 1970 through 1973.

(c) *Types or classes of products.* Wet cement.

(d) *Other identifying characteristics.* Porter Bonding Mortar #20.

(e) *Additional information.* No additional information is available.

13. Kaiser Cement Corporation

(a) *Name and address of manufacturer.* Kaiser Cement Corporation, 1333 North California Blvd., Suite 445, Walnut Creek, CA 94596-1209. Formerly Kaiser Cement & Gypsum Corporation (1964 to 1979), and Permanente Cement Company (1939 to 1964).

(b) *Years of manufacture.* 1944 through 1946, and 1959 through 1979.

(c) *Types or classes of products.* Plastic gun cement, plastic cement, masonry cement, stucco.

(d) *Other identifying characteristics.* Kaiser Permanente Plastic Gun Cement (produced 1959 to 1976) was a grey powder composed primarily of portland cement and plasticizing and air-entraining agents. Sold in sacks, the product was used to make stucco for building exteriors and was applied by gun with a plastering machine. The product contained a small amount of chrysotile asbestos. Plastic gun cement was sold primarily in California, but also in several other Pacific Coast States and Nebraska.

Kaiser Permanente Plastic Cement (Hand) (produced 1961 to 1973) had the same composition and use as plastic gun cement, with the exception that it was applied manually with a trowel. The distribution area for sales of this product was the same as for the plastic gun cement.

Kaiser Permanente Masonry Cement (produced 1973) was sold in 78 lb. bags and used as mortar in building construction. The product's ingredients included a trace amount of chrysotile asbestos, probably less than 1% when product was applied, and was primarily composed of a combination of portland cement and air-entraining additives. This masonry cement was manufactured and sold in the Phoenix, AZ area.

Plastite (produced 1944 to 1945) was sold in 100 lb. sacks, and used to make manually applied stucco for building exteriors. The product was primarily composed of portland cement, adhesive, plasterizing and water repellant agents, and contained a small amount of asbestos. It was sold in Northern California and in Washington.

(e) *Additional information.* No additional information is available.

14. Kaiser Gypsum Company, Inc.

(a) *Name and address of manufacturer.* Kaiser Gypsum Company, Inc., 1333 North California Blvd., Suite 445, Walnut Creek, CA 94596–1209.

(b) *Years of manufacture.* 1952 through 1976.

(c) *Types or classes of products.* Texture paints, joint compounds, joint compound premixes, mineral fiber acoustical ceiling tile and lay-in board, specialized surface- finish products.

(d) *Other identifying characteristics.* Cover-Tex, Spray-Tex, Spray Cover-Tex, and Kaiser-Tex were produced 1952 to 1967. These texture paints were sold by the bag in dry powder form and were composed of casein, limestone, mica and a small amount of chrysotile asbestos.

Cover-Tex Wall Texture, (TSS), (produced 1968 to 1975) was similar to the other texture paints described

above. K-Spray Ceiling Texture (KSV or KSP and KSS) were produced 1961 to 1975. Ceiling texture paints were manufactured in dry form and had the same primary composition as the texture paints described above.

Joint Compound-Powder, Finishing Compound-Powder, One-Day Joint Compound-Powder, and 3-Purpose Compound-Powder were produced 1953 to 1975. Joint compounds were sold by the bag in dry form and were primarily composed of casein or polyvinyl, clay, talc, limestone and mica, with a small amount of chrysotile asbestos.

Premix Joint Compound, Premix Finishing Compound, Dual Purpose Premix Compound, and Premix Topping Compound were produced 1959 to 1976. Joint compound premixes were sold in paste form in cartons or pails and composition was essentially the same as dry form with the addition of a liquefying agent.

Kaiser Mineral Fiberboard UL-Fire Rated (Underwriters' Laboratories, Inc. Design) was produced 1963 to 1974. Mineral fiber acoustical ceiling tile and lay-in board contained a small amount of chrysotile asbestos and was primarily composed of mineral wool and various wool fibers, clays and starch. Sold in boxes, the face side had a fissured or swirl, or pin-punched design for acoustical treatment.

"Laminating Compound," an adhesive for laminating wallboard to wallboard or to sound deadening board, was primarily composed of soya flour and limestone.

"Filler Compound," for covering radiant heat system ceiling surfaces, was primarily composed of limestone and mica.

"Radiant Heat Compound," for covering radiant heat cables stapled to ceiling surfaces, was primarily composed of sand and white portland cement.

"Radiant Heat Surfacing Compound," for covering radiant heat cables embedded in ceiling surfaces, was primarily composed of silica, flour and mica, as was "Radiant Heat Scrimless Surfacing Compound."

"Radiant Heat Joint Compound," for filling cracks and embedded tape grooves in radiant heat gypsum wallboard ceiling surfaces, was primarily composed of casein, clay, mica and limestone.

"X-Terior Premix Prefill Compound," for prefilling joints in gypsum wallboard, was primarily composed of raw gypsum, PVA emulsion and mica.

"X-Terior Premix Wall Texture Compound," for providing surface texture to gypsum wallboard installed on building exteriors only, was primarily composed of limestone, acrylic emulsion, and mica. The only form of asbestos used in these products was chrysotile.

(e) *Additional information.* No additional information is available.

15. Keene Corporation

(a) *Name and address of manufacturer.* Keene Corporation, 200 Park Avenue, New York, NY 10017. Former subsidiary: Keene Building Products Corporation ("KBPC"). KBPC's corporate predecessors: Baldwin-Ehret-Hill, Inc. ("BEH"), a Pennsylvania Corporation; Ehret Magnesia Manufacturing Company ("EHRET"), a Pennsylvania Corporation; Baldwin Hill Company ("B-H"), a New Jersey Corporation.

(b) *Years of manufacture.* 1904 through approximately 1972.

(c) *Types or classes of products.* Pipe and block covering, cement, insulation materials, insulated pipe, spray-on acoustical coverings, acoustical ceiling tiles.

(d) *Other identifying characteristics.* 85% Magnesia (Thermalite) Pipe and Block Covering (produced 1904 to 1964 by Ehret and BEH) was a molded insulation for use on hot surfaces having temperatures up to 600 °F. Little information exists on the product, and the best estimate is that it was composed primarily of magnesium carbonate (85%). Although there has been diverse testimony on the product, the best information is that up until World War II it contained 10 to 15% asbestos fiber, composed primarily of amosite and a small amount of chrysotile. Thereafter, it contained 10 to 15% amosite. It was manufactured in cylindrical sections and in curved segments. It was also made in the form of blocks. The product was packaged in corrugated cardboard boxes according to size. The remnants from the molding and shaping process were sold as 85% Magnesia Cement or Thermalite Cement for use in sealing joints between the block and pipe covering, which was packaged in multiwall open mouth paper bags in 60 lb. weights and 75 lb. barrels (85% Magnesia Cement) and in multiwall open mouth paper bags in 50 lb. weights (Thermalite Cement). Investigation of this product is ongoing.

No. 1 Plus Cement/No. 1 Cement (produced 1938 to 1971 by B– H, BEH, and KBPC) was a dry mixture of spun mineral wool granules, bentonite clay binder, chrysotile asbestos fiber (7.5%) and other ingredients. Mixed with water and applied with a trowel, it formed a thermal insulation capable of withstanding temperatures from 1,800° to 2,100 °F. Asbestos was removed from this product in 1971. The product was packaged in paper bags by 40 or 50 lb. weights. For approximately 1 year around 1970, a Military Formulation of No. 1 Plus Cement was manufactured. Investigation of this product is ongoing.

Mono-Block (produced 1941 to 1968 by B–H and BEH) was a lightweight, moisture-resistant, non-corrosive, incombustible and chemically stable insulation product. Mono-Block contained 0.95% amosite asbestos, which amount was removed in 1968. The product was packaged in corrugated cardboard boxes according to size. Investigation of this product is ongoing.

Thermasil Pipe & Block Covering and Cement (produced 1956 to 1972 by Ehret, BEH, and KBPC) was a lightweight, molded, hydrous calcium silicate insulation, manufactured from a blend of special inorganic ingredients, reinforced with amosite asbestos fibers. Although one witness testified it contained chrysotile, the best available information is that Thermasil contained approximately 10% amosite asbestos fiber from 1956 to February 1969. The amount was reduced to approximately 8.6% until 1970, when the amount was further reduced to 2%. In November 1972, all remaining amounts of asbestos fiber were removed and KBPC purchased a license to manufacture an asbestos-free calcium silicate product. The product was packaged in corrugated cardboard boxes according to size. The remnants from the molding process were sold as Thermasil cement. Investigation of this product is ongoing.

Military Formulation of Super Powerhouse Cement (produced 1957 to 1971 by B–H, BEH, and KBPC) contained 5% chrysotile asbestos and was developed to conform to government specification. This product was manufactured and sold exclusively for U.S. government military installations. The commercial formulation without asbestos continued in production. Both products were dry, mixtures containing spun mineral-wool, hydraulic setting binders, clays and other ingredients. Asbestos was removed from the military formulation in 1971. Super Powerhouse Cement was sold in dry mixture in 50 lb. bags. Investigation of this product is ongoing.

Enduro Pipe Covering and Block Cement (produced 1924 to 1955 by Ehret) consisted of specially selected pre-calcined diatomaceous earth, clays, and asbestos fibers. Enduro is believed to have contained a blend of 1.1% No. 373 chrysotile asbestos and 8.7% amosite fiber. The dry formula of this product was sold as Enduro Cement. Investigation of this product is ongoing.

Durant Insulated Pipe (produced 1938 to 1945 by Durant) was a piping system exclusively for outdoor and underground use. Durant was metal piping insulated with 85% magnesia and then protected with a thick layer of a special high melting point asphalt which was cast inside of a heavy sheet metal jacket. Investigation of this product is ongoing.

Pyrospray Types I, T & S (produced 1963 to the early 1970's by BEH and KBPC) were packaged in multiwall open mouth paper bags in 40 or 50 lb. weights. Pyrospray Type I was a dry mixture of mineral wool, 32% chrysotile asbestos and inorganic binders and inhibitors which was mixed with water at a nozzle and applied pneumatically. Pyrospray Type T was a combination of dry mineral wool, 15% asbestos and inorganic binders and inhibitors, which was mixed with water at a nozzle and applied pneumatically. Pyrospray Type S (also known as Uni-Coustic) was a dry mixture of mineral wool, 22% chrysotile asbestos, and hydraulic setting binders and inhibitors, which was mixed with water at a nozzle and applied pneumatically. Asbestos was removed from all three types of Pyrospray prior to 1972. Investigation of these products is ongoing.

Mono-spray (produced 1963 to 1970 by BEH) was a dry-mixed blend of mineral wool with asbestos fibers and inorganic binders which was mixed with water at a nozzle and applied pneumatically. Mono-Spray contained 13% chrysotile asbestos from 1963 to 1968, and 12.5% chrysotile asbestos from 1968 to 1970. Production was terminated in 1970. The product was packaged in multiwall open mouth paper bags in 40 lb. weights. Investigation of this product is ongoing.

Mono-K (produced from 1964 to 1968 by BEH) is a high temperature insulating material which was manufactured by laminating asbestos-free mineral wool felts to Mono-Block. Mono- Block contained 0.95% amosite asbestos. Mono-K was discontinued for lack of a sales market. Investigation of this product is ongoing. Styltone AF, FR–2, and FR–3 (produced from 1957 to 1972 by B–H, BEH, and KBPC) were acoustical ceiling tiles which are believed to have contained approximately 4.3% amosite asbestos fiber. Sales of asbestos containing Styltone ceased in 1972. Styltone AF, FR–2 and FR–3 was a preformed, natural fissured, ridged mineral fiber acoustical tile for use on mechanical suspension systems. Styletone also was produced as a non-asbestos containing product from 1957 to 1975. Investigation of this product is ongoing.

(e) *Additional information.* No additional information is available.

16. Kentile Floors Inc.

(a) *Name and address of manufacturer.* Kentile Floors Inc., 58 Second Avenue, Brooklyn, NY 11215.

(b) *Years of manufacture.* 1907 through 1986.

(c) *Types or classes of products.* Resilient flooring—tiles and sheet goods.

(d) *Other identifying characteristics.* Kentile Asphalt Tile: Asbestos Filler; Standard size: 9″×9″; Thickness: ⅛″ and 3/16″ (heavy duty); Border size: 18″×24″; Edging: 1″×18″; 25 Tile Colors; 3 Styles: Regular marbleized Kentile noted for its uniform marbleization, Carnival Kentile noted for multi-color mottling, and Corktone Kentile which has a cork look.

KenFlex Vinyl Asbestos Tile: Blend of vinyl and asbestos fibers; Size: 9″×9″; Thickness: 1/16″ and ⅛″ (heavy duty); Styles include: Regular, Carnival, Corktone, Terrazzo Style, Woven Tones, Woodgrain KenFlex Vinyl Asbestos Tiles.

Kentile Vinyl Sheet Flooring: Styles vary in width of rolls and thickness.

(e) *Additional information.* Additional information is available.

17. Mannington Mills, Inc.

(a) *Name and address of manufacturer.* Mannington Mills, Inc., P.O. Box 30, Salem, NJ 08079.

(b) *Years of manufacture.* 1963 through 1983.

(c) *Types or classes of products.* Cushioned vinyl floor covering sheet goods, counter top coverings.

(d) *Other identifying characteristics.* The following styles of cushioned vinyl floor covering sheet goods contained asbestos backing: Royal Air (produced from approximately 1967 to 1977; unavailable 1967, 1968, 1977, and 1978); Marquis (produced from approximately 1968 to 1983); Vinyl-Ease 100 (produced from approximately 1968 to 1983; unavailable 1971 and 1973); Million Air (produced from approximately 1970 to 1983); Vega (produced from approximately 1970 to 1983; unavailable 1971 and 1973); Aristocon (produced from 1974 to 1983); Lustrecon (produced from approximately 1976 to 1983); Classicon (produced from approximately 1975 to 1983; unavailable 1976); Decora (produced from approximately 1975 to 1983; unavailable from 1976 to 1983); Architect's Choice (produced from 1977 to 1983; unavailable 1977); Duracon (produced 1981 to 1983); Special "Y" (produced 1980 to 1981; unavailable 1980 and 1981); Price Buster (produced 1981 to 1983; unavailable 1981 to 1983); Boca (produced 1983; unavailable).

The following styles from Mannington Mills Inc.'s Vinyl-1 line contained asbestos backing: Estoril (produced 1967 to approximately 1970; unavailable 1967 and 1968); Laurentian (produced 1966 to approximately 1970; unavailable 1967 to 1969); Tahiti (produced 1963 to 1967; unavailable 1963, 1965 to 1967); Pebble Beach (produced 1963 to 1971; unavailable 1963, 1967 to 1971); Castanet (produced 1964 to approximately 1970; unavailable 1967 to 1970); Costa Bella (produced 1966 to 1971; unavailable 1966 to 1968, and 1971); Marvel Air (produced 1969 to 1971; unavailable 1971); Villa Madrid (produced 1969 to 1971; unavailable 1971).

The following styles of Mannington Mills, Inc. products also contained asbestos: Counter Top (produced 1963 to 1972; unavailable 1971 and 1972); Casina (produced 1969 to 1971; unavailable 1969 to 1971); Sea Isle (produced 1969 to 1971; unavailable 1969 to 1971); Marvel Air (produced 1969 to 1971; unavailable 1971).

(e) *Additional information.* Additional information is available.

18. Manville Corporation

(a) *Name and address of manufacturer.* Manville Corporation, P.O. Box 5108, Denver, CO 80217 (1982 to the present). Predecessor: Johns Manville Corporation, Ken-Caryl Ranch, Denver, CO 80217 (1972 to 1981), 22 East 40th Street, New York, NY 10016 (1907 to 1971).

(b) *Years of manufacture.* 1891 through 1983.

(c) *Types or classes of products.* Packing, insulation, construction materials, friction materials, asbestos-cement pipe, and asbestos fiber.

(d) *Other identifying characteristics.* Chempac: 2012, 2011, 2009, 2008, 2006, 2013, 2014, 2024, 2005, 2004, 587, and Valve Stem Packing (produced 1891 to 1983) was a packing which contained white asbestos yarns, 0 to 90%; blue asbestos yarns, 0 to 90%, commercial grade T asbestos, 0 to 90%; TFE, 0 to 10%; mineral oil, 0 to 1%; wax and oil, 0 to 1%. Description: braid-over-braid, square cross section; braided in the interlocked pattern; twisted to form a round cross section.

Interlocked: 255, 253, 263, 270, 257, 254, 2009 (produced 1891 to 1983) was a packing which contained white asbestos yarns, 60 to 98%; petroleum base wax, 0 to 35%; petroleum base oil, 0 to 1%; neoprene cement, 0 to 35%; inorganic fillers, 0 to 10%; copper wire 0 to 10%; graphite finish, 0 to 1%. Description: square cross section; a resilient braided packing, its construction of interlocking

braided asbestos yarn prevents unraveling or coming apart.

Centripac: 4, 7, 11, 18, 19, 2018, 2021, 2036, 350, 351, 2022 (produced 1891 to 1983) was a packing which contained white asbestos yarns, 0 to 90%; blue asbestos yarns, 0 to 90%; petroleum base wax, 0 to 35%; petroleum base oil, 0 to 1%; mineral oil, 0 to 2%; inorganic fillers, 0 to 10%; lead ribbon, 0 to 10%; copper wire, 0 to 10%; graphite finish, 0 to 1%. Description: square plaited cross section.

Thermacore: 398, 397, 399 (produced 1891 to 1983) was a packing which contained white asbestos yarns, 50 to 90%; inconel wire, 0 to 10%; neoprene, 0 to 30%; mica, 0 to 1%; graphite finish, 1 to 2%. Description: braid-over asbestos/plastic core, with a square cross section.

Rajah: 6, 2 (produced 1891 to 1983) was a packing which contained white asbestos yarns, 95 to 98%; natural and buna-S rubbers, 0 to 2%; graphite finish, 1 to 2%. Description: braid-over-braid, with square or round cross-section.

Mogul: 223, 222 (produced 1891 to 1983) was a packing which contained white asbestos yarns, 95 to 98%; light petroleum base oil, 1 to 2%; graphite finish, 1 to 2%. Description: braid-over-braid, and calendered to a square cross-section.

Braided: 2020, 10 Jewett, 55, 2053, 323, 14, 322, 2017 (produced 1891 to 1983) was a packing which contained white asbestos yarns, 0 to 98%; blue asbestos yarns, 0 to 98%; petroleum base waxes, 0 to 2%; petroleum base oils, 0 to 2%; inert inorganic fillers, 0 to 2%; copper wire, 0 to 5%; lead ribbon, 0 to 10%; neoprene base cement, 0 to 5%; graphite finish, 0 to 2%. Description: Braid-over-braid, and calendered to a square cross-section.

Asbestos-metallic: 344, 360, 379, 392, 393 (produced 1891 to 1983) was a packing which contained white asbestos yarns, 25 to 60%; blue asbestos yarns, 25 to 60%; copper mesh, 45 to 60%; antimony-lead ribbon, 45 to 60%; lead-alloy ribbon, 45 to 60%; aluminum foil, 45 to 60%; lead foil, 45 to 60%, petroleum base oil, 0 to 2%; hydrocarbon waxes, 0 to 2%; graphite, 1 to 2%. Description: constructions include braid-over-braid, square plaited twisted foil, knitted mesh, spiral and others.

Asbestos fabrics: 166 Kearsarge, 167 Superheat Steam, 168 Kearsarge (produced 1891 to 1983) were packings which contained asbestos cloth, 90 to 94%; natural and buna-S rubber compound, 5 to 8%; graphite finish, 0 to 2%; mica, 0 to 1%. Description: Square cross-section.

Groove: 17, 790, 872, 216 (produced 1891 to 1983) was a packing which contained white asbestos yarns, 98 to 100%; copper wire, 1 to 2%; copper wire mesh, 0 to 2%; buna-S cement, 0 to 1%; graphite finish, 0 to 1%. Description: braided, square, or rectangular cross-section.

Inconel mesh core groove: 164, 163 (produced 1891 to 1983) was a packing which contained asbestos yarns, 90 to 94%; inconel mesh, 5 to 10%, buna-S and neoprene cement, 0 to 5%; viton cement, 0 to 5%; graphite finish, 0 to 2%. Description: asbestos cloth wrapped around inconel core, form to a square or rectangular form.

Folded groove: 176, 177, 128, 129 (produced 1891 to 1983) was a packing which contained asbestos cloth, 94 to 98%; buna-S cement, 0 to 4%; copper wire, 0 to 2%. Description: asbestos cloth wrapped around asbestos rope, or asbestos folded core, in square or rectangular cross-section.

165 Moulded autoclave packing (produced 1891 to 1983) was a packing which contained asbestos yarns, 90 to 94%; buna-S and neoprene rubbers, 3 to 6%; inconel wire, 1–5 to 4%. Description: variety of cross-sectional shapes. Supplied also in rings.

124 Tubular gasketing (produced 1891 to 1983) was a packing which contained asbestos cloth, 94 to 96%; brass wire, 2 to 4%; lead insert, 2 to 4%; natural and buna-S rubber cement, 2 to 4%. Description: round cross-section with hollow core.

Thermo-Pac rope: 500, 750, 1000, Blue (produced 1891 to 1983) was a packing which contained asbestos fibers, 0 to 100%; blue asbestos fiber, 0 to 98%; nylon thread, 0 to 1%. Description: soft, twisted, felted strands.

Braided rope: 566, 702, 733, 787, 788, 873, 857, 869 (produced 1891 to 1983) was a packing which contained 95 to 98% asbestos fibers. Description: braided jacket over twisted core, or jacket, with round or square cross-section.

Asbestos wick: 4180, 4197, 4198, 4199, 195, 535 (produced 1891 to 1983) was a packing which contained 95 to 99% asbestos fibers. Description: twisted strands of rovings or felted strips of asbestos, ¼" to ⅜" in size. Twisted rope: 4185, 4186, 4188, 4196, 4200 (produced 1891 to 1983) was a packing which contained 95 to 99% asbestos fibers. Description: asbestos roving twisted together, into ⅜" and up.

Gasketing tape: 122, 121, 119, 2032, 132, 131, 142, 141, Besto-Tak, 120 (produced 1891 to 1983) was a packing which contained asbestos fibers, 80 to 98%; natural and buna-S rubber cement, 0 to 4%; TFE, 0 to 5%; silicone cement, 0 to 5%; adhesive backing. Description: Strip of woven or folded asbestos material sometimes wire-inserted and impregnated with sealants; used to seal joints or closure in mechanical equipment; for applications where design does not permit use of cut or preformed gaskets.

Tadpole tapes: 123, 191, 150, 151, 152, 153, 154, 155, 156, 157, 160, 192 (produced 1891 to 1983) were packings which contained asbestos rope, 0 to 30%; asbestos cloth, 50 to 70%; brass wire, 0 to 5%; inconel mesh, 0 to 5%; inconel wire, 0 to 5%; natural and buna-S rubber, 0 to 10%; neoprene base compound, 0 to 10%; silicone rubber, 0 to 10%; aluminum finish, 0 to 2%; teflon suspensoid, 0 to 5%. Description: Tadpole packing is made by wrapping a core with asbestos cloth cover. The edges of the cloth are stitched or cemented together to form a tail structure.

Compressed asbestos sheets: style 60, 61, 70, 70C, 71, 78, 86A, 52, 76 (produced 1891 to 1983) were packings which contained white chrysotile asbestos, 60 to 80%; SBR rubber compound, 0 to 20%; neoprene compound, 0 to 20%; nitrile, buna-N compound, 0 to 20%. Description: compressed asbestos sheets, with thickness from 1/64" to ¼".

Felted asbestos sheets: 219, 83 B (produced 1891 to 1983) were packings which contained white chrysotile asbestos, 95 to 98%; inorganic binder, 2 to 5%. Description: asbestos sheets, with thicknesses from ⅛" to ½".

Flexible asbestos firewall sheets: 95, 96, 89, 88 (produced 1891 to 1983) were packings which contained asbestos fabric, 90 to 98%; brass wire, 0 to 2%, inconel, 0 to 2%, neoprene compound, 0 to 10%; fluoro elastomer compound, 0 to 10%. Description: flexible flameproof asbestos sheets, supplied in three thicknesses: 3/64", 1/16", 1/8".

Asbestos textiles (produced 1891 to 1983) were packings which contained carded asbestos fibers, 97 to 98%; cotton fiber, 0 to 2%; rayon fiber, 0 to 2%. Description: asbestos fiber twisted, woven or felted into cloth, yarn, tape, tubing, etc.; usually a small percentage of organic fiber such as cotton or rayon is woven in with the asbestos.

Molded packings: Conepac, Cumpac, Uneepac, O-ring, V-ring, Clipper seal (produced 1891 to 1983) were packings which contained asbestos fibers, 0 to 40%; elastomer compound, 0 to 40%; natural rubber compound, 0 to 40%; inorganic fillers, 0 to 20%. Description: packing precision-molded from rubber compounds, often combined with asbestos fiber, cotton duck, etc. Furnished in three basic shapes: Type "A", Type "U", and hat-shaped.

Clutch facings: HDM, STM, Spiral Wound, Gear Tooth, SWAB, UHS, Asbestos-Metallic (produced 1892 to 1972) were friction materials which contained asbestos fiber, 40 to 50%;

friction particles, 20 to 30%; brass chips, 2 to 10%; phenol-elastomer compound, 15 to 25%. Description: Metallic facings designed for truck, car and other industrial applications. They are engineered to resist high temperatures, fade or slipping and wear on mating surfaces; has good spin strength and torque capacity.

Brake blocks: high, medium and low friction levels, Asbestos Metallic, Trailiners, Trukliners (produced 1892 to 1972) were friction materials which contained asbestos fiber, 20 to 30%; brass chips, 10 to 15%; phenol-elastomer compound, 40 to 50%. Description: molded blocks of friction element for commercial service on trucks, buses, and industrial equipment.

Brake linings: Custom Four Star, WK (produced 1892 to 1972) were friction materials which contained asbestos fiber, 45 to 60%; friction particles, 20 to 30%; phenol-elastomer compound, 30 to 40%. Description: molded materials that can be drilled, bonded, and rivetted on braking shoe for cars and trucks.

Railroad brake block and lining: Cobra (produced 1892 to 1980) were friction materials which contained asbestos fiber, 45 to 60%; friction particles, 0 to 30%, metallic chips, 0 to 10%; phenol-elastomer compound, 40 to 50%. Description: an incombustible mineral, found in nature, which separates into fibers. Sold in fiber form packaged in bags.

Transite Ring-Tite water pipes (produced 1929 to 1983) were asbestos-cement pipes which contained asbestos fibers, 15 to 25%; silica flour, 25 to 35%; portland cement, 45 to 55%. Description: asbestos-cement pipes of various diameter sizes.

Transite electrical ducts: Conduit Type II, Korduct Type II (produced 1929 to 1983) were asbestos-cement pipes which contained: asbestos fibers, 15 to 25%; silica flour, 25 to 35%, portland cement, 45 to 55%. Description: asbestos-cement pipes from 2" in diameter to 6" in diameter.

Transite telephone ducts (produced 1902 to 1983) were asbestos-cement pipes which contained: asbestos fibers, 15 to 25%; silica flour, 25 to 35%; portland cement, 45 to 55%. Description: asbestos-cement pipes from 2" in diameter to 6" in diameter.

Magnesia, 85% High Temperature Insulation: Pipe covering and block form (produced 1902 to 1970) was an insulation which contained: asbestos fibers, 12 to 18%; ground clay, 2 to 5%; basic magnesia carbonate, 85 to 90%. Description: white pipe covering and block form.

Superex M & Superex 1900: Pipe covering and block form (produced 1922 to 1972) was an insulation which contained asbestos fibers, 8 to 14%; celite, 55 to 60%; magnesia, 25 to 35%. Description: grey-white pipe covering and block forms, used for high temperature insulation.

Thermobestos: Pipe covering and block form (produced 1939 to 1973) was an insulation which contained asbestos fibers, 5 to 10%; diatomaceous earth, 45 to 50%; quicklime, 40 to 46%. Description: white pipe covering and block forms.

Asbestos Millboard: C, 101, 102, 103, 104, 105, 106, 106–B, 106–H, 219, Type A, XXX (produced 1878 to 1980) was an insulation which contained asbestos fibers, 65 to 75%; clay and lime, 15 to 25%; starch, 2 to 8%; sodium silicate, 2 to 5%. Description: sheets or board furnished in thicknesses 1/32" to 1/2".

Asbestos-Binder cements: 0352, 300, 301, 302, 304, 319, 340, 352, 364, 400, 450, 500, 678, Superex, 85% Magnesia (produced 1930 to 1973) was an insulation which contained asbestos, 10 to 100%; diatomaceous earth, 0 to 30%; clay, 0 to 30%; portland cement, 0 to 30%; mineral wool, 0 to 30%. Description: off-white to grey in color. Packaged in cans or pails.

Putty-like Sealing Compound: Albaseal, Body Sealer, Branchtite, Duxseal, Nordseal, Stove Putty, TranolSeal, Navaseal, Uniseal (produced 1957 to 1977) was an insulation which contained asbestos, 25 to 65%; butane polymer, 0 to 40%; calcium carbonate, 0 to 20%; titanium dioxide, 0 to 5%; carbon black, 0 to 1%; castor oil, 0 to 40%; magnesium oxide, 0 to 1%; chlorinated paraffin, 0 to 55%; stearic acid, 0 to 1%. Description: Pugs-packaged in fiberboard cartons.

Asbestos Pipe Blanket (produced 1898 to 1960) was an insulation which contained asbestos fiber, 95 to 98%. Description: blanket.

Asbestos Roll Fire Felt: Vitro Firefelt, Gold Line (produced 1891 to 1973) was an insulation which contained asbestos fiber, 95 to 98%. Description: felt.

Asbestos Sponge Felted (produced 1890 to 1961) was an insulation which contained asbestos fiber, 95 to 98%. Description: felt. Asbestos Turbine Blankets (produced 1951 to 1973) were insulation which contained asbestos fiber, 95 to 98%; stainless steel tufting discs, 1 to 2%; monel wire, 1 to 2%. Description: blanket.

Asbestos Weatherproof Felt: 50 Asbestos Weatherproofing, 15A Asbestos Jacket, 45A Asbestos Jacket, 7700 Coated Asbestos Jacket (produced 1931 to 1969) was an insulation which contained asbestos fiber, 95 to 98%. Description: felt and jacket.

White Surface Asbestos Jacket (produced 1931 to 1968) was an insulation which contained asbestos fiber, 95 to 98%. Description: felt.

Asbestos Felts-Corrugated: Vitrobestos, VitroFire Felt (produced 1907 to 1959) was an insulation which contained asbestos fiber, 95 to 98%. Description: corrugated felt.

Neoprene coated asbestos: Thermotape, Thermowrap (produced 1951 to 1964) was an insulation which contained asbestos fiber, 95 to 98%; neoprene, 2 to 5%. Description: neoprene coated pad and blanket.

Asbestos Firefelt, Asbestos Firetard (produced 1891 to 1962) was an insulation which contained asbestos, 95 to 98%; inorganic binder, 2 to 5%; asphalt, 0 to 10%. Description: asbestos felt.

Asbestos paper and rollboard: Armaturo, Doublex, Fibroid, Long Fiber, Microbestos, Non-Burn, Welding Paper (produced 1900 to 1965) was an insulation which contained asbestos, 40 to 99%; inorganic binder, 1 to 60%.

Fibrous adhesive (produced 1930 to 1981) was an insulation which contained asbestos fiber, 15 to 20%; sodium silicate, 80 to 85%. Description: off-white liquid, packaged in cans, pails, or drums.

Refractory cement: Firelite Furnace Cement, Heat Treating Cement (produced 1954 to 1973) was an insulation which contained asbestos fiber, 1 to 3%; silica sand, 55 to 65%; sodium silicate, 25 to 35%; clay, 4 to 6%; water, 1 to 3%. Description: liquid, packaged in cans, pails, or drums.

Asbestos Bitumen cement: Insulkote, Duplex, Asbestile, Laptite (produced 1952 to 1984) was an insulation which contained asbestos fiber, 5 to 10%; asphaltic emulsion, 0 to 30%; limestone, 0 to 20%; clay, 0 to 3%, asphalt, 0 to 45%; mineral spirits, 0 to 35%. Description: black thick liquid, packaged in cans, pails, or drums.

Asbestos calcium silicate sheet: Marimet 45, Marinite, Marinite 23, 36, 65, Metal Veneered, Veneered, Molten Metal, Imperial, Heat Treated 30 (produced 1936 to 1978) was an insulation which contained asbestos fiber, 25 to 65%; lime, 20 to 36%, diatomaceous earth, 20 to 35%; clay, 10 to 15%. Description: grey-brownish sheet.

Molded: Min-K 1301, 2000, 500, Min-Klad; Blanket: Min-K Flexible, High Temp, Standard (produced 1958 to 1974) was an insulation which contained asbestos fiber, 5 to 20%; colloidal silica, 70 to 80%; carbon black, 0 to 10%; titanium dioxide, 0 to 20%; phenol-formaldehyde resin, 0 to 6%; silicon metal powder, 0 to 20%; glass clothes, 0 to 30%; glassfiber thread, 0 to 4%.

Description: solid form for molded Min-K and flexible blankets.

Electrical insulation paper and millboard: Quinorgo, Quinorgobord, Quinterra, Quinterrabord, Quintex, Quintexbord (exact date manufacture began is unknown; manufactured up to 1975) was an insulation which contained asbestos fiber, 80 to 95%; starch, 8 to 12%; kraft pulp, 0 to 10%; nitrile rubber, 0 to 10%. Description: paper and board that has good electrical insulation properties.

Marinite veneer-aluminum: Reeferite (produced 1950 to 1974) was an insulation which contained asbestos fiber, 25 to 35%; portland cement, 40 to 45%; silica, 25 to 30%; aluminum sheet, 1 to 3%. Description: solid sheet.

Molded Insulation: Sonite (produced 1969 to 1974) was an insulation which contained asbestos fiber, 3 to 8%; colloidal silica, 85 to 95%; phenol-formaldehyde resin, 3 to 8%. Description: Molded solid used for acoustical insulation.

Molded felt sheet and molding compound: Thermomat (produced 1963 to 1970) was an insulation which contained asbestos fiber, 90 to 98%; phenol-formaldehyde resin, 2 to 5%. Description: in sheet or tape form.

Asbestos cement sheet: Marine Veneer, Pallite, Transite Core Plate, Dekeran Transite Board (produced 1938 to 1978) was an insulation which contained asbestos fiber, 5 to 50%; portland cement, 40 to 45%; silica, 25 to 30%. Description: asbestos- cement sheet or board.

Asbestos-cement: corrugated and flat transite, transite acoustical panel (produced 1930 to 1982) was a construction product which contained asbestos fiber, 25 to 35%; portland cement, 40 to 45%; silica, 25 to 30%.

Asbestos-cement Architectural Panel: Splitwood, Stonehenge, Transitop, Transifoam, Thermocore, Thermostone, Agean, Santone (produced 1907 to 1982) was a construction product which contained asbestos fiber, 25 to 50%; portland cement, 30 to 50%; silica, 10 to 15%; pigment, 2 to 10%; wood fiber 0 to 25%; asphaltic compounds, 0 to 25%; expanded polystyrene board, 0 to 10%, fesco board, 0 to 10%. Description: Gray or colored, flat or perforated panels.

Asbestos-cement extrusion products: ACE Stone, Colorsil, Corspan, Facespan (produced 1907 to 1976) were construction products which contained asbestos fiber, 25 to 50%; portland cement, 30 to 50%; silica, 10 to 15%. Description: Flat or wedge shaped window sills, stools.

Asbestos-cement sheet: Asbestoboard, Asbestos Ebony, Chemstone, Colorceran, Colorlith, Electrobestos, Flexboard (produced 1934 to 1987) was a construction product which contained asbestos fiber, 40 to 70%; portland cement, 15 to 50%; dry asphalt size, 0 to 8%; pigment, 0 to 12%. Description: Gray or colored smooth sheets or boards.

Asbestos-cement shingles: Cedargrain, Salem Colonial, Salem American, Durosbestos, Rock-Shakes, Western Shade Corrgrain, Deepgrain, Trugrain (produced 1907 to 1976) was a construction material which contained asbestos fiber, 15 to 30%; portland cement, 20 to 60%; silica, 15 to 50%; pigment, 5 to 10%. Description: roof and sidewall shingles.

Asbestos Roofing felts: Centurian, Blue Chip Felts, Asbestos finishing felts, coated asbestos base felts, ventsulation felts (produced 1907 to 1979) was a construction product which contained asbestos fiber, 50 to 70%; asphalt saturant, 30 to 50%; inorganic filler, 0 to 10%; sand, 0 to 20%. Description: asphalt-impregnated asbestos felts.

Asbestos-asphalt roofing shingles: Fire-Glass Seal-O-Matic, Fire-King Seal-O-Matic, Flexbetos, FGA, Townsend Seal-O-Matic (produced 1907 to 1979) were construction products which contained asbestos fiber, 30 to 50%; fiberglass, 20 to 40%; asphalt saturant, 30 to 50%; inorganic filler, 0 to 5%; sand, 0 to 10%. Description: asphalt-impregnated asbestos-fiberglass- reinforced shingles.

Asbestos-vinyl floor tile: Terraflex, Terraschip, Allegro, Seastone, Granada, Larado, Abode (produced 1933 to 1969) was a construction product which contained asbestos fiber, 30 to 50%; Gilsonite, 5 to 15%; Vinyl resin, 20 to 30%; plasticizer, 10 to 20%; inorganic fillers, 20 to 40%; pigments, 0 to 20%. Description: vinyl floor tiles of various colors and design backed with asbestos reinforced asphalt adhesive. Asbestos fiber available in over 60 standard and special grades. Each designation defines a distinct grade that is suitable for certain industrial applications. These grades are further defines as to textural characteristics. It is used in a variety of products such as textiles, paper, plastics, cement products, friction materials, coatings, caulkings, to name a few. Produced 1912 to 1983. Contained 80 to 100% asbestos fiber. Description: Asbestos fiber is inorganic, fibrous, strong, flexible, and nonflammable. It bulks, reinforces, adds flexibility, provides dimensional stability, and resists time, weather, and fire.

(e) *Additional information.* No additional information is available.

19. National Gypsum Company

(a) *Name and address of manufacturer.* National Gypsum Company, 4500 Lincoln Plaza, 500 North Akard Street, Dallas, TX.

(b) *Years of manufacture.* 1933 through 1972.

(c) *Types or classes of products.* Acoustical plasters, acoustical treatment, fireproofing.

(d) *Other identifying characteristics.* Rockwall Acoustic Plaster (produced 1936 to 1940) contained the following ingredients: molding plaster, 35.5% (by weight); pumice, 53.2%; asbestos, 6.4%; cork, 2.5%; retarder, 2%, fiber, 2.1%.

Standard Gold Bond Macoustic (produced 1933 to 1936) contained the following ingredients: asbestos, 39.90% (by weight); rock wool, 9.98%; slag, 24.94%; stucco, 24.94%; aluminum sulphate, 0.05%; retarder, 0.20%. This product was available in colors; the pigments used are not listed in the above formula or accounted for in calculations.

New Smooth Trowel Finish Macoustic (also called New Trowel Finish Macoustic and Trowel Finish Macoustic) had varied formulations. The formula for September 27, 1935 was: pumice, 34.94% (by weight); cork, 11.98%; asbestos, 17.97%; hydrated finish lime, 24.96%; keenes cement, 9.99%; soap bark powdered, 0.15%. The formula for October 8, 1936 was: pumice, 35.95% (by weight); cork, 11.98%; asbestos, 3.99%; hydrated finish lime, 29.96%; keenes cement, 14.98%; soap bark powdered, 0.15%; ground paper, 1.50%; wood fiber, 1.50%. The formula for March 8, 1937 was: pumice, 35.30% (by weight); cork, 11.98%; asbestos, 5.99%; hydrated finish lime, 29.96%; keenes cement, 14.98%; soap bark powdered, 0.15%; ground paper, 1.50%; wood fiber, 1.50%. The formula for October 7, 1943 was: pumice, 42.42% (by weight); cork, 14.47%; asbestos, 7.49%; hydrated finish lime, 12.47%; keenes cement, 18.71%; ground paper, 1.88%; wood fiber, 1.88%; Nacconal Hg, 0.19%. This product was available in colors; pigments used are not listed in the above formulas or accounted for in calculations.

Macoustic Plaster (produced 1942 to 1947) had varied formulations over the years. The formula for October 5, 1942 was: moulding plaster, 33.47% (by weight); pumice, 54.39%; asbestos, 10.88%; wood fiber, 0.84%; Naccanol Hg, 0.16%; retarder, 0.25%. The formula for January 23, 1946 was: moulding plaster, 29.24% (by weight); pumice, 62.38%; asbestos, 5.85%; wood fiber, 2.34%; retarder, 0.16%; Duponol Me Dry, 0.04%. The formula for February 18, 1946 was: moulding plaster, 29.43% (by weight); pumice, 60.17%; asbestos, 7.85%; wood fiber, 2.35%; retarder, 0.16%; Duponol Me Dry, 0.04%. The formula for December

30, 1947 was: moulding plaster, 28.62% (by weight); pumice, 61.07%; asbestos, 7.63%; wood fiber, 2.29%; powdered locust gum, 0.25%; arctic syntex M beads, 0.08%; Dowicide G, 0.05%. This product was available in colors; the pigments are not listed in the above formulas or accounted for in calculations.

Perlite Macoustic (also called Perlite Acoustical Plaster and Acoustical Plaster) contained the following ingredients: stucco, 48.63% (by weight); asbestos, 12.97%; wood fiber, 3.89%; perlite, 33.72%; powdered locust gum, 0.43%; arctic syntex M beads, 0.27%; Dowicide G, 0.08%; retarder, as required. This product was available in colors; pigments used are not listed in the above formula or accounted for in calculations.

Thermacoustic (produced 1949 to 1957) had varied formulations. The formula for August 10, 1949 was: mineral wool, 80% (by weight); asbestos, 12%; starch, 8%. The formula for December 22, 1949 was: mineral wool, 79.84% (by weight); asbestos, 11.98%; starch, 7.98%; cut fungicide, 0.2%. The formula for January 24, 1951 was: mineral wool, 70.67% (by weight); asbestos, 18.90%; portland cement, 4.52%; starch, 5.75%; cut fungicide, 0.16%. The formula for January 12, 1953 was: mineral wool, 70.67% (by weight); asbestos, 18.90%; portland cement, 4.52%; starch, 4.96%; cut fungicide, 0.99%. The formula for August 23, 1956 was: mineral wool, 65.09% (by weight); asbestos, 21.16%; portland cement, 4.88%; starch, 2.85%; cut fungicide, 1.22%; diethylene glycol, 1.95%; vegetable cellulose adhesive, 2.85%.

Fire-Shield Plaster (produced 1958 to 1970) was also known as Steel Deck Fireproofing Plaster for Spray. The product had varied formulations over the years. The formula for August 27, 1958 was: perlite, 36.89% (by weight); stucco, 50.44%; asbestos, 12.61%; Monad G, 0.05%. The formula for February 4, 1959 was the same. The formula for April 11, 1960 was the same, except for the asbestos content, which increased to 24.37% (by weight), and the Monad G content, which increased to 0.06%. The formula for May 1, 1968 was the same. The formula for September 30, 1968 was: perlite, 23.74% (by weight); stucco, 50.23%; asbestos, 24.35%; bentonite, 1.52%; Monad G, 0.15%.

White Spray-On Acoustical Plaster (produced 1955 to 1956) had two formulations. The formula for October 6, 1955 was: perlite, 59.32% (by weight); bentonite, 15.21%; asbestos, 7.60%; limestone, 15.21%; titanium dioxide, 2.09%; Monad G, 0.57%. The formula for December 15, 1955 was: perlite, 59.04%; bentonite, 15.14%; asbestos, 7.57%; limestone, 15.14%; titanium dioxide, 2.08%; Monad G, 0.57%; sodium nitrite, 0.47%.

Superwhite Sprayolite (produced 1956 to 1968) had varied formulations. The formula for April 6, 1956 was: perlite, 59.04% (by weight); bentonite, 15.14%; asbestos, 7.57%; calcium carbonate, 15.14%; asbestos, 7.57%; calcium carbonate, 15.14%; titanium dioxide, 2.08%; Monad G, 0.57%; sodium nitrate, 0.47%. The formula for September 3, 1956 was: perlite, 58.87% (by weight); bentonite, 15.09%; asbestos, 7.55%; calcium carbonate, 15.09%; titanium dioxide, 2.08; Monad G, 0.57; sodium nitrite, 0.47%; boric acid, 0.28%. The formula for January 21, 1958 was the same. The formula for March 27, 1958 was: perlite, 63.20% (by weight); bentonite, 13.50%; titanium dioxide, 1.86%; Monad G, 0.51%; sodium nitrate, 0.42%; boric acid, 0.25%. The formula for July 30, 1958 was perlite, 58.37% (by weight); bentonite, 12.47%; asbestos, 9.35%; calcium carbonate, 18.71%; Monad G, 0.47%; sodium nitrite, 0.39%; boric acid, 0.23%.

Gold Bond Acoustical Plaster Type C (produced 1952 to 1956) was also called Gold Bond Acoustical Plaster High Humidity. The formula for this product was: asbestos, 6.95% (by weight); Monad G, 0.35%; white portland cement, 23.17%; pumice, 69.52%.

(e) *Additional information.* Additional information is available.

20. Owens-Corning Fiberglas Corporation

(a) *Name and address of manufacturer.* Owens-Corning Fiberglas Corporation ("OCF"), Fiberglas Tower, Toledo, OH 43659.

(b) *Years of manufacture.* 1938 through 1972.

(c) *Types or classes of products.* Asbestos paper facing for blankets of fiberglass insulation, asbestos yarn ties, high temperature insulation, insulating cement, finishing cement.

(d) *Other identifying characteristics.* Blankets of fiberglass insulation with an asbestos paper facing were produced 1938 to 1941. OCF did not manufacture the asbestos paper, but offered, as a special order option, to sew it on to blankets of its fiberglass insulation.

Asbestos yarn ties were produced 1938 to approximately 1952. OCF sold fiberglass blankets which had a metal mesh attached to the blanket. The metal mesh was affixed to the fiberglass insulation blanket by wire ties. Yarn ties were offered as a special order option for this product.

Kaylo high temperature insulation (produced 1958 to 1972) contained 15% asbestos, quicklime, silica, diatomaceous earth, clay, chromite, limestone, and sodium silicate.

Unarcoboard, later called Fyrcor, (produced 1970 to 1972) was a high temperature industrial insulation, produced in sheet form. It contained a small amount of amosite asbestos and was generally grayish/white in color.

Insulating cement (produced for 6 months in 1951) may have contained asbestos. The modulated insulation was dry mixed with refractory type materials.

Asbestos-containing finishing cement (produced 1940 to 1949) was a light density fibrous material combined with asbestos fibers and suitable binders.

(e) *Additional information.* No additional information is available.

21. Pfizer Inc.

(a) *Name and address of manufacturer.* Pfizer Inc., 235 East 42nd Street, New York, NY 10017. Predecessor: Gibsonburg Lime Products Co. (GLPC).

(b) *Years of manufacture.* January 19, 1962 through December 31, 1964 by GLPC; December 31, 1964 through approximately December 31, 1972 by Pfizer Inc.

(c) *Types or classes of products.* Kilnoise acoustical ceiling plaster.

(d) *Other identifying characteristics.* The formula for Kilnoise was 89.1% hydrated dolomitic lime, 9.9% chrysotile asbestos, 0.25% fiberglass, and 0.75% Duponol (sodium lauryl sulfate). Kilnoise was a white (on rare occasions, cream or buff) powder mixed with water, then trowelled on by hand over gypsum brown coat. After being applied to approximately ¼" thickness, Kilnoise was brush stippled and nail perforated by hand while wet, and then allowed to dry to a hard, uniformly textured surface, which could thereafter be painted if desired. Kilnoise was not a spray-on insulation material.

Rapid screening test: To a 300-mg sample of the building material add 2 to 3 drops of dilute (1 N) hydrochloric acid. If there is not an immediate evolution of gas (carbon dioxide), the sample is not Kilnoise and no further testing is necessary. (Note: If there is only a very small amount of gas evolution, the binder may contain hydrated lime that has reacted with carbon dioxide in the air to form small amounts of carbonate. Lime- based material, however, may be differentiated from dolomitic material on the basis of its greater alkalinity.)

(e) *Additional information.* Additional information is available.

22. Rhone-Poulenc Ag Company

(a) *Name and address of manufacturer.* Rhone-Poulenc Ag Company, or "Rhone-Poulenc", P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. Predecessor: Achem Products, Inc., formerly American Chemical and Paint Company and Benjamin Foster Company (office address from 1930 to 1946: 1411 Walnut Street, Philadelphia, PA), (factory address from 1930 to 1946: 31st Street and Magazine Lane, Philadelphia, PA), (office and factory address 1946 to 1976: 4635–37 West Girard Avenue, Philadelphia 31, PA).

(b) *Years of manufacture.* Early 1930's through 1976.

(c) *Types or classes of products.* Adhesives, coatings and sealants, and mastics.

(d) *Other identifying characteristics.* The following products which contained small amounts of encapsulated asbestos were manufactured and sold by the Benjamin Foster division of Amchem Products, Inc. and/or its predecessors in interest and may have been used in the construction industry:

Adhesives: Thermas Extruded Heat Transfer Cement (designed 1955); Black Spot Adhesive (designed 1959); INSULFAS (designed 1941); Fibrous Adhesive (designed 1942, 1966, 1957); Fire Resistive Adhesive (designed 1943); Fire Resistive Insulation Adhesive (designed 1959); Metal Adhesive (designed 1959); Black Adhesive; C.C. Adhesive; Fire Resistive Linoleum Adhesive; Cement, Adhesive, Fire Retardant, Type 1; Steel Floor Plate Adhesive, Part A; Insulation Adhesive, Part B; Adhesive Sealer, Charcoal Gray, Part A; Adhesive Sealer, Part A; Adhesive Sealer, White, Part A; Mariner Adhesive; Cold Storage Adhesive; Adhesive; Foster IBM Asphalt Fibre Roof Cement; Black Cat Roof Cement (Asphalt with Asbestos); Foster IBM Red Plastic Roof Cement; Foster IBM Green Plastic Roof Cement; Foster IBM Green Fibre Roof Coating Cement.

Mastics: Sealfas Mastic (designed 1959); Sealfas Mastic, Sand (Temporary) (Low Temperature Grade) (designed 1959); Sealfas Mastic, Mediterranean, Blue (Low Temperature Alt.) (designed 1959); Sealfas Mastic, Sand, (designed 1959); Sealfas Mastic, White, (designed 1959); SEALFAS G–P–M Mastic; Cork-filled Mastic (designed 1959); C.I. Mastic; Fire Resistive Mastic; C.I. Mastic, Aluminum; Fire Resistive Mastic, Aluminum; STACKFAS Mastic (designed 1960); Safetie H. I. Mastic (designed 1955); Hilastic Mastic (designed 1958); Fire Resistive Asphalt Material (designed 1965); Safetie C. I. Mastic (designed 1964); H. I. Mastic (designed 1941); Low Temperature H. I. Mastic (designed 1962); Climastic MASTIC; Sealfas Mastic; Sealfas G–P–M Mastic; Cork-Filled Sealfas; Sealfas Mastic Trowel; Cork Filled Fire Resistive Mastic; Fire Resistive Mastic; Safetee Cork-Filled Fire Resistive Asphalt Mastic; O. C. Mastic.

Sealants: Flame Resistant High Velocity Duct Sealant (designed 1960); Asphalt Seam Sealer (designed 1959); Fire Resistive Navy Sealer (designed 1955); Heat Resistant Sealant (designed 1949); FOAMSEAL Sealant (designed 1960); Insulation Sealant (designed 1963); Contraction Joint Sealant (designed 1969); High Velocity Duct Sealer (designed 1962); Flame Resistant High Velocity Duct Sealant Cartridge Grade (designed 1968); Flashing Compound (designed 1960); Elastolar Sealant (designed 1966); Extruded Sealant Tape; Duct Sealer, Gray; Flame Resistant High Velocity Duct Sealant, Gray; Insulation-Sealer Undercoating; Flexible Joint Sealer; Flextra Sealant (Spray); Gray Caulking Compound; Fitting Filler; Foster Black Caulking Compound-Gun Grade; Joint Filler.

Coatings: Protection Kote (designed 1953); Fire Retardant Vapor Barrier (designed 1955); LAGTONE Coating (designed 1962); Tite-Fit Coating; White Insulation Coating; Lagtone (designed 1956); FOAMSEAL Coating (designed 1972); Masonry Coating; Stackfas-Hi Solids; Heat Resistant Metal Coating; Foster IBM Asphalt Fibre Roof Coating; Black Cat Roof Coating (Asphalt with Asbestos); Foster IBM Red Fibre Roof Coating.

(e) *Additional information.* Additional information is available.

23. The Sherwin-Williams Company

(a) *Name and address of manufacturer.* The Sherwin- Williams Company, 101 Prospect Ave., N.W., Cleveland, OH 44101. Purchased subsidiary: Dutch Boy Group, 101 Prospect Ave., N.W., Cleveland, OH 44101.

(b) *Years of manufacture.* Before 1972. Records were reviewed back to 1964.

(c) *Types or classes of products.* Cement block fillers.

(d) *Other identifying characteristics.* The coatings are used as a thin film and the asbestos is bound in a resin. There usually is a non-asbestos top coat applied over these coatings. The only way to distinguish these products from other manufacturers' is by purchase records.

(e) *Additional information.* No additional information is available.

24. Tremco Incorporated

(a) *Name and address of manufacturer.* Tremco Incorporated, 3735 Green Road, Beachwood, OH 44122. Also operated by Tremco: Adhesives System Division, BFGoodrich Company, 123 West Bartges, Akron, OH 44311.

(b) *Years of production.* 1930 through the present.

(c) *Types or classes of products.* Extruded Butyl Tapes (produced 1955 to the present by Tremco Incorporated); Acrylic Sealant (produced 1961 to the present by Tremco Incorporated); Polyurethane Coatings & Sealants (produced 1979 to the present by Tremco Incorporated); Butyl Sealants (produced 1960 to the present by Tremco Incorporated); Drying Sealants (produced 1950 to the present by Tremco Incorporated); Non-Drying Sealants (produced 1952 to the present by Tremco Incorporated); Oil Based Paints (produced 1930 to 1973 by Tremco Incorporated); Adhesives (produced 1960 to 1983 by Adhesives Systems Division, BFGoodrich Company).

(d) *Identifying characteristics.* The above products contain chrysotile asbestos; identifying characteristics are unavailable.

(e) *Additional information.* No additional information is available.

25. Union Carbide Corporation

(a) *Name and address of manufacturer.* Union Carbide Corporation, 39 Old Ridgebury Road, Danbury, CT 06817–0001. Predecessor: Calidria Corporation, Bakelite Corporation.

(b) *Years of manufacture.* 1939 through approximately 1974.

(c) *Types or classes of products.* Raw chrysotile asbestos, phenolic resin material.

(d) *Other identifying characteristics.* Calidria (initially sold as Union Carbide Asbestos), (produced 1963 to June 30, 1985), consisted entirely of raw chrysotile asbestos in a unique short fiber form. The chemical formula was $Mg_6(OH)_8Si_4O_{10}$. Union Carbide produced four grades of Calidria asbestos: standard, super standard, high purity, and resin grade; the different grades reflect varying degrees of purity of content. Union Carbide packaged some of the Calidria products which were sold by domestic distributors under the following trade names: Arcovis, Imcobest, Oilbestos, Super Visbestos, Telvis, Univis, Visbestos, and Visquick. Calidria asbestos consisted of raw chrysotile asbestos in a unique short fiber form and can thus be

distinguished from other chrysotile asbestos by its short fiber length. Calidria asbestos was sold in fibrous and pelletized forms. In appearance, Calidria was grey (pelletized) or white (fibrous) in color and powdery in substance.

Bakelite (produced from approximately 1939 to mid 1974), was manufactured at Union Carbide's Bound Brook Facility, 1 River Road, Bound Brook, NJ 08805. Union Carbide affiliates also manufactured asbestos containing Bakelite in Monterey and Mexico City, Mexico, and in Belleville, Ontario, Canada, however, none of these facilities sold Bakelite to customers in the United States. Prior to Union Carbide, from 1931 until 1939, Bakelite was manufactured by the Bakelite Corporation at the same Bound Brook facility as Union Carbide's Bakelite plant. The Bakelite Corporation and facility at Bound Brook was formed and created from a merger of the Bakelite Company, originally located at Bloomfield, IN; the General Plastics Company, of Perth Amboy, NJ; and the Redmonal Company, of Chicago, IL. Bakelite consisted of a phenolic resin material, sold to customers in a coarse granular (sand-like) form. Bakelite's purchasers consisted of molders who used the intermediate products sold to additional manufacturers. Bakelite customers would heat and melt the powder to create a molten resin (to which some purchasers would add other substances) and then mold, harden and cool the resin into the finished product. Most Bakelite did not contain asbestos. At its peak, asbestos containing Bakelite comprised 40% of the Bakelite produced by Union Carbide. The great bulk of non-asbestos Bakelite contained wood flour as a filler in lieu of asbestos. Asbestos containing Bakelite fell into three classes of Bakelite, which differed on the basis of the quantity and type of asbestos: General Purpose Bakelite, Heat Resistant Bakelite, and High Impact Heat Resistant.

General Purpose Bakelite contained less than 12% asbestos content. The asbestos consisted of short fiber usually purchased from the Carey-Canada Corporation. General Purpose Bakelite was marketed for use in certain electrical devices such as electrical panels, electrical plug receptacles, and electrical switches. General Purpose Bakelite consisted of the following Bakelite product designations (which differed with respect to either resin components or asbestos proportions): BMMA 5138, BMRS 5314, BMMA 5440, BMMA 5330, BMMC 5333, BMMS 5333, BMRS 5440, BMMA 5441.

Heat Resistant Bakelite contained 25 to 30% asbestos content (with one exception noted below). The asbestos consisted of short fiber asbestos usually purchased from the Carey Canada Corporation. Heat Resistant Bakelite was marketed for high voltage electrical switches or switch boxes and consisted of the following product designations: BMMC 2035; BMMA 5303; BMMD 5303; BMRS 2035; BMRS 5303; BMRC 2035; BMMA 5353 (only 10% asbestos).

High Impact Heat Resistant (only manufactured until the mid 1960's) consisted of 50% asbestos. The asbestos consisted of long fiber African Blue (trade name) Asbestos. High Impact Heat Resistant was marketed for use in or with very high voltage industrial electrical switch gear and consisted of the following product designation: BMMZ 5250.

As indicated above, Bakelite was sold in a granular form. Bakelite was brown; however, a pigment was usually added to give it a black appearance. Some of the long-fiber asbestos had a green hue to it. Asbestos containing Bakelite can be distinguished from Bakelite or other phenolics which contained wood flour as a filler by appearance or weight: the asbestos-containing Bakelite had a smoother appearance and a greater specific gravity (by a factor of approximately 1.3). Asbestos containing Bakelite can only be distinguished from phenolics with asbestos or other, non-asbestos, mineral filler (as opposed to wood flour) by an ash chemical analysis.

Any asbestos contained in general purpose Bakelite or Heat Resistant Bakelite was fully encapsulated by the resin in the Bakelite sold by Union Carbide. Any asbestos in High Impact Heat Resistant Bakelite would be encapsulated when the resin was molded, hardened and cooled into the finished product by the purchasers of Bakelite. Therefore, any asbestos in Bakelite found in buildings is encapsulated and thus not respirable.

(e) *Additional information.* No additional information is available.

26. Uniroyal Holdings, Inc., Textile Division

(a) *Name and address of manufacturer.* Uniroyal Holdings, Inc., Textile Division, 455 Chase Parkway, Waterbury, CT 06708-3392. Formerly named U.S. Rubber Company.

(b) *Years of manufacture.* 1941 through 1976.

(c) *Types or classes of products.* Asbestos cloth.

(d) *Other identifying characteristics.* From about 1941 until 1976, Uniroyal's Textile Division made and marketed asbestos-containing cloth containing a significant quantity by weight and volume of chrysotile asbestos fiber. Uniroyal sold this cloth for a great variety of uses, and did not market it specifically as an insulation material for use in buildings. The chrysotile fibers in the cloth were combined with cotton or other natural or synthetic fibers, and the woven cloth was often coated with resin to achieve a smooth and uniform finish. Uniroyal's asbestos cloth, generally light in weight as compared to other manufacturers' asbestos-containing cloth, was graded depending on the percentage of asbestos in the finished product. Generally speaking, the grades were Underwriters, AA and AAA; the range of gauges .023 to .078; and the weight in pounds per square yards ranged from .75 to 2.5, with the predominant sales in the lighter weight fabric.

(e) *Additional information.* No additional information is available.

27. United States Gypsum Company

(a) *Name and address of manufacturer.* United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606. United States Gypsum Company in NJ was incorporated December 27, 1901 and dissolved August 23, 1920. Avery Gypsum Company in NJ was incorporated August 23, 1920 and dissolved October 14, 1927. United States Gypsum Company in IL was incorporated August 12, 1920 and dissolved December 24, 1936. United States Gypsum Company in DE was incorporated December 24, 1936 and dissolved in August 1952. United States Gypsum Company was incorporated August 1952 and dissolved February 4, 1966. USG Corporation in DE was incorporated February 2, 1966 and dissolved July 1, 1966. The United States Gypsum Company in DE was incorporated August 1, 1966.

(b) *Years of manufacture.* 1930 through 1977.

(c) *Types or classes of products.* Ceiling tile, fireproofing plaster, thermal insulation, rigid block insulation, texture, simulated acoustical ceiling texture, paper and felt, and pipe covering.

(d) *Other identifying characteristics.* Acoustone 120 ceiling tile was produced 1968 to 1976 in Gypsum, OH.

Shadowline ceiling tile was produced 1968 to 1976 in Walworth, MI.

Acoustone 180 ceiling tile was produced 1966 to 1975 in Gypsum, OH.

Red Top Firecode Plaster (D) fireproofing plaster was produced 1962 to 1963 in Boston, MA; 1962 to 1963 in

Detroit, MI; 1959 to 1964 in East Chicago, IN; 1960 to 1964 in Empire, NY; 1959 to 1964 in Fort Dodge, IA; 1961 to 1964 in Gypsum, OH; 1959 to 1964 in New Brighton, NY; 1962 to 1963 in Oakfield, NY; 1962 to 1963 in Philadelphia, PA; 1961 to 1963 in Sperry, IA; 1962 to 1963 in Stony Point, NY; 1964 only in Hagersville, CAN.

Red Top Firecode "V" Plaster fireproofing plaster was produced 1965 to 1969 in Baltimore, MD; 1962 to 1963 in Boston, MA; 1962 to 1963 in Detroit, MI; 1962 to 1969 in East Chicago, IN; 1962 to 1969 in Empire, NY; 1964 to 1965 in Fort Dodge, IA; 1962 to 1963 in Galena Park, TX; 1962 to 1968 in Gypsum, OH; 1963 to 1967 in Midland, CA; 1962 to 1969 in New Brighton, NY; 1962 to 1963 in Oakfield, NY; 1962 to 1963 in Philadelphia, PA; 1967 to 1968 in Plaster City, CA; 1962 to 1963 in Stony Point, NY; 1963 to 1969 in Sweetwater, TX; 1963 to 1969 in Hagersville, CAN.

Spraydon Standard A fireproofing plaster was produced 1965 to 1971 in Plainfield, NJ; 1965 to 1971 in Torrance, CA.

Spraydon Standard G fireproofing plaster was produced 1968 to 1970 in Plainfield, NJ; 1968 to 1970 in Torrance, CA. Spraydon

Powercote thermal insulation was produced 1969 to 1971 in Plainfield, NJ; Torrance, CA; and Corsicana, TX.

K–Fac Industrial Insulating Block rigid block insulation was produced 1943 to 1950 in East Chicago, IN.

K–Fac 19 rigid block insulation was produced 1970 to 1973 in Greenville, MS.

Pac-Tex Texture Paint was produced 1962 to 1963 in Dallas, TX; 1943 to 1970 in South Gate, CA; 1949 to 1962 in Sweetwater, TX.

A–B Tex Texture Paint was produced 1959 to 1973 in Chamblee, GA; 1935 to 1949 in Gypsum, OH; 1954 to 1973 in Gypsum, OH; 1973 only in Midway, IL; 1935 to 1949 in New Brighton, NY; 1954 to 1968 in New Brighton, NY; 1943 to 1944 in South Gate, CA; 1954 to 1974 in South Gate, CA; 1948 to 1950 in Sweetwater, TX; 1962 to 1963 in Hagersville, CAN; 1973 only in Hagersville, CAN.

Texture Paint was produced 1959 to 1973 in Chamblee, GA; 1964 to 1973 in Dallas, TX; 1930 to 1973 in Gypsum, OH; 1937 to 1973 in New Brighton, NY; 1948 to 1970 in South Gate, CA; 1948 to 1964 in Sweetwater, TX.

Texolite Dry Fill texture was produced 1959 to 1961 in New Brighton, NY.

Texolite Drywall Surfacer, Aggregated, (renamed Drywall Surfacer, Texture XII in 1965) was produced 1963 to 1965 in Dallas, TX; 1961 to 1977 in Gypsum, OH; 1970 to 1972 in Midway, IL; 1963 to 1965 in New Brighton, NY; 1963 to 1965 in South Gate, CA.

Spray Texture Paint (or Finish) was produced 1961 to 1976 in Chamblee, GA; 1961 to 1976 in Dallas, TX; 1960 to 1976 in Gypsum, OH; 1970 to 1976 in Midway, IL; 1966 to 1968 in New Brighton, NY; 1963 to 1973 in South Gate, CA; 1959 to 1961 in Sweetwater, TX.

Multi-purpose Texture Finish was produced 1964 to 1976 in Chamblee, GA; 1963 to 1976 in Dallas, TX; 1965 to 1976 in Gypsum, OH; 1971 to 1976 in Midway, IL; 1965 to 1966 in New Brighton, NY. Improved Spray Texture B–8 was produced 1963 to 1973 in South Gate, CA.

Sanded, Colored, Texture Paint was produced 1952 to 1953 in New Brighton, NY; 1952 to 1955 in Sweetwater, TX.

Concrete Ceiling Texture was produced 1970 to 1973 in South Gate, CA. Textone Texture Finish was produced 1959 to 1972 in Chamblee, GA; 1962 to 1972 in Dallas, TX; 1928 to 1975 in Gypsum, OH; 1937 to 1972 in New Brighton, NY; 1944 to 1972 in South Gate, CA; 1949 to 1972 in Sweetwater, TX; 1965 to 1977 in Hagersville, CAN.

Texolite Block Filler was produced 1961 to 1966 in Chamblee, GA; 1966 to an unknown date in Dallas, TX; 1958 to an unknown date in Gypsum, OH; 1958 to an unknown date in New Brighton, NY; 1959 to 1966 in South Gate, CA; 1959 to 1966 in Sweetwater, TX.

Sheetrock Smoothcoat texture was produced 1966 to 1974 in Dallas, TX; 1965 to 1974 in Gypsum, OH; 1971 to 1974 in Midway, IL.

Sheetrock Radiant Heat Simulated Acoustical Texture ceiling texture was produced 1970 to 1972 in South Gate, CA.

Special Texture Paint was produced from 1963 to 1964 to Dallas, TX; 1971 to 1972 in Dallas, TX; 1955 only in New Brighton, NY.

Texture XII, Super Vinyl was produced 1970 to 1976 in Gypsum, OH; 1970 to 1976 in Midway, IL.

Aggregated Spray Finish, White texture was produced 1967 to 1968 in Dallas, TX; 1964 to 1968 in Gypsum, OH; 1971 only in Midway, IL.

Smooth Hard Finish texture was produced 1968 to 1969 in South Gate, CA.

Superhard Spray Texture Finish was produced 1968 to 1969 in South Gate, CA.

Exterior Texture Wallboard Finish was produced 1971 to 1973 in Dallas, TX; 1971 to 1972 in South Gate, GA.

Simulated Acoustical Spray Texture/Finish was produced 1964 only in Chamblee, GA; 1963 to 1964 in Dallas, TX; 1959 to 1964 in Gypsum, OH; 1961 to 1964 in New Brighton, NY; 1959 to 1964 in South Gate, CA; 1961 to 1962 in Sweetwater, TX.

"QT" Simulated Acoustical Spray Texture was produced 1963 to 1973 in South Gate, CA.

Imperial "QT" (Spray) Texture Finish-Regular was produced 1964 to 1965 in Dallas, TX; 1967 to 1976 in Dallas, TX; 1964 to 1968 in New Brighton, NY; 1966 only in South Gate, CA; 1968 to 1973 in South Gate, CA.

Imperial "QT (Spray) Texture Finish-LC was produced 1965 to 1968 in Dallas, TX; 1965 to 1968 in Gypsum, OH; 1965 to 1966 in New Brighton, NY; 1965 to 1966 in Hagersville, CAN; 1966 only in Montreal, CAN.

Imperial "QT" (Spray) Texture Finish-NC–LC was produced 1968 to 1976 in Chamblee, GA; 1966 to 1974 in Dallas, TX; 1966 to 1976 in Gypsum, OH; 1966 to 1975 in New Brighton, NY.

Imperial "QT" (Spray) Texture Finish-Extra Hard Fine was produced 1964 to 1974 in Chamblee, GA; 1964 to 1971 in Dallas, TX; 1964 to 1974 in Gypsum, OH; 1964 to 1973 in New Brighton, NY.

Imperial "QT" (Spray) Texture Finish-Vermiculite, Coarse and Regular was produced 1967 to 1976 in Chamblee, GA; 1966 to 1976 in Dallas, TX; 1968 to 1976 in Gypsum, OH; 1970 to 1976 in Midway, IL; 1968 to 1976 in New Brighton.

Imperial "QT" (Spray) Texture Finish-Polystyrene, Coarse and Regular was produced 1967 to 1976 in Dallas, TX.

Imperial "QT" (Spray) Texture Finish-NC4 was produced 1968 to 1972 in Chamblee, GA; 1968 to 1971 in Dallas, TX; 1967 to 1972 in Gypsum, OH; 1970 to 1972 in Midway, IL; 1967 to 1972 in New Brighton, NY.

Ready-Mixed Imperial "QT" Spray Finish was produced 1966 to 1967 in New Brighton, NY.

Asbestos Paper was produced 1938 to 1939 in Jersey City, NJ.

Asbestos Felts and Coverings were produced 1936 to 1939 in Jersey City, NJ.

Commercial Asbestos Paper was produced 1936 to 1939 in Jersey City, NJ.

Asbestos Corrugated Paper-Corrugated Wool Felt was produced 1936 to 1939 in Jersey City, NJ.

Asbestos Air Cell Pipe Covering was produced 1936 to 1939 in Jersey City, NJ.

Corrugated Wool Felt Air Cell Covering was produced 1936 to 1939 in Jersey City, NJ. Wool Felt Pipe Covering was produced 1936 to 1939 in Jersey City, NJ.

Laminated Asbestos & Sponge Pipe Covering was produced 1936 to 1939 in Jersey City, NJ.

Hair & Wool Felt Pipe Covering-Frost Proof was produced 1936 to 1939 in Jersey City, NJ.

Anti-Sweat Pipe Covering was produced 1936 to 1939 in Jersey City, NJ.

Range Boiler Jackets pipe covering was produced 1936 to 1939 in Jersey City, NJ.

Asbestos Air Cell Board pipe covering was produced 1936 to 1938 in Jersey City, NJ.

Laminated Sponge & Asbestos Board pipe covering was produced 1936 to 1939 in Jersey City, NJ.

Asbestos Cement pipe covering was produced 1936 to 1939 in Jersey City, NJ.

Pyrobestos Pipe Covering Board & Stack Lining was produced 1936 to 1939 in Jersey City, NJ.

(e) *Additional information.* Additional information is available.

28. W.R. Grace & Company

(a) *Name and address of manufacturer.* W. R. Grace & Company, Grace Plaza, 1114 Avenue of the Americas, New York, NY 10036–7794.

(b) *Years of manufacture.* Approximately 1938 through 1978; exact years of production for many of the products are unknown.

(c) *Types or classes of products.* Surfacing material, concrete leveler or block filler, window glazing compound or paste, elastomeric caulking and sealing compounds, extrudable chalking compound, non-staining oil base caulking compound, waterproofing compounds, bonding agent, epoxy based adhesive, epoxy resin floor surfacing, slip resistant coating, exterior masonry coating, acrylic sealant, and waterproofing sealant.

(d) *Other identifying characteristics.* Zonolite Acoustical Plaster (produced 1945 to approximately 1972) was a surfacing material which contained approximately 15 to 20% 7M chrysotile asbestos by weight; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied or trowelled on wet; it was light beige or tan in color. Zonolite Acoustical Plaster may also have been marketed as Zonolite Acoustical Plastic, Vermiculite Acoustical Plaster, and Vermiculite Acoustical Plastic; it may have been manufactured in the 1950's with 6D or 7D chrysotile asbestos.

Zono-Coustic (produced 1960 to 1973) was a surfacing material which contained approximately 10 to 14% 7M chrysotile asbestos by weight; it was an acoustical base coat for walls and ceilings; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied or trowelled on wet; it was off-white in color. Zono-Coustic may also have been marketed as Zono-Coustic 1, Zono-Coustic 2, Zono-Coustic 3, Zono-Coustic Type Z, and Zono-Coustic (MK-2).

Zonolite Finish Coat (produced 1950 to approximately 1973) was a surfacing material which contained approximately 11 to 14% 7M chrysotile asbestos by weight; was a decorative textured finish for ceilings; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied wet; it was white in color. Zonolite Finish Coat may also have been marketed as Zonolite Finish coat, Decorator's White, Zonolite Acoustical Finish, and Zonolite Finish Coat Decorator's White Extra Hard.

Zonolite Spra-Tex (produced approximately 1955 to 1972) was a surfacing material which contained approximately 29 to 36% chrysotile asbestos by weight; it was a decorative textured finish for ceilings; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied wet; it was white in color. Zonolite Spra-Tex may also have been marketed as Zonolite Spra-Tex EH.

Econo-White 70 (produced 1956 to approximately 1970) was a surfacing material which contained approximately 13 to 17% 7M chrysotile asbestos by weight; it was an acoustical plaster for walls and ceilings; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied or trowelled on wet; it was white in color. Econo-White 70 may also have been marketed as Econo-White Acoustical Texture or Econo-White Super White.

Z–Tex (produced approximately 1958 to 1962) was a surfacing material which contained approximately 13 to 17% 7M chrysotile asbestos by weight; it was a spray acoustical texture product; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied wet; it was white or beige in color. Z–Tex may also have been marketed as EZ–Tex.

Zonolite Board of Education Texture (produced approximately 1962 or 1963) was a surfacing material which contained approximately 9 to 12% 7M chrysotile asbestos by weight; it was a textured acoustical plaster coat; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied or trowelled on wet; it was white in color. Zonolite Board of Education Texture was manufactured for one job site only.

Zonolite Mono-Kote MK–1 (produced 1958 to approximately 1962) was a surfacing material which contained approximately 10 to 13% 7M chrysotile asbestos by weight; it was a cementitious fireproofing; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied or trowelled on wet; it was light beige in color. Zonolite Mono-Kote MK–1 was also sold under the generic name Mono-Kote.

Zonolite Spra-Insulation (produced approximately 1959 to 1973) was a surfacing material which contained approximately 10 to 13% 7M chrysotile asbestos by weight; it was a cementitious insulation and acoustical material for application to metal building interiors; it did not contain commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied or trowelled on wet; it was dark beige in color.

Zonolite Mono-Kote MK–3 (produced 1959 to 1973) was a surfacing material which contained approximately 10 to 14% 7M or 7R chrysotile asbestos by weight; it was cementitious fireproofing, it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied or trowelled on wet; it was light beige in color. Zonolite Mono-Kote MK–3 was also sold under the generic name Mono-Kote.

Zonolite High Temperature Cement (produced approximately 1938 to 1970) was a surfacing material which contained approximately 15 to 19% 7D or 6D–20 chrysotile asbestos by weight; it was a cementitious insulation and fireproofing for high temperature applications; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; contained perlite or vermiculite, but not both; it was trowelled on wet; it was light beige in color. Zonolite High Temperature Cement was also marketed as Hi Temp Insulating Cement, Zonolite Hi-Temperature Cement and Zonolite High Temperature Insulating Cement; it was

marketed primarily for industrial applications.

Ari-Zonolite Texture (produced approximately 1961 to 1964) was a surfacing material which contained approximately 10% chrysotile asbestos by weight; it was a cementitious sprayed texture product; it was used to cover grooves in a pre-wired ceiling board; it did not contain commercially added amphibole asbestos; it was spray-applied wet; it was off-white in color.

Perltex Super-40 Perlite (exact date manufacture began is unknown; manufactured up to approximately 1973) was a surfacing material which contained approximately 6 to 8% chrysotile asbestos by weight; it was a decorative textured coating; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied wet; it was white or beige in color; it may also have been marketed as Perltex Perlite or Super-40 Perlite.

Perltex Super-40 SAV (exact date manufacture began is unknown; up to approximately 1973) was a surfacing material which contained approximately 5 to 7% chrysotile asbestos by weight; it was a decorative textured coating; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool, or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied wet; it was white or beige in color. Perltex Super-40 SAV may also have been marketed as Perltex SAV or Super-40 SAV.

Perltex Super-40 Polycoarse (exact date manufacture began is unknown; manufactured up to approximately 1973) was a surfacing material which contained approximately 4 to 6% chrysotile asbestos by weight; it was a spray texture coating; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it was spray-applied wet; it was white or beige in color. Perltex Super-40 Polycoarse may also have been marketed as Perltex Polycoarse, Perltex Super-40 Poly or Perltex Poly.

Perltex Super-40 Fog (exact date manufacture began is unknown; manufactured up to approximately 1973) was a surfacing material which contained approximately 4 to 7% chrysotile asbestos by weight; it was used as a base coat under paint or decorative textured finish products; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it was spray-applied wet; it was white or beige in color. Perltex Super-40 Fog may also have been marketed as Perltex Fog.

Perltex Spray Surfacer (exact date manufacture began is unknown; manufactured up to approximately 1973) was a surfacing material which contained approximately 6 to 11% 7TF1 or 7RF9 chrysotile asbestos by weight; it was a spray texture coating applied over board, concrete, metal or plaster; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied wet; it was white in color. Perltex Spray Surfacer may also have been marketed as PlasterTex, Perltex Super-40 Spray Surfacer, Perltex Super-40, and Gun Coat Spray Surfacer.

Hi-sorb Acoustical Plaster (exact date manufacture began is unknown; manufactured up to approximately 1973) was a surfacing material which contained approximately 8 to 10% 7M chrysotile asbestos by weight; it was an acoustical textured ceiling plaster; it was to be applied over gypsum plaster, portland cement, and lime plaster base coats, and directly to monolithic concrete surfaces; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it was spray-applied or trowelled on wet; it was oyster white or white in color. It was also sold as Hi-Sorb Acoustical Plaster Oyster White and XX White.

Spra-Wyt (produced 1954 to approximately 1973) was a surfacing material which contained approximately 16 to 20% 7M chrysotile asbestos by weight; it was an acoustical finish coat; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied wet. Spra-Wyt may also have been marketed as Spra-Wyt Finish, Spra-Whyt Acoustical or Spra-Wyt Acoustical Finish.

Versakote (exact date manufacture began is unknown; manufactured up to approximately 1973) was a surfacing material which contained approximately 5 to 7% chrysotile asbestos by weight; it was a decorative exterior finish; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied wet; it was white or beige in color. Versakote may also have been marketed as Perltex Versakote or Prep Coat #4.

Prep Coat #3 (exact date manufacture began is unknown; manufactured up to approximately 1972) was a surfacing material which contained approximately 4 to 5% chrysotile asbestos by weight; it was a decorative exterior finish; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it was spray-applied wet. Prep Coat #3 may also have been marketed as Perltex Prep Coat #3.

Perlcoustic (years of production unknown) was a surfacing material which contained approximately 15 to 17% 7M chrysotile asbestos by weight; it was an acoustical finish coat; it did not contain commercially added amphibole asbestos or commercially added glass fibers, mineral wool or rock wool; it contained perlite or vermiculite, but not both; it was spray-applied wet.

Concrete Leveler or Block Filler (produced late 1960's to approximately 1973) was a cement-like product used to patch or fill concrete and brick.

Horn Glazing Compound (produced 1966 to 1970) was a commercial window glazing compound or paste; it was off-white in color. Hornflex Sealants (produced 1964 to 1975) were elastomeric caulking and sealing compounds; they were a gray heavy paste and a brown viscous liquid.

Hornseal (produced 1969 to 1975) was an extrudable chalking compound; it was sold in tubes or pails; it was available in various colors, including gray, black, white aluminum, and limestone.

Vulcatex Professional Grade (produced approximately 1972 to 1977) was a polymerized, non-staining oil base caulking compound; it was gray or white in color.

Waterproofing Compounds (produced 1964 to 1977) were sold in the form of a black mastic.

Epoxy Liquid Bonding Agent (produced approximately 1969 to 1975) was a two-component bonding agent; it contained two viscous brown-colored liquids.

Epoxy Base Adhesive (produced approximately 1964 to 1966) was an epoxy based adhesive; it contained two viscous brown colored liquids.

Epoxy Resin Floor Surfacing (produced approximately 1966 to 1971) was an epoxy resin bond coat and seal coat for use on floors; it was applied in two stages; it contained a two-component bond coat and a two-component seal coat; it was available in a wide range of colors including: platinum, cashmere, iroquois, cedar, iron gray, feather green, sand, palmetto, meadowlark, lagoon, beech, graystone, rattan, medium gray, and white.

Slip Resistant Coating (produced 1966 to 1978) was a viscous liquid slip resistant coating; it was available in gray, green, red, and yellow.

Exterior Masonry Coating (produced approximately 1966 to 1972) was a heavy-bodied liquid exterior masonry coating; it was available in a wide range of colors, including: white, sandstone, tea rose, birch gray, ash gray, shadow green, cedar, baltic, dusty rose, sherwood green, and dove gray.

Acrylic Sealant (produced 1965 to approximately 1969) was a one-component acrylic sealant used for caulking, glazing and sealing joints not subject to abrasion or emersion; it was available in black, white, off-white, limestone, natural gray, and aluminum gray.

Waterproofing Sealant (produced 1969 to 1975) was a sealant accessory product for waterproofing; it was sold as a black extrudable paste.

(e) *Additional information.* No additional information is available.

III. Obtaining Additional Information

In addition to the summaries in unit II of this notice, some submitters provided EPA with such information as product catalogs, product formulas, protocols for samples, and photographs. The availability of additional information about each submission is indicated in paragraph (e) at the end of each summary in Unit II. To assist individuals in ordering any additional information, the following table has been prepared to show the total number of pages in each submission:

NUMBER OF PAGES IN EACH AIA SUBMISSION

Manufacturer	Total pages	Summary pages	Additional information pages
American Biltrite Inc., Amtico Division	264	3	261
Armstrong World Industries, Inc.	562	9	553
The BFGoodrich Company	1	1	0
The Celotex Corporation	4	4	0
Congoleum Corporation	5,594	2	5,592
Eagle-Picher Industries	5	5	0
Fibreboard Corporation	16	11	5
Flintkote Company	4	4	0
GAF Building Materials	571	35	536
General Refractories Company	3	3	0
Georgia-Pacific Corporation	4	4	0
H. K. Porter Company, Inc.	1	1	0
Kaiser Cement	3	3	0
Kaiser Gypsum Company, Inc.	5	5	0
Keene Corporation	7	7	0
Kentile Floors, Inc.	38	1	37
Mannington Mills, Inc.	1,245	2	1,243
Manville Corporation	14	14	0
National Gypsum Company	388	2	386
The Owens/Corning Fiberglas Corporation	3	3	0
Pfizer, Inc.	8	2	6
Rhone-Poulenc Ag Company	190	3	187
The Sherwin Williams Corporation	1	1	0
Tremco, Inc., Adhesives System Division	4	4	0
Union Carbide Corporation	5	5	0
Uniroyal Holding, Inc.	1	1	0
U.S. Gypsum Company	1,090	10	1,080
W. R. Grace & Company	37	37	0
Total	10,068	182	9,886

Copies of the information described above and any additional information submitted to EPA after November 17, 1989, are available for a fee of fifteen cents per page to cover reproduction costs. To obtain additional information, interested individuals should contact the following: ATLIS Federal Services, Inc., EPA/AIA Program, 6011 Executive Blvd., Rockville, MD 20852, (301) 816-0873.

Dated: February 3, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90-3370 Filed 2-12-90; 8:45 am]

BILLING CODE 6560-50-D

federal register

Tuesday
February 13, 1990

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 73

Proposed Prohibited Areas Over Department of Energy Nuclear Facilities; Announcement of Public Meetings

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 90-AWA-1]

Proposed Prohibited Areas Over Department of Energy Nuclear Facilities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Announcement of public meetings.

SUMMARY: This document announces a series of meetings to solicit information from the public concerning the establishment or modification of prohibited airspace areas for security and safety purposes at nine Department of Energy (DOE) nuclear weapon facilities.

DATES: Comments must be received on or before May 7, 1990, or 30 days after the close of the last meeting, whichever is later. The public meetings will be held on March 15, 1990, in Columbus, OH; March 20, 1990, in Oak Ridge, TN; March 21, 1990, in Augusta, GA; March 27, 1990, in Westminster, CO; March 28, 1990, in Albuquerque, NM; March 29, 1990, in Amarillo, TX; April 3, 1990, in Richland, WA; April 4, 1990, in Idaho Falls, ID; April 5, 1990, in Livermore, CA.

ADDRESSES: Comments may be mailed in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 90-AWA-1, Department of Energy/Proposed Prohibited Areas, 800 Independence Avenue SW., Washington, DC 20591.

Comments may be delivered in triplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC 20591.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

The public meeting locations are as follows:

Columbus, OH
Date: Thursday, March 15, 1990.
Time: 7:30 p.m.
Location: Broadleigh Elementary School, 3039 Maryland Avenue, Columbus, OH

Oak Ridge, TN
Date: Tuesday, March 20, 1990.
Time: 7:30 p.m.
Location: The American Museum of Science and Energy, 300 S. Tulane, Oak Ridge, TN

Augusta, GA
Date: Wednesday, March 21, 1990.
Time: 7:30 p.m.
Location: Landmark Hotel, 640 Broad Street, Augusta, GA

Westminster, CO
Date: Tuesday, March 27, 1990.
Time: 7:30 p.m.
Location: Ramada Hotel, 8773 Yates Drive, Westminster, CO

Albuquerque, NM
Date: Wednesday, March 28, 1990.
Time: 7:30 p.m.
Location: Holiday Inn—Pyramid, 5151 San Francisco Road NE., Albuquerque, NM

Amarillo, TX
Date: Thursday, March 29, 1990.
Time: 7:30 p.m.
Location: Amarillo College, 2201 S. Washington Street, Amarillo, TX

Richland, WA
Date: Tuesday, April 3, 1990.
Time: 7:30 p.m.
Location: DOE Federal Building, 825 Jadwin Avenue, Richland, WA

Idaho Falls, ID
Date: Wednesday, April 4, 1990.
Time: 7:30 p.m.
Location: Westbank Motel, 475 River Parkway, Idaho Falls, ID

Livermore, CA
Date: Thursday, April 5, 1990.
Time: 7:30 p.m.
Location: Almond Avenue School, Pod A, 1401 Almond Avenue, Livermore, CA

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, 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) 267-9252.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meetings will be informal in nature and will be conducted jointly by representatives of the FAA and the DOE. Each participant will be given an opportunity to make a presentation.

(b) The meetings will be open to all persons on a space-available basis. All efforts will be made to provide a meeting site with sufficient seating capacity for the expected participation. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Any person who wishes to present a position paper to the panel pertinent to the topic of prohibited areas over nuclear weapons facilities for consideration may do so.

(e) Persons wishing to hand out pertinent position papers to the attendees should present three copies to the representatives from the FAA and DOE. The FAA and DOE representatives will retain one copy each, with the third being placed in the meeting files. There should be additional copies of each handout available for other attendees.

(f) The meeting will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

Materials relating to this subject will be accepted at the individual meetings. Every reasonable effort will be made to hear every request for presentation consistent with a reasonable closing time for the meeting. Written materials may also be submitted up to 30 days after the close of the last meeting.

Agenda

Opening Remarks and Discussion of Meeting Procedures.
Public Presentations.
Closing Comments.

The Proposed Prohibited Airspace Designations

The Department of Energy (DOE) has requested the FAA to establish or modify prohibited airspace over nine DOE nuclear weapons sites for security and safety purposes. The establishment of prohibited airspace would reduce the amount of overflights in the vicinity of DOE facilities, thus providing DOE security forces increased response time to identify an aircraft as either an intentional or accidental intruder, as well as substantially enhancing safety to aircraft, DOE facilities, and personnel through avoidance of potential accidents resulting from DOE facility overflights. The following describes the proposed prohibited airspace that DOE has requested the FAA to designate or modify at nine DOE installations:

Location	Horizontal boundaries	Altitude surface to—
Portsmouth Gaseous Diffusion Plant, Piketon, OH.	Beginning at lat. 39°03'07"N., long. 83°01'26"W.; to lat. 39°03'07"N., long. 82°58'05"W.; to lat. 38°59'12"N., long. 82°58'05"W.; to lat. 38°59'12"N., long. 83°01'26"W.; to the point of beginning.	5,600 MSL
Oak Ridge Y-12 Plant, TN	Beginning at lat. 35°58'55"N., long. 84°16'51"W.; to lat. 35°59'54"N., long. 84°14'39"W.; to lat. 35°59'26"N., long. 84°13'55"W.; to lat. 35°58'02"N., long. 84°16'34"W.; to the point of beginning.	4,000 MSL
Savannah River Plant, Aiken, SC.	Beginning at lat. 33°23'45"N., long. 81°33'20"W.; to lat. 33°14'30"N., long. 81°29'50"W.; to lat. 33°13'16"N., long. 81°30'45"W.; to lat. 33°08'50"N., long. 81°39'22"W.; to lat. 33°17'12"N., long. 81°47'40"W.; to lat. 33°18'33"N., long. 81°45'45"W.; to lat. 33°19'25"N., long. 81°46'35"W.; to lat. 33°23'00"N., long. 81°46'00"W.; to lat. 33°22'20"N., long. 81°42'55"W.; to the point of beginning.	10,300 MSL
Rocky Flats Plant, Golden, CO	Beginning at lat. 39°55'42"N., long. 105°14'02"W.; to lat. 39°54'38"N., long. 105°09'37"W.; to lat. 39°51'01"N., long. 105°09'53"W.; to lat. 39°51'57"N., long. 105°14'26"W.; to the point of beginning.	10,500 MSL
Los Alamos National Laboratory, NM.	Beginning at lat. 35°47'00"N., long. 106°14'48"W.; to lat. 35°50'03"N., long. 106°21'36"W.; to lat. 35°52'22"N., long. 106°20'42"W.; to lat. 35°52'52"N., long. 106°16'48"W.; to lat. 35°52'30"N., long. 106°14'48"W.; to lat. 35°50'05"N., long. 106°14'48"W.; to lat. 35°47'16"N., long. 106°11'50"W.; to lat. 35°45'30"N., long. 106°15'00"W.; to lat. 35°47'05"N., long. 106°15'05"W.; to the point of beginning.	14,500 MSL
Pantex Plant, Amarillo, TX	Beginning at lat. 35°22'54"N., long. 101°37'04"W.; to lat. 35°22'59"N., long. 101°30'21"W.; to lat. 35°15'08"N., long. 101°30'18"W.; to lat. 35°15'03"N., long. 101°37'04"W.; to the point of beginning.	10,000 MSL
Hanford Site, Richland, WA	Beginning at lat. 46°44'25"N., long. 119°25'00"W.; to lat. 46°39'30"N., long. 119°20'00"W.; to lat. 46°34'10"N., long. 119°20'00"W.; to lat. 46°30'00"N., long. 119°15'00"W.; to lat. 46°23'00"N., long. 119°24'50"W.; to lat. 46°38'00"N., long. 119°43'30"W.; to the point of beginning.	10,000 MSL
Idaho National, Engineering Laboratory Idaho Falls, ID.	Beginning at lat. 43°26'58"N., long. 113°10'35"W.; to lat. 43°26'57"N., long. 112°56'10"W.; to lat. 43°33'15"N., long. 112°35'20"W.; to lat. 43°54'50"N., long. 112°38'00"W.; to lat. 43°54'51"N., long. 112°46'25"W.; to lat. 43°48'16"N., long. 112°50'55"W.; to lat. 43°39'22"N., long. 113°03'20"W.; to lat. 43°36'27"N., long. 113°10'35"W.; to the point of beginning.	10,000 MSL [1]
Lawrence Livermore, National Laboratory, Livermore, CA.	Beginning at lat. 37°45'28"N., long. 121°46'39"W.; to lat. 37°45'28"N., long. 121°38'13"W.; to lat. 37°37'02"N., long. 121°38'13"W.; to lat. 37°37'02"N., long. 121°46'39"W.; to the point of beginning.	3,000 MSL*

*A corridor 2 miles wide with no altitude restrictions exists in the northern portion of this boundary extending from the intersection of ID 88 and ID 22 near the point of the mountain at lat. 43°48'16"N., long. 112°50'55"W.; due east approximatlely 12 miles to a point approximately 1 mile south of circular butte to lat. 43°47'40"N., long. 112°34'30"W.

Issued in Washington, DC, on February 8, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

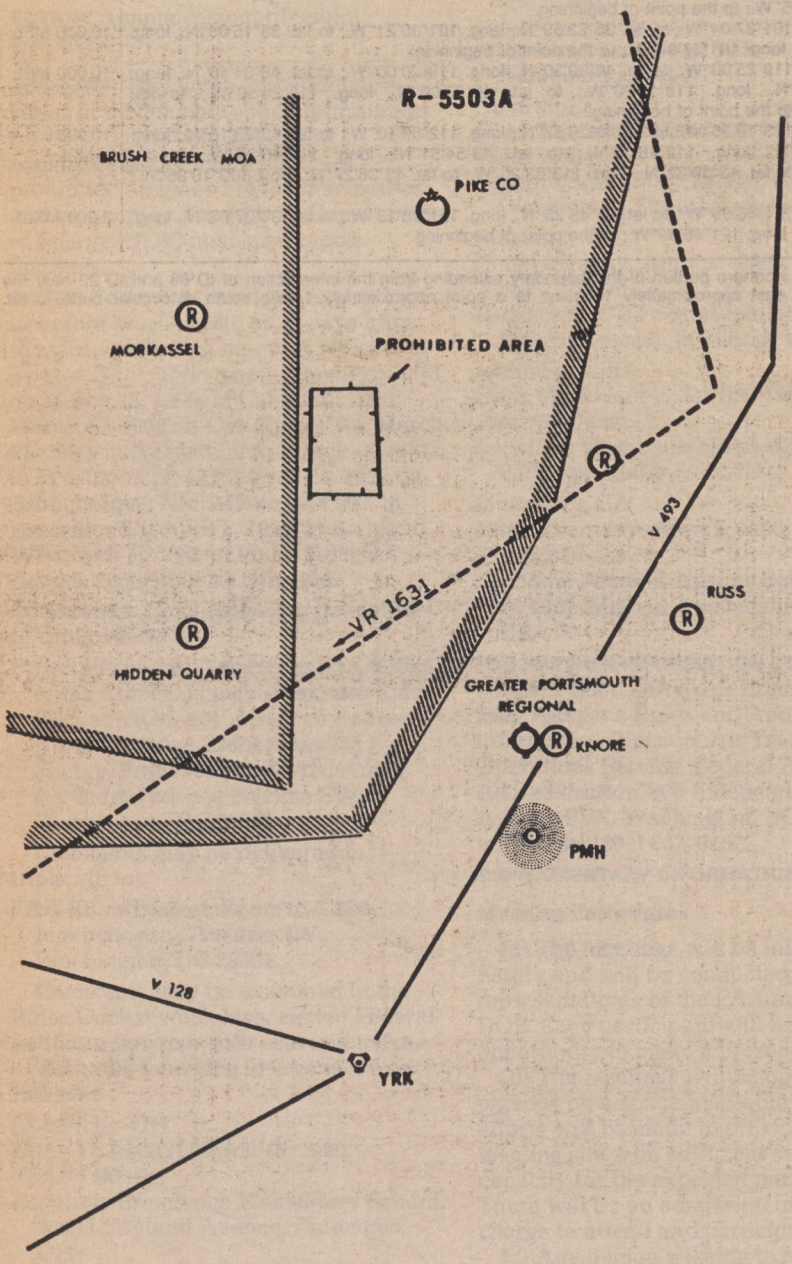
BILLING CODE 4910-13-M

PIKETON, OH.

Proposed Prohibited Airspace

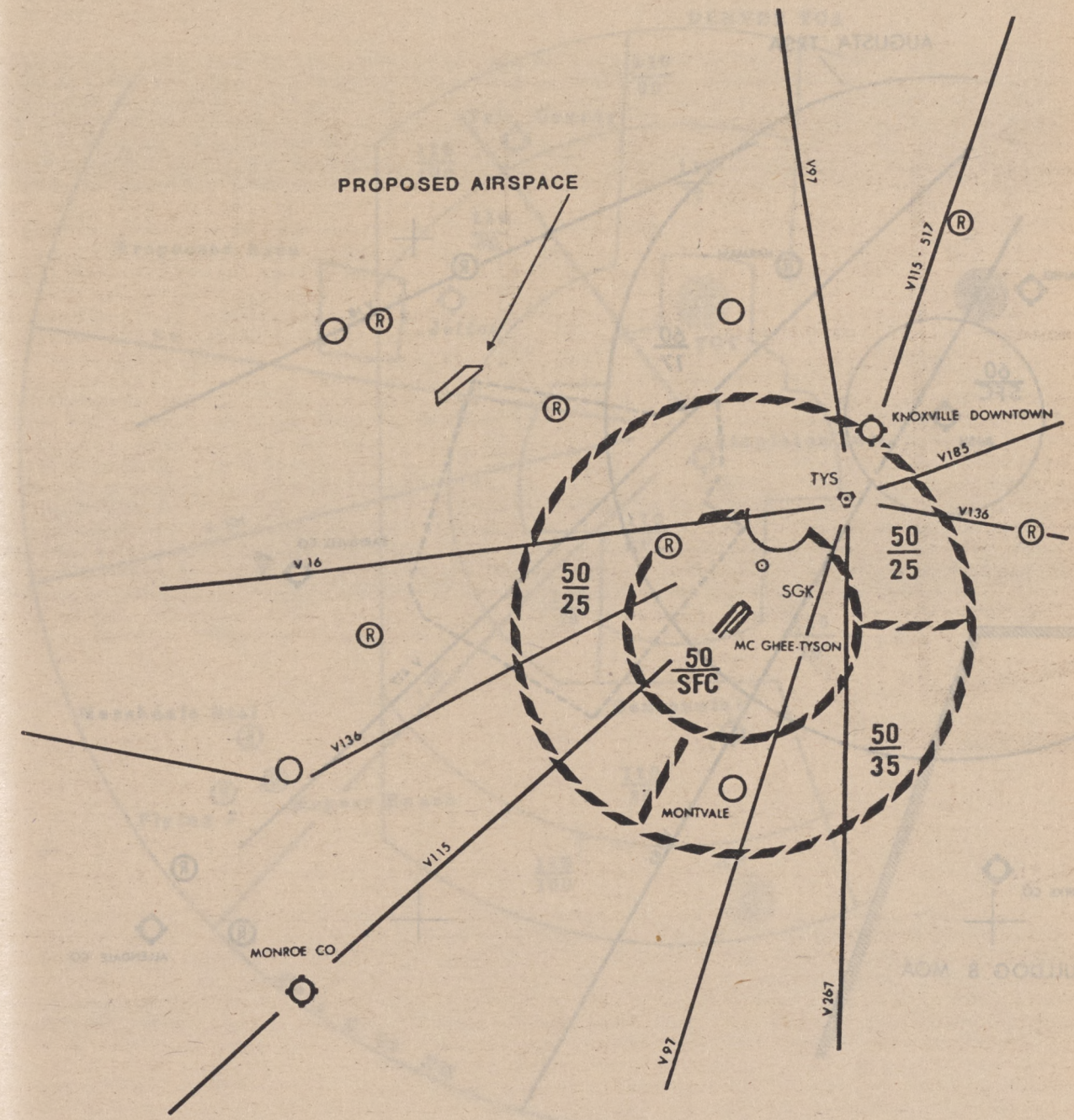
Designated Altitude

5,600 Ft.MSL



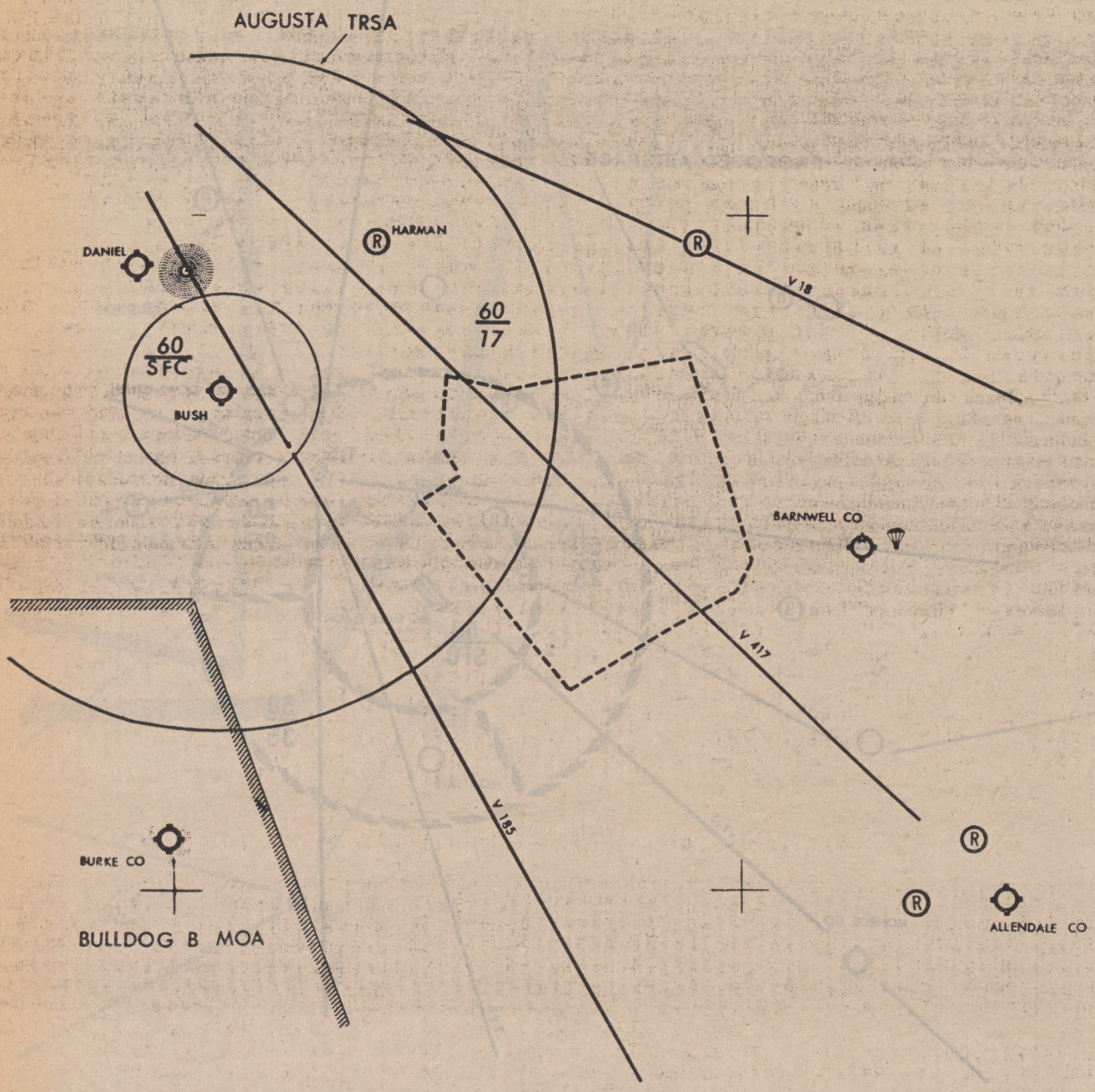
OAK RIDGE, TN.
Proposed Prohibited Airspace

Designated Altitude
4,000Ft. MSL



AIKEN, SC
Proposed Prohibited Airspace

Designated Altitude
10,3000Ft. MSL



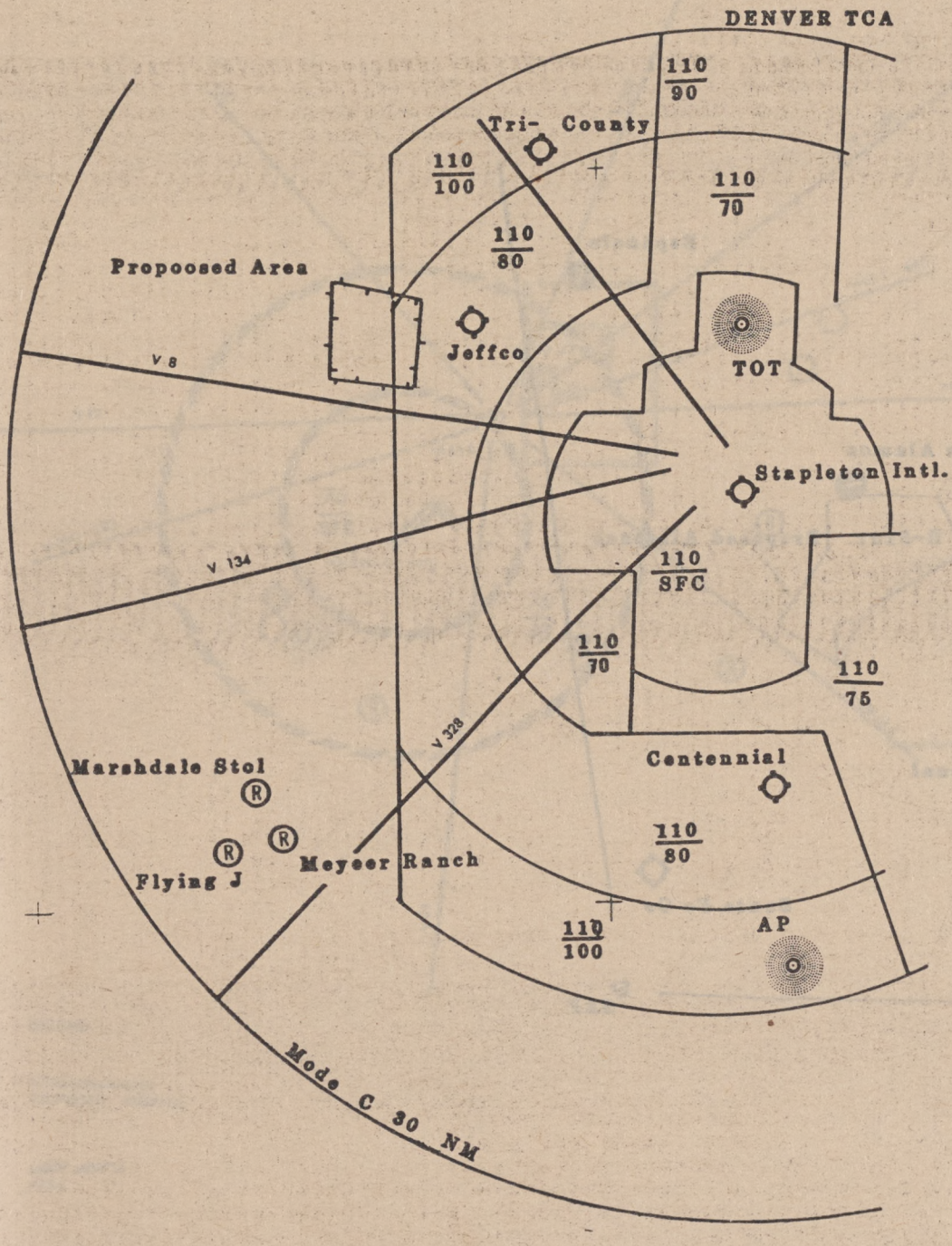
LEGEND

---- Proposed Airspace

GOLDEN, CO.

Proposed Prohibited Airspace

Designated Altitude
10,500 Ft. MSL



LOS ALAMOS, NM.

Proposed Prohibited Airspace

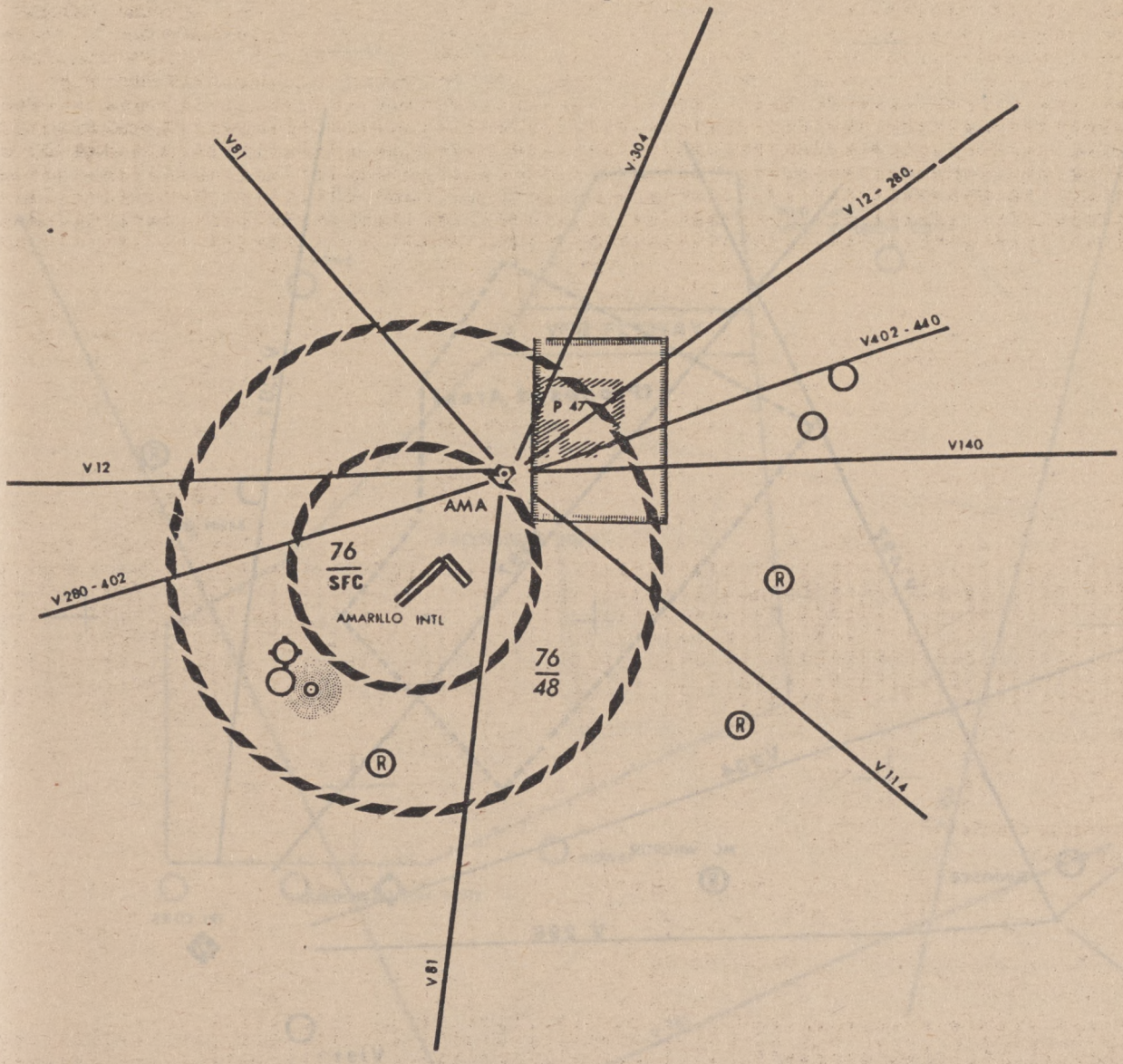
Designated Altitude
14,500Ft. MSL



AMARILLO, TX.

Proposed Prohibited Airspace

(Designated Altitude)
10,000FT. MSL



LEGEND

PROPOSED AIRSPACE

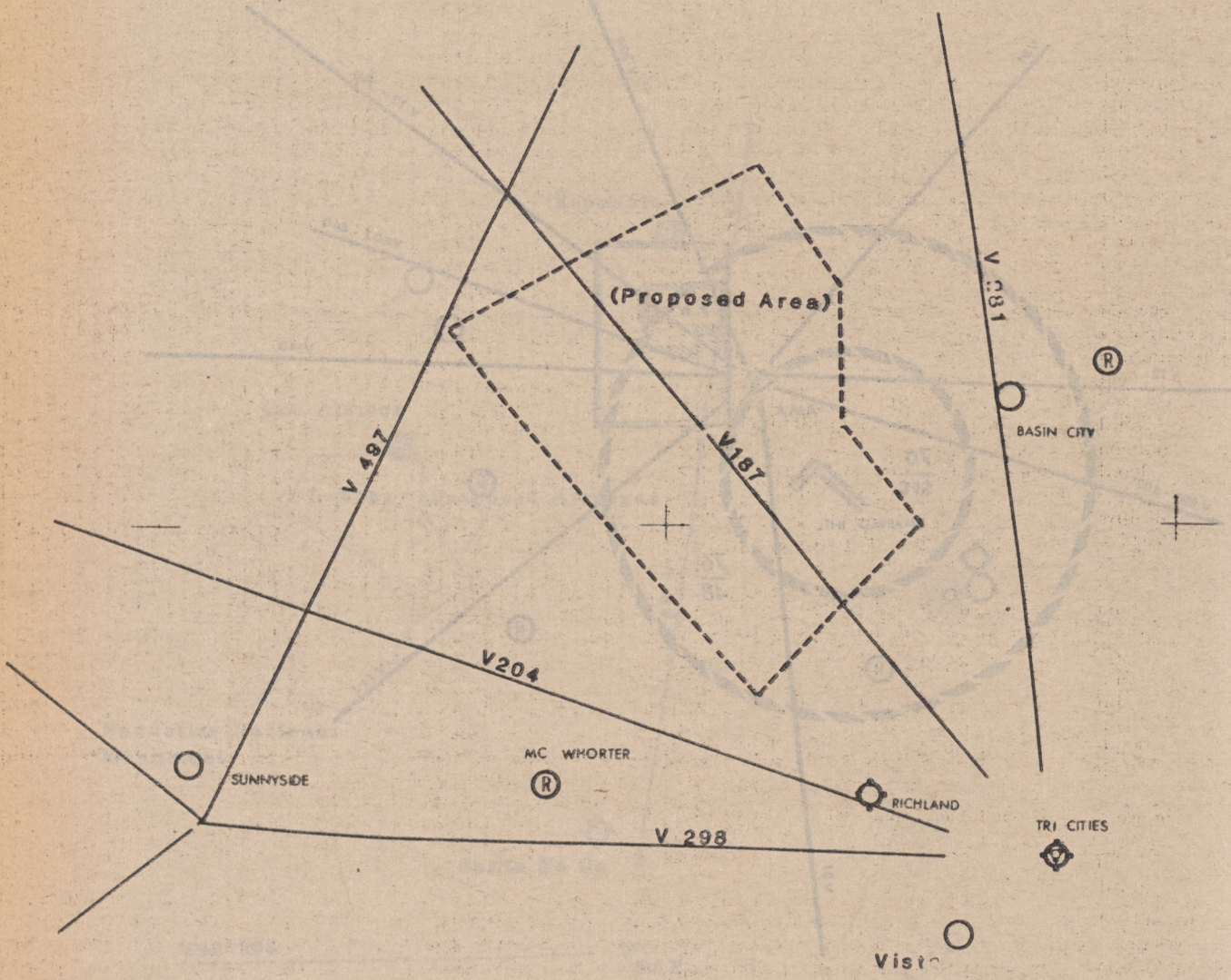
ARSA

RICHLAND, WA.

Proposed Prohibited Airspace

Designated Altitude

10,000 Ft. MSL

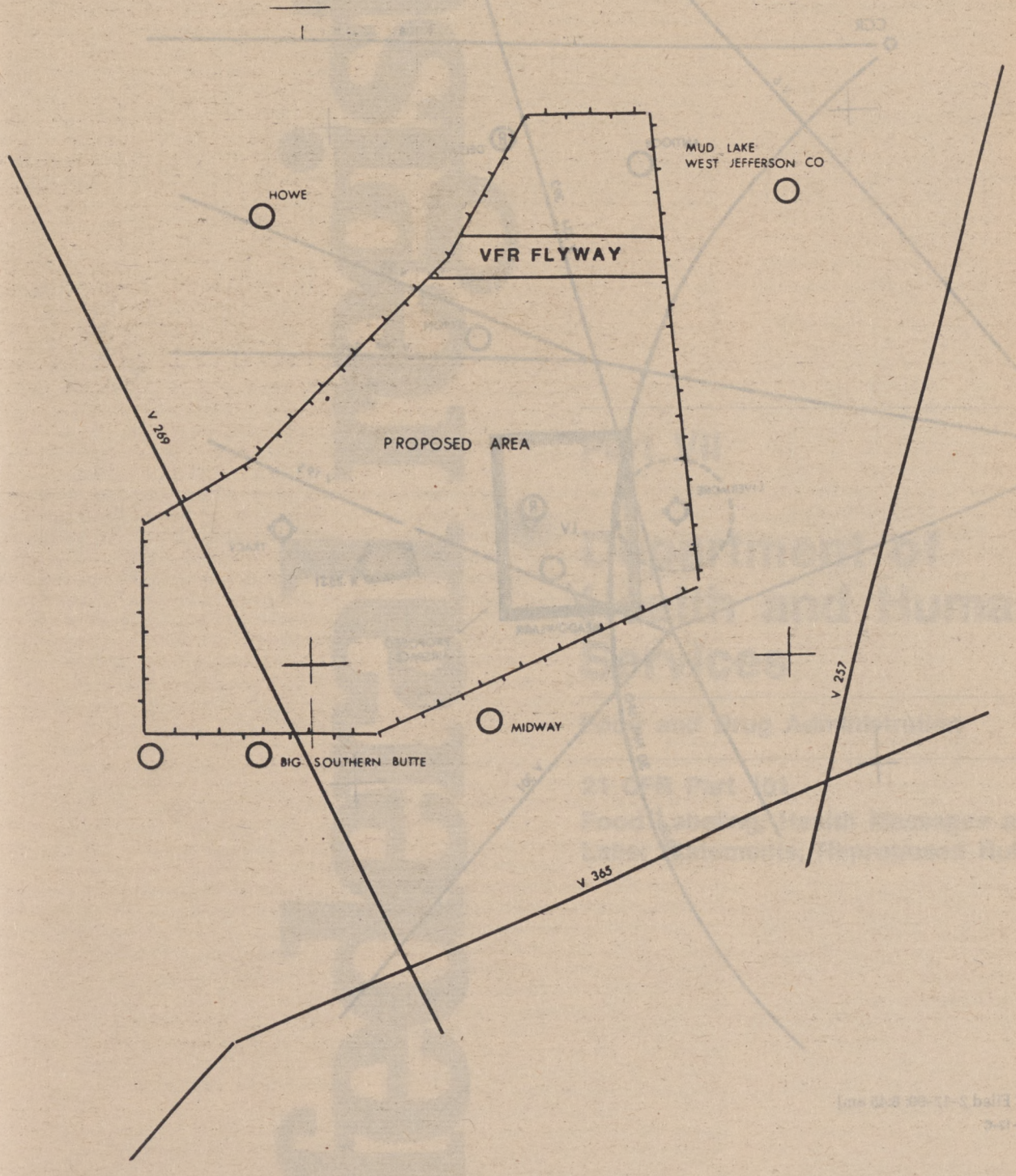


IDAHO FALLS, ID.

Proposed Prohibited Airspace

Designated Altitude

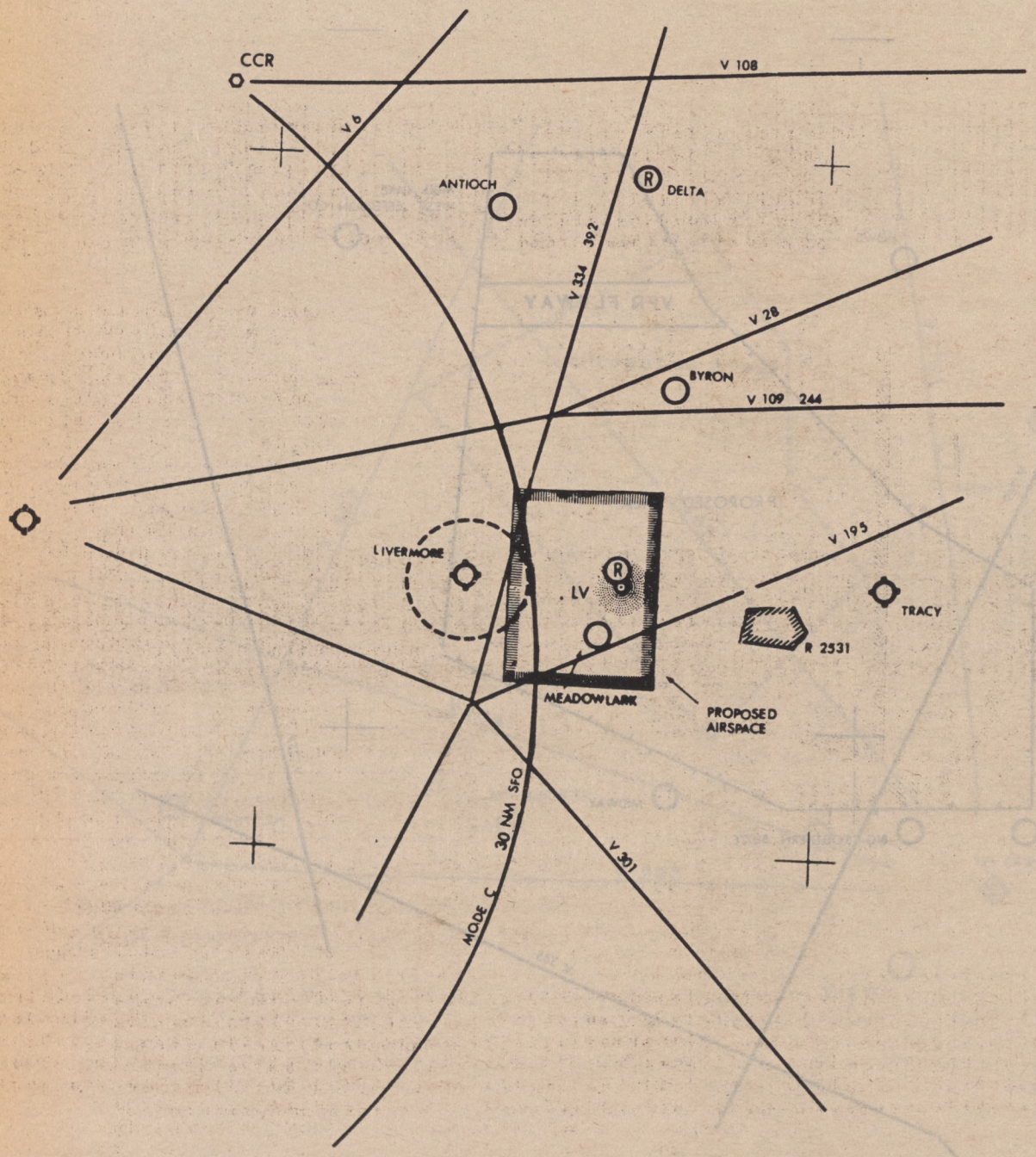
10,000 Ft. MSL



LIVERMORE, CA.

Proposed Prohibited Airspace

Designated Altitude
3,000 Ft. MSL



Doc. 90-3377 Filed 2-12-90; 8:45 am]
NG CODE 4910-13-C

federal register

Tuesday
February 13, 1990

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling; Health Messages and Label Statements; Reproposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 85N-0061]

RIN 0905-AB67

Food Labeling; Health Messages and Label Statements; Reproposed Rule

AGENCY: Food and Drug Administration HHS.

ACTION: Reproposed rule.

SUMMARY: The Food and Drug Administration (FDA) is reproposing to amend the food labeling regulations to provide for the use of health messages on food labeling. The purpose of this reproposal would be to establish procedures for permitting valid and reliable consumer information on food labels about the value that ingestion (or reduced ingestion) of a dietary component, as part of a total dietary pattern, may have in either lowering the risk, or forestalling the premature onset, of a particular chronic disease condition. In light of this reproposal, the agency is withdrawing the August 4, 1987 (52 FR 28843), proposal on health messages on food labels. FDA is also outlining how it is likely to enforce its regulations that bear on health messages during the period that it is receiving and considering comments on this reproposal. Finally, FDA is providing information on the proposed functions and responsibilities of the Public Health Service (PHS) Committee on Health Messages; on the agency's proposed plan to utilize health messages as a consumer education tool; and on the agency's proposed plan to prepare a consumer guide to food labeling.

DATES: Written comments by April 16, 1990. The agency is proposing that any final rule based on the reproposal become effective 1 year after date of publication of the final rule in the Federal Register.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

FOR FURTHER INFORMATION CONTACT: V. P. Frattali, Center for Food Safety and Applied Nutrition (HFF-260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1064.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of August 4, 1987 (52 FR 28843), FDA published a proposal to amend the food labeling regulations to "codify and clarify" the agency's policy on the appropriate use of health messages on food labeling. "Health messages" refer to statements concerning reducing the risk, or forestalling the premature onset, of certain chronic serious disease conditions (e.g., coronary heart disease, high blood pressure, cancer, osteoporosis) through changes in the diet. In the proposal the agency discussed its rationale for initiating a change in traditional agency policy by permitting well-supported health messages to appear on food labels. The proposal also summarized four relevant citizen petitions (filed by the Center for Science in the Public Interest, the Council for Responsible Nutrition, the National Food Processors Association, and the Kellogg Co.) and invited comments on them. The agency also announced that the Assistant Secretary for Health (ASH) would establish an interagency Committee on Health Messages (the PHS Committee) chartered by the Public Health Service as an advisory body to FDA in the development of health messages appropriate for food labeling. Finally, the agency posed a series of questions and called for comments on all aspects of the document.

FDA requested written comments on the proposed rule and related issues by November 2, 1987. Based on several requests, the agency extended the comment period until January 4, 1988 (November 2, 1987 (52 FR 42003), corrected November 16, 1987 (52 FR 43772)). FDA received approximately 575 comments in response to the proposal, including comments from consumers and consumer advocacy groups, health care professionals and biomedical professional organizations, industry and trade associations, academicians and their societies, and Federal, State, and local government agencies.

During the comment period the Commissioner held a series of informal meetings with representatives of (1) the food industry and related trade associations, (2) consumer advocacy groups, (3) biomedical professional organizations, and (4) representatives of the food supplement industry (Refs. 1 through 4). The purpose of these meetings was to establish a dialogue with each of the groups on the many issues involved in establishing a new policy on health messages on food labels. In addition, the Human Resources and Intergovernmental Subcommittee of the House Committee on Government Operations (the Subcommittee) held a hearing on this subject in December 1987 (Refs. 5 and 6).[1] Views expressed at the meetings and at the congressional hearing were taken into consideration in the development of this reproposal.

II. Comments on Appropriateness of 1987 Proposal

Many of the comments concerning the agency's initial proposal expressed general support for the concept of providing information to consumers about the diet and its impact on human health. Some of those who commented expressed support for the use of the food label as a proper vehicle for conveying health-related dietary information, thus enhancing consumer awareness of the relationship between diet and health.

However, there were strongly expressed views that safeguards must be in place to limit the nature and scope of health statements that may be used on the food label or labeling and thus reduce the potential for false or misleading statements. Numerous comments, for example, suggested that food label statements have the potential to be misleading if they do not provide complete and balanced information that would enable the consumer to understand the important ramifications of a specific diet/chronic disease relationship. Other comments were concerned about how all the information needed by consumers can be provided in the very limited space available on the food label and in sufficient detail to be of value to consumers in assessing a particular food and how it fits into the context of a total diet.

Many comments contended that the initial proposal was vague and unenforceable and expressed concern about potential proliferation of deceptive labeling under the new policy. Numerous comments called for clarification of what constituted valid, reliable scientific evidence to support any health message. Many comments also pointed out that strict enforcement by the agency was important and expressed the belief that the agency did not have the resources to do the job adequately, particularly if government preclearance was not in place.

The majority of comments on the initial proposal from the medical profession, academicians and their societies, dietitians and their societies, and consumer advocacy groups, while endorsing the concept of health

[1] In October 1989, the Subcommittee held a second hearing on health messages. The views expressed at this hearing were also considered by the agency in the development of this reproposal (see Ref. 9).

messages on food labels, opposed the proposal. Approximately half of the comments from individual consumers, State and local government representatives, and foreign respondents also expressed opposition to the August 1987 proposal. Many of these comments contended that health messages on food labels are not in the consumer's best interest, and that FDA's current policies and standards have served the agency and the public very well and, therefore, should be maintained.

Some comments expressed the view that it is not possible to devise label statements that are pertinent for the general population. A few comments noted that label statements appropriate for adults may be inappropriate or harmful for infants, preschoolers, senior citizens, or other specific groups.

Other comments suggested that the dietary needs of individuals are so diverse that it is inappropriate to provide dietary information on food labels.

A large number of comments asserted that the initial proposal was not in the public interest because it could substantially increase the use of misleading claims on food labels. Some comments noted that the food label is currently viewed as a credible source of information, and that a proliferation of health claims would undermine this credibility and confuse consumers.

III. 1989 Food Labeling Advance Notice of Proposed Rulemaking

On August 8, 1989 (54 FR 32610), FDA published an advance notice of proposed rulemaking (ANPRM) concerning food labeling. The agency requested public comments on five areas: (1) Whether to revise the requirements for nutrition labeling; (2) whether to change the nutrition label format on food packages; (3) whether to revise the requirements for ingredient labeling; (4) whether to formally define commonly used food descriptions and reconsider the use of standards of identity for foods; and (5) how to reasonably permit the use of messages on food labels that link food components to reducing the risk of chronic disease.

The ANPRM noted the extreme divergence of opinions on the legal, scientific, and practical aspects of the 1987 health messages proposal (52 FR 28843) and stated that this divergence had impeded the agency's progress toward a resolution (54 FR 32610 at 32615). Thus, FDA considered it appropriate to request further comments from interested persons. Specifically, the agency requested comments on the approach or process that it should utilize to assure resolution of the health messages issue.

The ANPRM also noted that, to maximize the public's responsiveness to the many important food labeling issues, FDA planned to hold public hearings in different areas of the country (54 FR 32610). A notice announcing the dates, location, and focus topics of a series of four public hearings on food labeling and an extension of the comment period on the ANPRM until January 5, 1990, was published in the **Federal Register** on September 20, 1989 (54 FR 38806). On December 7, 1989, FDA held a food labeling hearing in Seattle at which health messages were the prime focus. The comments received at this hearing, and the other hearings held under the ANPRM, that relate to health messages will be considered as part of this rulemaking on health messages.

FDA recognizes that there are descriptors that are used on food labels that describe only the characteristics of the food, although they may have some health implications (e.g., "low in saturated fat"). FDA advises that it intends to address these descriptors separately under the ANPRM and not through this rulemaking.

IV. Deficiencies in, and Withdrawal of, the 1987 Proposal

Based in part on the adverse comments and the extreme divergence of opinion about the August 1987 proposal, the agency has concluded that the proposal was too broadly written. Some manufacturers have taken advantage of the uncertainties created by the August 1987 proposal by making drug claims on health fraud products and then, when challenged by FDA, asserting that these claims are consistent with how food can be labeled under the proposal. The August 1987 proposal was not intended to provide a means by which fraudulent or misleading claims could be made to the American public. Thus, while FDA continues to believe that some form of health message could be an appropriate part of the food label, the agency has become convinced that the health messages concept needs to be refined and narrowed in scope from that presented in the 1987 proposal.

In view of these factors, FDA has decided to withdraw the August 1987 proposal in its entirety and to replace it with this reproposal. This reproposal, which is based in large part on the agency's consideration of the comments on the August 1987 proposal, supersedes that proposal in all respects. Specifically, pursuant to 21 CFR 10.85(e), the advisory opinion contained in the August 1987 proposal is revoked. Accordingly, the agency is no longer bound in any way by the 1987 proposal or by the statements made in its preamble. This reproposal sets forth the agency's tentative views on health messages. Nothing contained in this reproposal should be considered to be an advisory opinion within the meaning of 21 CFR 10.85(d)(1).

FDA is taking this action even though the ANPRM contemplated that health messages would be included among the subjects considered as part of that proceeding (54 FR 32614 to 32615). The factors that have led FDA to withdraw the 1987 proposal have convinced the agency that more specific action with respect to health messages is necessary at this time.

Once the agency has concluded the hearings on the ANPRM and received comments on the ANPRM and on this reproposal, FDA will determine how to proceed in this rulemaking.

V. The Reproposal

A. The Role of Food

As discussed in the August 8, 1989 ANPRM, claims regarding the role of a food in the prevention, cure, mitigation, or treatment of a disease evidence an intent to offer the product as a drug under section 201(g)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act)(21 U.S.C. 321(g)(1)(B)). The ANPRM also recognized that, under section 201(g)(1)(C) of the act, claims regarding the effect of food on the body need not make that food a drug if the claims relate to how the food affects the structure and function of the body. Therefore, a discussion on the label of a food product of the role of calcium, for example, in building strong bones and teeth would generally not be a drug claim. Foods have effects like these by virtue of their nutritional value when consumed over time and not as the result of an immediate pharmacological response, as is the case with drugs. However, comments on the August 1987 proposal (as discussed in more detail later in this document) reveal that this distinction between food and drugs was not sufficiently drawn in the 1987 document, causing confusion in interpretations of the intent of the proposal. With the publication of this reproposal, FDA is providing guidance on what distinguishes a food claim from a drug claim.

In providing this guidance, FDA is governed by the definitions in the act and guided by judicial opinions construing these definitions. In one such decision, the United States Court of Appeals for the Seventh Circuit

concluded that "* * * the statutory definition of 'food' includes articles used by people in the ordinary way most people use food—primarily for taste, aroma, or nutritive value." (*Nutrilab, Inc.* v. *Schweiker*, 713 F.2d 335, 338 (7th Cir. 1983)).

The concept of "nutritive value" in this decision is basic to the distinction between a food and a drug. Nutritive or nutritional value is the ability of food to supply nourishment, that is, that that is necessary for maintaining life. Nutritional value is realized, however, only as part of a total diet.

Nutritional value includes the usefulness of a food component in reducing the risk of a disease or condition that is caused solely as a consequence of a lack or insufficiency of that component in the diet. As a hypothetical example, were pellagra a major disease in the U.S., a discussion of the role of niacin in preventing pellagra could be considered a nutritional claim, and thus a food claim, because pellagra is a direct result of a niacin deficiency, and that deficiency can be corrected by consuming nicacin at levels that approximate the Recommended Dietary Allowance. (However, elsewhere in this document, FDA proposes that health messages be limited to chronic diseases of major importance. Moreover, a claim related to a disease that is virtually nonexistent in the U.S., such as pellagra, could be misleading because it could convey an impression to the consumer that the ordinary diet is not sufficient to prevent the disease.) On the other hand, a discussion of, or a claim relative to, the role of niacin in reducing serum cholesterol, and thus reducing the risk of coronary heart disease, would go beyond the concept of health messages and enter the realm of drug claims because the ability to reduce serum cholesterol is not related to niacin's role as a vitamin in the diet at levels approximating the Recommended Dietary Allowance. Such a claim is a therapeutic claim related to the effect of a level of the nutrient far beyond that provided by an ordinary, nutritious diet.

Nutritional value may also include the usefulness of a food component, consumed as part of the total diet, in reducing the risk, or forestalling the premature onset, of a chronic disease condition. It is now believed that diet can have some effect on a person's risk of developing chronic diseases. Assuming that there is appropriate scientific evidence to support the existence of such an effect, a discussion of that effect would not necessarily make a food a drug. For example, a dietary reduction of saturated fat has been associated with a reduction in blood cholesterol level, which is a known risk factor for cardiovascular disease. On the label of a food that is low in saturated fat, a discussion of this association, and of how the food could be used as part of a low fat diet, would arguably be a discussion of its nutritional value and not evidence that the intended use of the product is as a drug.

In sharp contrast is the discussion of the role of the "food component" in *Nutrilab, Inc.* v. *Schweiker, supra*. That case involved "starch blockers," tablets and capsules that consisted of a protein that was extracted from a certain type of raw kidney bean. This protein functioned to prevent an enzyme from acting in the gut. The manufacturer of this product claimed that the tablets and capsules would block the digestion of food and aid in weight loss. The court found, based on these claims, that these products were taken for their effect on the body, rather than for their taste, aroma, or nutritional value. Therefore, the court concluded that these products were drugs and not foods (id. at 338–339).

The purpose of this reproposal is to explore further whether and how useful, truthful, and nonmisleading health messages about the nutritional value of foods with respect to chronic diseases can be formulated.

B. The Surgeon General's Report and the National Academy of Sciences (NAS) Report

Two recent major reports that bear directly on this question are the Surgeon General's Report on Nutrition and Health by the Public Health Service of the Department of Health and Human Services (DHHS 1988) ("the Surgeon General's Report") and "Diet and Health: Implications for Reducing Chronic Disease Risk" by the National Research Council's Food and Nutrition Board (NAS 1989) ("the NAS Report"). These reports have provided comprehensive analyses of the current scientific evidence on the relationship between diet and health.

The Surgeon General's Report analyzed the scientific evidence relating dietary excesses and imbalances to chronic disease and, on the basis of this evidence, recommended dietary changes intended to improve the public health. Through extensive review chapters, the report examined in detail the current knowledge about the relationships between specific dietary practices and specific disease conditions and summarized the implications of this information for individual food choices, public health policy initiatives, and further research.

The NAS Report, which was issued a year later, also provided a comprehensive analysis of the scientific literature on diet and the spectrum of major chronic diseases. The report systematically evaluated the scientific evidence relating dietary components, foods, food groups, and dietary patterns to the maintenance of health and reduction of risk of chronic diseases; assessed the scientific evidence relating these same factors to health and reduction of chronic disease risk; proposed dietary guidelines for maintaining health and reducing chronic disease risk; and suggested directions for future research.

There is general agreement between these two reports in their conclusions about the current state of knowledge about diet and health and a convergence of dietary recommendations that apply to risk reduction with respect to several chronic diseases. Both reports, for example, identify the reduction of total fats as the primary priority for dietary change because of their relationship to the risk of several important chronic disease conditions. Together, the two reports represent the most generally agreed upon scientific basis for health messages and recognized the utility of food labeling as a vehicle for providing a consumer with information on the relationship between diet and health.

C. FDA's Objectives in This Reproposal on Health Messages

Historically, FDA has treated health messages relating to chronic disease conditions as indicating that a product was intended to be used for drug purposes. Under this historical view, a new drug application was required to substantiate the safety and the effectiveness of the product.

In recent years, however, FDA has come to the tentative judgment that it may be appropriate to allow expanded health information on products that are consumed primarily as foods. Such information, if based on sound scientific data and if properly presented, can be useful to consumers who desire to adopt a healthier dietary pattern.

FDA is concerned, however, that if health messages are to be permitted, they be authorized with appropriate restraints that will protect the public. The agency's first level of concern is related to protection of the public health. In particular, FDA wants to ensure that health messages are not presented in such a way that certain segments of the population will forgo needed medical treatment based on the

information that they obtain from the label and labeling of the food products they consume. Likewise, the agency is concerned that consumers who are under a doctor's care for treatment of chronic disease conditions and who may be taking drugs for those conditions, not substitute commonly available foods for the prescribed treatment. To this end, FDA is reasserting in this document the traditional distinctions between foods and drugs which became blurred as a result of the August 1987 proposal.

Under the act, FDA is also responsible for assuring that consumers are not misled by the labeling of either foods or drugs. The agency's responsibility extends not only to prohibiting false statements but also half truths or other statements on labels or in labeling that may mislead the public. In this regard, section 201(n) of the act provides in essence that in determining whether a label or labeling is misleading, the agency must look not only at what is said but also to the relevant information that has been omitted.

In the context of health messages on food labels, FDA believes that statements relating to medical, scientific, or health information have a potential for misleading the public, which has come to expect very high standards in the quality and accuracy of this information. There are numerous ways in which such information can be misleading. For example:

1. The statement on the label may be inconsistent with the total scientific knowledge on the topic being addressed, or it could highlight certain findings without indicating that other data point to different conclusions.

2. The statement may reach a conclusion that goes beyond what available scientific data actually demonstrate.

3. The label of a particular product may suggest that the product will reduce the risk of developing a chronic disease condition when the available data reveal that only the total dietary pattern produces this effect.

4. Even if the information is truthful, the emphasis or other aspects of the presentation may cause the consumer to misperceive the truth (e.g., a health message tied to the low cholesterol content of a food that is high in saturated fat).

FDA is thus trying to formulate a health messages policy that avoids these or other possible ways of misleading the consumer. Indeed, the agency does not believe that it is in the public interest for the food label to lose its credibility. FDA also firmly believes that all responsible companies, as well as the community of public health professionals and consumers, support having expanded health information that minimizes the likelihood of consumers being misled.

Finally, FDA is concerned that there be equal treatment of all competitors who are selling similar products to the public. Those responsible companies who are attempting to label their products honestly and in accordance with the laws and applicable regulations should not have to face competition from labels that are intended to increase market share by causing consumers to draw unsupported conclusions about the health effects of products that are no better than competing products in the marketplace.

This reproposal is intended to help achieve these multiple objectives. The agency recognizes, however, that it may not have achieved the right balance. FDA, therefore, invites comments from all segments of the public on whether the balance should be different, or whether there are other improvements in the policy that should be considered.

D. Provisions of the Reproposed Amendment to § 101.9

The purpose of this reproposal is to establish procedures for permitting valid and reliable consumer information on food labels about the value that ingestion (or reduced ingestion) of particular food components, as part of a total dietary pattern, may have in lowering the risk, or delaying the premature onset, of a particular chronic disease condition. The reproposal lists the criteria that a health message on a food label would have to satisfy to meet that purpose and to avoid causing the food to be in violation of the act. In addition, these criteria would provide guidance to the PHS Committee, which FDA is proposing to establish, in its deliberations on the appropriateness and sufficiency of the science supporting a particular diet/chronic disease relationship being considered as a topic for a health message. The criteria also would provide guidance to other interested persons who might wish to propose a health message to the agency for its consideration.

The following is a description and brief explanation of the criteria for FDA to use in deciding whether a particular diet and chronic disease relationship is a candidate for a health message:

Proposed § 101.9(i)(1) retains the current rule that a food would be misbranded if its labeling claims that, because of the presence or absence of certain dietary properties, the food is adequate or effective in the prevention, cure, mitigation, or treatment of any disease or symptom. Such a food would also be subject to regulatory action based on the fact that it is a drug under the definition in 21 U.S.C. 321(g)(1)(B). However, given the Surgeon General's Report, the NAS Report, and other evidence of growing acceptance that diet has a role in reducing the risk, or forestalling the premature onset, of certain chronic disease conditions, FDA is proposing to allow foods to bear a health message about the association of diet and chronic diseases in certain limited conditions. As the agency discussed above, these health messages can be viewed as descriptions of the nutritional value of the food. The agency also recognizes that a claim that a product "may reduce the risk" or "may forestall the premature onset" of a particular chronic disease is arguably a claim that it will prevent or mitigate the disease and thus a drug claim. If these claims are drug claims, the agency is considering using its enforcement discretion in the limited circumstances outlined in this reproposal to not take actions against such products under the drug provisions of the act. FDA requests comments on the appropriateness of the aforementioned claims and on whether these claims should be viewed as claims about nutritional value or as drug claims.

FDA is proposing to allow health messages on foods based on its finding that all of the following criteria are met:

(1) The label statement is truthful and not misleading. This criterion would be crucial to the successful implementation of the reproposed health message policy. It is self-evident that the label statement would have to be truthful. The concept that the label statement must not be misleading is equally important. Section 201(n) of the act instructs the agency, when determining if a label is misleading, to consider what is omitted from, as well as what appears on, the label.

There are, as discussed previously, a number of ways for a label statement to be misleading. In addition to the ways listed above, a label statement would be misleading, first, if it omitted significant information that might be needed to properly interpret the label statement. Second, while specific statements might be true by themselves, when considered with other label statements, the overall impression conveyed might be misleading. Third, a labeled food might contain insignificant amounts of the dietary component referred to in the label statement. Fourth, the food, in addition to having a health benefit, may have other attributes that might make a health claim for the product misleading. These, and possibly other, conditions could lead FDA to conclude that a label

statement caused the food to be in violation of any final rule based on this reproposal.

(2) The label statement is limited to describing the value that ingestion (or reduced ingestion) of a dietary component, as part of a total dietary pattern, may have in either lowering the risk, or forestalling the premature onset, of a chronic disease condition. Such a statement would have to be based on the totality of publicly available scientific evidence, including that evidence from well-designed studies conducted in a manner that is consistent with generally recognized scientific procedures and principles.

This criterion would require that the statement be supported by a sound body of scientific evidence upon which a significant agreement exists among qualified experts as to the relationship between a dietary component and the reduction of risk presented by a particular chronic disease condition (see discussion in section V. E. of this document, infra). FDA would not accept preliminary data or significantly contradictory findings as the basis of support for a label statement. While all relevant data on a topic would be considered, the quality of study from which data are derived would have an important bearing on how much weight is placed on the data. Finally, judgments concerning the quality of data, the appropriateness of the study design, and the conclusions derived from the total body of evidence would be based on those generally recognized scientific procedures and principles that are most appropriate to the issues being addressed.

(3) The label statement is consistent with generally recognized medical and nutritional principles for a sound total dietary pattern.

Each label statement would have to provide some basis for a consumer to decide whether (and how) the labeled food best fits into an individual's diet.

(4) The label statement is based on and consistent with the conclusions set forth in an applicable scientific summary and consumer health message summary (see discussion in section V. E. of this document, infra) accepted by FDA.

FDA is proposing to establish scientific summaries and consumer health message summaries to ensure that there is scientific and practical support for health messages, and that the scientific support is available in a comprehensive form to consumers. The health message contained in the label statement would be described in greater detail in these documents. The health message summary would be an extension of the label statement for purposes of providing full information and proper balance to the label statement itself. The existence of these documents would enable the consumer to better judge whether the label statement applies to him or her and, in certain instances, to what extent it applies.

(5) The label statement includes a reference to the applicable consumer health message summary (see discussion in section V. E. of this document, infra).

FDA is proposing to require that the health message include a reference to the applicable consumer health message summary. This reference would direct the interested consumer to more complete and balanced information on the food component/chronic disease interaction being referred to by the label statement. Under this proposed mechanism, the most complete expression of the health message would be contained in the consumer health message summary. It would be necessary for the label statement to contain a reference to this summary because, otherwise, the label would fail to reveal the existence of more complete information that would be required to complement and give balance to the label statement.

(6) The food is labeled in accordance with the requirements of § 101.9.

FDA believes that nutrition labeling is another mechanism to provide more complete information on the nutritional characteristics of the labeled food. Because virtually any food can be appropriate for certain individual diets and inappropriate for others, the information supplied by nutrition labeling would allow individuals to judge whether a given food will be compatible with their individual dietary goals. An important aspect of this reproposal is that the use of a health message would trigger full nutrition labeling in accordance with 21 CFR 101.9.

E. Scientific Summaries, Consumer Health Message Summaries, Model Label Statements, and Consumer Guide to Food Labeling

Under this reproposal, the agency is proposing to require the development of three items as a means of regulating the content of health messages: (1) Scientific summaries, (2) consumer health message summaries, and (3) model label statements. In addition, the agency is proposing to develop a consumer guide to food labeling. These four components together represent a possible vehicle by which the agency could communicate to the industry, the scientific community, and consumers what FDA considers to be appropriate information regarding diet and chronic disease interactions suitable for discussion on the food label. For each diet and chronic disease topic area, a scientific summary, a consumer health message summary, and model label statements would be developed concurrently. Although these three components are discussed separately below, they would be submitted as a unit to the PHS Committee for scientific and health-policy review.

The agency is outlining only one possible approach to regulating health messages. However, FDA may decide that an alternate mechanism is more appropriate. For example, FDA may be convinced that all claims that address a special dietary need that exists by reason of a chronic condition (e.g., the need to reduce blood cholesterol levels) should be regulated under section 403(j) of the act (21 U.S.C. 343(j)), as a claim related to a food for special dietary use. Another possibility would be the establishment of a petition process for health messages. Thus, FDA solicits comments on the appropriate mechanism for regulating the content of health messages.

1. Scientific summary

The purpose of the first component of the reproposed process would be to summarize the most relevant scientific information on the role of a particular food component (e.g., calcium) in reducing the risk of premature onset of a particular chronic condition (e.g., osteoporosis) and to permit FDA and the PHS Committee to decide whether there is adequate scientific evidence to develop a model label statement.

a. *Content of summary.* Each scientific summary would concentrate on the findings of appropriate review articles, National Institutes of Health consensus development conferences, and other appropriate resource materials, particularly the Surgeon General's Report and the NAS Report. Issues addressed in the scientific summary would include such questions as:

(1) Is there an optimum level of the particular food or food component to be consumed beyond which no benefit would be expected?

(2) Are there safety concerns about high levels of consumption?

(3) Are there certain populations that must receive special consideration?

(4) What are the foods that are significant sources of the component being considered, and what are the roles of these foods in the context of the total diet in affecting a particular condition? and

(5) What other nutritional or health factors (both positive and negative) are important to consider when consuming such foods and food components?

b. *Scientific standard.* FDA seeks comment on the standard that would be used in deciding whether a particular dietary/chronic disease relationship actually exists, and whether, if it does, it is an appropriate basis for a health message. Possible standards include whether a consensus exists to support the relationship, as evidenced by authoritative reports such as the Surgeon General's Report and the NAS Report, or whether substantial evidence of the existence of the relationship would be adequate.

(1) A few comments on the initial proposal indicated that unpublished or proprietary studies, as well as published studies, should be accepted as appropriate for supporting health messages. Some comments suggested that proprietary studies should be kept confidential until after the health claim is made public, so that the manufacturer sponsoring the study could enjoy the competitive advantage afforded to the initial user of the label claim. On the other hand, one comment suggested that manufacturers should not be allowed to conduct their own studies to support health claims. A few comments requested that studies be peer-reviewed before they are accepted as adequate support for a health message.

Under the proposed process for developing a health message, FDA and the PHS Committee would consider any valid and reliable scientific evidence that is submitted, regardless of the source. The most important characteristic of study results is that they be obtained from well-designed and well-conducted studies, whether published or unpublished, proprietary of publicly available. It is nonetheless essential to the goals of the health messages policy that the data be open to public scrutiny. The open nature of the review process that FDA is proposing makes it impossible to treat a study as confidential once it has been submitted to the PHS Committee for review. Further, any topic area for which there is sufficient evidence to successfully support a label statement is likely to have been investigated in multiple studies from a number of different, publicly available sources. Thus, it is probable that data from government and academic laboratories will be available to compare with data from manufacturer-sponsored studies. Concerning peer-reviewed data, FDA regards the process set out in the proposal for developing health messages as an adequate peer review process. Scientific data would be subjected to expert scrutiny as it progresses through the various stages of the process.

(2) Several comments offered advice on whether clinical studies, animal studies, and epidemiological data should be required or viewed as sufficient scientific evidence to support a health message. A few comments noted that it is difficult to conduct adequate, well-controlled clinical studies related to foods, and that a requirement for such studies might hamper development of health messages. At least one comment noted that it is not possible to specifically prescribe the type of studies that will be needed to support health messages. On the other hand, some suggested that epidemiological data alone should be accepted as sufficient to support a health message.

FDA tentatively concludes that the agency will not prescribe a specific set of studies or types of studies as being sufficient to support a health message. The very nature of the various food components and the wide variability of possible studies make it difficult to outline precise requirements. The amount and type of evidence required may differ from case to case, depending on a number of variables. The ideal circumstances is to have data from well-designed and conducted studies to provide the scientific basis for any decision that might be made.

(3) A few comments indicated that corroboration of health messages should be based on the more stringent standard of a "consensus of scientific opinion," rather than the "weight of the scientific evidence" standard. On the other hand, some comments objected to requiring a consensus because it is impossible to achieve. A few comments contended that, if a consensus is required, consumers would be deprived of early access to valuable nutrition information.

FDA has carefully considered a number of different approaches regarding the appropriate standard of proof for health messages. As discussed elsewhere in this document, FDA believes that the nutrition and health issues raised by the health messages concept are vitually important to the American consumer. These considerations are far too important to the potential outcome of some of our most common chronic diseases to consider the scientific data in less than a very rational and serious manner. The main objective of the reproposed health messages concept is to provide useful nutrition information to consumers regarding the potential influence of their eating patterns on a number of chronic diseases. Thus, given the important nature of the relationships being discussed, the huge number of people that may be affected, and the lasting impressions that official pronouncements leave on the public consciousness, FDA tentatively concludes that the standard proposed will meet the objective. However, because the scheme laid out in this proposal has not previously been elucidated, the agency, as stated above, seeks further comment on what this standard should be.

(4) Several comments suggested that health messages based on preliminary studies or unconfirmed findings should be permitted. Some of these comments clarified that a statement indicating the preliminary or unconfirmed nature of the findings should be included in the health message.

FDA does not agree that health messages on food labeling should be made based only on preliminary or unconfirmed findings. Label statements contemplated by the proposal and this reproposal would convey dietary recommendations that are based on valid, reliable scientific evidence that is generally recognized and accepted by the scientific community. The agency considers that preliminary and unconfirmed findings would not be sufficient to ensure that the specific dietary recommendation implied or expressed in a health message is truthful and nonmisleading. The reproposal does not contemplate condoning health messages outside those developed through the process detailed earlier in this document or by whatever alternate process is ultimately adopted in the final rule.

(5) A few comments recommended that the requirements for substantiating health messages for foods should be the same as for drugs.

The criteria laid out in this reproposal pertain to substantiating a given health message and are not entirely dissimilar from the criteria that would be applied in substantiating the validity of a drug claim. The primary difference between the approaches lies in the agency's willingness to consider a broad array of data concerning the relationship between diet and chronic disease, including data that, over the years, have helped form generally recognized medical and nutritional principles concerning what constitutes a sound total dietary pattern.

2. Consumer health message summary

The second component of the reproposed process for developing a health message would entail the

development of a "consumer health message summary." The agency agrees with comments on the initial proposal that stressed that consumer education programs are vital to the successful communication of dietary advice and to the appropriate use of such advice. Consequently, the consumer health message summaries would provide the supporting scientific information on a specific diet/chronic disease relationship in lay language, would be available for distribution to the general public, and would be referred to in the label statements. A consumer health message summary would be developed for each diet and chronic disease relationship for which a health message would be appropriate. FDA seeks comments on how these messages would best be developed.

The summaries would provide further detail and balance to the brief summaries that may appear on food labels. They would include recommendations concerning the role of specific food components in the total dietary pattern and useful information on sources of the food component—including, when appropriate, quantitative dietary intake recommendations for the general population, and special considerations that may apply to selected subpopulations (such as infants and children). In conjunction with the food label, the consumer health message summary would serve two basic functions. First, it would foster public health by providing a more extensive source of information on a relationship between a given diet and a condition (compared to what is possible in the limited space on the food label), and second, it would help to alleviate the potential problem of information overload on the label. As described further below, the reproposal would require a cross-reference to the consumer health message summary to appear on the food label. The label statement would have to bear a reference to a consumer health message summary to ensure that a complete and balanced discussion about appropriate use and limitations of the nutritional component is provided.

3. Model label statement

The third component of the reproposed process for developing a health message would be the formulation of model label statements that may be used on food labels to convey appropriate information regarding a diet/chronic disease interaction or topic area. The nature and extent of the label statement would be based directly on, and supported by the conclusions of, the scientific summary. Model label statements would be developed for each of the topic areas in which the agency would have determined, based on the advice of the PHS Committee, that the state of scientific opinion supports dietary recommendations, as related by the contents of the scientific summary. The model label statement would define the minimum material facts that must be included in a label statement to ensure that it is not misleading. The model label statements would include:

(1) A brief capsulized statement (e.g., 50 words in length) of the relevant conclusions of the appropriate scientific summary;

(2) A statement of the extent to which the food product contains or does not contain the key food component, and how this food product helps the consumer to attain a total dietary pattern or goal associated with reduction in the risk of the relevant chronic disease;

(3) A reference indicating that more complete nutrition/chronic disease information is available from the appropriate consumer health message summary, and how that summary may be obtained; and

(4) A statement directing the consumer's attention to the nutrition label for further nutrition information.

Although manufacturers would be urged to use approved model label statements, they would be free to devise their own statements, provided those statements are consistent with the conclusions of the approved scientific summaries and consumer health message summaries and meet the criteria identified in the reproposal.

A few comments on the August 1987 proposal opposed the initial proposal for FDA to develop model label statements. Some comments contended that the process for developing model label statements would be too slow and would, therefore, hamper industry's creativity and flexibility for providing consumers with health-related information.

FDA recognizes that the process for developing health messages would require a commitment of time, and that any delay caused by the time needed for their development may be considered by some to be an impediment to industry's ability to provide consumers with chronic disease-related information. However, the agency's belief that it needs to develop model label statements has been reinforced by the comments that expressed concern that without proper guidance there is a real potential for proliferation of false and misleading health claims. As stated earlier, the agency believes that the process for developing health messages would not be inordinately slow. Therefore, FDA has tentatively concluded that the agency should prepare the model label statements.

4. Consumer guide to food labeling

The reproposed process for developing a health message would also entail the development of a consumer guide to food labeling (consumer guide) that would discuss in general terms how the various types of consumer-oriented information found on the food label are to be used.

The consumer guide would address questions such as: (1) What is a consumer health message summary and who is it for? (2) What is nutrition labeling and how is it used in dietary planning? (3) What is the importance of the total diet in maintaining good health? (4) What is the process used to develop label statements and consumer health message summaries? (5) Are label statements and consumer health message summaries applicable to specific groups (e.g., certain statements or messages may not be appropriate for infants or children)? and (6) How can consumers use ingredient statements, common or usual names of foods, and descriptors (e.g., "low sodium") to assist them in sound dietary practices?

There would be one "umbrella" consumer guide prepared that would be broadly applicable to all health message subject areas.

F. The PHS Committee on Health Messages

FDA is proposing to have all components of the reproposed health message process, described above, reviewed by the PHS Committee established by the ASH. The PHS Committee would be chaired by the ASH or the ASH's designee and be composed of individuals within Government who are knowledgeable in the sciences relating to diet, nutrition, and health. FDA is proposing that in addition to itself, the PHS Committee would include representatives from other components of the PHS (Office of the Assistant Secretary for Health, National Institutes of Health, Centers for Disease Control) and from the Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA). The Federal Trade Commission (FTC) would appoint a liaison member.

The PHS Committee would serve as an advisory body to FDA on issues related to the use of food labels to

communicate information on the relationship between diet and health. The specific functions of the PHS Committee would be to review and make recommendations on the documents described above (section V. E. infra).

PHS Committee members would coordinate review of these documents with appropriate scientific personnel within the represented agencies. The PHS Committee would solicit the views and comments of other recognized experts in specific areas. These other experts could be from government agencies not represented on the PHS Committee, academia, consumer groups, industry, or the biomedical professions. Expert opinion could be either submitted in writing or presented orally to the PHS Committee. The PHS Committee could recommend consumer testing of model label statements and consumer health message summaries to ensure that they would be correctly interpreted by consumers.

If the PHS Committee concluded that truthful, nonmisleading chronic disease-related label statements could be developed in a specific area, the PHS Committee would request that FDA announce in the Federal Register the availability for public comment of draft scientific summaries, consumer health message summaries, and model label statements.

After appropriate deliberations, the PHS Committee could recommend that FDA adopt, by publication in the Federal Register, approved model label statements. The PHS Committee could also recommend that a particular topic area covered by a draft scientific summary is not adquately supported by scientific evidence and is not suitable for label statements. In addition, the PHS Committee could recommend that additional diet and chronic disease relationships be considered for development of scientific summaries, consumer health message summaries, and model label statements.

1. Many comments on the initial proposal supported the role of the PHS Committee in developing model label statements. However, a few comments objected to the formation of the PHS Committee, contending that it is premature, unnecessary, and potentially counterproductive. Some comments argued that the PHS Committee would be unnecessary because it would have no legal or procedural status for issuing binding advice.

FDA disagrees with the position that the formation of the PHS Committee, under the process outlined in this document, would be unnecessary or counterproductive. Although the PHS Committee would have no legal or procedural status for issuing binding advice, this fact would not render the PHS Committee unnecessary. The PHS Committee would serve the important function of reviewing and making recommendations on scientific summaries, consumer health message summaries, and model label statements. Having the recommendations of the PHS Committee would assist FDA in taking the procedural actions needed to implement these recommendations, as appropriate.

2. Several comments objected to the composition of the PHS Committee. Some comments suggested that the PHS Committee should include industry and consumer representatives and pediatricians. Some comments indicated that the PHS Committee should also include representatives from FTC and the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA). One comment suggested establishing an industry advisory panel to the PHS Committee to assure that industry could participate in the information of guidelines and suggestions for health messages.

It is important for the various agencies of the Federal government that have relevant expertise to have a forum that would permit the agencies to coordinate their expertise in developing meaningful health messages. The ASH would determine the exact makeup of the PHS Committee if FDA determines that it is appropriate to establish such a committee. However, if the PHS Committee is established, it should include both PHS components and other Federal agencies. Thus structured, the PHS Committee would be able to operate efficiently and would ensure that the views of qualified experts, as well as the views of all interested persons, receive full consideration. Because the PHS Committee would be charged with ensuring that interested persons have an opportunity to make their views known to the PHS Committee, there would be no need for each interested group to have a representative on the PHS Committee or for separate advisory panels to be created.

3. One comment indicated that, for each model label statement approved by the PHS Committee, FDA should provide a comprehensive explanation of the basis for the claim and the reasons for the PHS Committee's approval of the statement. A few comments also suggested that the PHS Committee publish draft health messages for public comments.

The scientific support for model label statements recommended by the PHS Committee for FDA approval would be contained in the scientific summary. The draft scientific summaries as well as the draft consumer health message summaries and model label statements would be made available for public comment after the PHS Committee recommends to FDA that they be published.

4. A few comments suggested that meetings held by the Committee should be open to the public.

If the Committee is established, its meetings will be open to the public, if appropriate.

5. One comment suggested that health messages should be developed by a process similar to the process used for developing Recommended Dietary Allowances. Another comment suggested that health messages should be based on the dietary guidelines published by DHHS and USDA.

FDA agrees that a proccess must be developed that benefits from expert interpretation of the best scientific data available. The process outlined in this reproposal is similar to the process used by the Committee on Dietary Allowances of the Food and Nutrition Board for establishing the Recommended Dietary Allowances. FDA believes that the recommendations made in the dietary guidelines and the scientific data used to develop those guidelines would be carefully considered in the process used to develop health messages.

G. Effect of Use of Summaries

If FDA adopts the mechanism outlined in this reproposal, it would function in the following way: The use of approved label statements and health message summaries would be viewed by the agency as an appropriate, worthwhile effort to inform the American consumer about the relationship between diet and certain chronic diseases. Accordingly, food products bearing model label statements or similar label statements derived from or adequately supported by one of the scientific and consumer health message summaries and consistent with the characteristics of the respective food products would not be the subject of enforcement action under either the food or the drug misbranding provisions or the new drug provisions of the act solely because of the presence of such statements. Manufacturers, however, who deviate inappropriately from model label statements and consumer health message summaries would subject their products to substantial risk of regulatory action

under the food and drug misbranding provisions as well as the new drug provisions of the act.

H. Implementation

Comments on the initial proposal suggested that FDA, when formulating health messages, follow a more limited, manageable approach than that laid out in the 1987 initial proposal. These comments requested that FDA focus on the role of diet in reducing the risks presented by those diseases that are of major significance to the American population. The comments asserted that such an approach would be consistent with the agency's desire to use the food label to communicate meaningful health-related information.

The agency carefully evaluated these comments. Part of that evaluation included a consideration of the major interactions between diet and chronic diseases for which there exist sufficient evidence and scientific acceptance that would support a health message appearing on food labeling. Consistent with the comments mentioned above, the recent Surgeon General's Report supports restricting the agency's attention to a limited number of topic areas. The agency has tentatively identified six topic areas as appropriate subjects for initial consideration: (1) Calcium and osteoporosis; (2) sodium and hypertension; (3) lipids and cardiovascular disease; (4) lipids and cancer; (5) dietary fiber and cancer; and (6) dietary fiber and cardiovascular disease. FDA believes that these topic areas relate to problems of major health significance and are areas that have been the subject of sufficient scientific study to establish a science base adequate for review by FDA. By concentrating its efforts on developing scientifically supportable label statements regarding these areas; the agency believes it has the most realistic chance of providing the public with useful, desirable health-related information. Moreover, an initiative limited to these six areas would be most manageable in light of the effort and resources needed to thoroughly and responsibly develop chronic disease-related messages.

The agency acknowledges that, as knowledge about diet and health interaction continues to grow, health messages may be approrpiate in other areas. Thus, the regulatory process set out in this reproposal would permit the development of other scientific summaries, consumer health message summaries, and model label statements, as advances in scientific knowledge warrant.

VI. Interim Enforcement Policy

Several comments on the 1987 proposal suggested that FDA implement a moratorium on the use of label statements contemplated by the proposal until a more definitive enforceable regulation could be developed. FDA agrees that under its current regulations, health messages, as defined in this document, would be misleading and thus would be barred. While FDA recognizes its obligation to follow its regulations, the agency also recognizes that it does not have the resources to take action against all products that bear health messages. Therefore, FDA believes it is appropriate to set forth in a general way how the agency is likely to exercise its enforcement discretion with respect to health messages.

In conjunction with this reproposal, manufacturers may continue to include health messages on their products. Such messages will be carefully scrutinized, however, on a case-by-case basis. The agency will exercise its enforcement discretion and bring regulatory actions against label claims in appropriate circumstances. For example, if a message states or implies that the product is adequate or effective in the prevention, cure, mitigation, or treatment of any disease or symptom, FDA may bring an action against the product as a drug as well as a misbranded food. In addition, the agency may bring an action against a product as a misbranded food if it bears a health message that is false or is misleading in any respect.

FDA does not believe that it is appropriate to define the claims that can be made without concern that FDA will bring regulatory action against products so labeled. One of the difficulties with the August 1987 proposal was that it attempted to define a "safe harbor" through a notice of proposed rulemaking. Under *Community Nutrition Institute* v. *Young*, 818 F.2d 943 (D.C. Cir. 1987), the agency simply cannot bind itself in this way in a proposed (or in this case, a reproposed) rulemaking. Thus, it is not possible to define a "safe harbor" at this time.

Accordingly, FDA provides the following guidance on how it is likely to exercise its enforcement discretion.[2]

1. As stated above, FDA recognizes that a claim that a product "may reduce the risk" or "may forestall the premature onset" of a particular chronic disease is arguably a claim that it will prevent or mitigate that disease and thus a drug claim. While FDA requests comment on this issue, the agency advises that the use of either of the phrases "may reduce the risk" or "may forestall the premature onset" in a claim in one of the six topic areas about which significant and general scientific agreement exists, in and of itself, is less likely to result in regulatory action than will a claim that more firmly asserts the relationship between the food component and the disease.

2. In the absence of a final rule that defines a "safe harbor," the use of any health message on a food label may result in a regulatory action. However, the health messages that are, for the present, least likely to run the risk of regulatory action are those regarding topic areas about which significant evidence and general scientific agreement exists. The two recent authoritative reports on the relationship between diet and health cited above, the Surgeon General's Report and the NAS Report, have identified six topic areas about which such evidence may exist: (1) Calcium and osteoporosis, (2) dietary fiber and cancer, (3) lipids and cardiovascular disease, (4) lipids and cancer, and (5) sodium and hypertension, and (6) dietary fiber and cardiovascular disease.

In deciding how it will exercise its enforcement discretion with respect to claims that come within these six areas, the agency will consider such factors as whether the claim is adequately supported by the scientific evidence; whether the claim is exaggerated; whether the food component that is the subject of the claim is present in sufficient quantities (or reduced sufficiently) to justify the claim; and whether the benefits from the component (or reduction of the component) are outweighed by the negative attributes of another component of the food with respect to the same chronic disease (e.g., a heart disease claim on a low sodium food with a high saturated fat content).

3. A claim outside the six topic areas for which supporting scientific evidence is rapidly accumulating is at greater regulatory risk than those in the six areas, but the agency is still likely to consider the nature of the claim and the extent of support for the claim before taking regulatory action.

4. A claim outside the six areas with no developing scientific support is likely to be misleading and thus will be at greatest risk of regulatory action.

FDA recognizes that the absence of a defined "safe harbor" at this time may restrict the development of health

[2] Obviously, a food product must not be adulterated in any way, e.g., it must not contain an unapproved food additive.

messages on food labels. The agency believes that the food label has an important role as part of a broader public education initiative about nutrition and health, and that this initiative is in the best interest of consumers. The agency also recognizes, however, that the food label alone cannot reasonably be expected to convey a complete and balanced summary of any particular diet/chronic disease relationship. The concept of health messages on food labels is relatively new, the practical implementation and scope of which is still being defined. Therefore, there is a need to move systematically and cautiously to establish a process to ensure that truthful, useful, and nonmisleading health messages that consumers can understand and rely upon can be developed.

The agency also cautions that this document is only a proposal. No final decision has been made regarding the types of claims that may be made on food, even with respect to the six topic areas identified on the basis of the Surgeon General's Report and the NAS Report. Therefore, the agency reiterates that it will evaluate health messages on a case-by-case basis at least until there is a final rule in this proceeding.

VII. Other Comments on the Initial Proposal

A. Introduction

FDA recognizes that the interchangeable and inconsistent use in the initial proposal of various phrases such as "health messages" and "health-related messages," "health claims," and "health-related claims or information" was confusing. The agency considers that the phrase "health messages" more appropriately describes the type of information that was contemplated in the initial proposal and that best reflects the total concept of health information reflected in this reproposal.

Therefore, the agency has clarified and refined the terminology, as reflected in the definitions of "scientific summary," "consumer health message summary," "consumer guide to food labeling," and "model label statements" discussed earlier in this preamble. The agency's responses in the reproposal to comments received on the initial proposal have been made consistent, to the extent possible, with the defined terms.

Several comments on the initial proposal addressed issues raised by one or more of the citizen petitions referred to above. However, most of the comments did not generally refer to, or specifically identify, the citizen petitions as a basis for their comments. FDA, however, is treating the citizen petitions as comments on the initial proposal and is consolidating the issues raised in the citizen petitions with those raised in other comments.

B. Scope

1. One comment on the initial proposal recommended that the final rule clarify that the regulation applies to food labeling, as well as labels.

The agency advises that any final rule based on this reproposal would apply to food labeling. Section 201(m) of the act defines "labeling" as "all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article."

2. Some comments suggested that label statements related to previously prevalent nutrition deficiency diseases should be permitted; e.g., scurvy or pellagra.

The purpose of this reproposal is to set forth procedures that could be established to permit food labels to bear valid and reliable consumer information about the relationship between several food components in the diet and chronic diseases. The focus of this rulemaking is on reduction of risk of serious chronic conditions that are of major importance in the United States. Hence, label statements concerning specific nutrient deficiency diseases, which are virtually nonexistent in the United States, could be misleading because they convey the false impression that the ordinary diet is not sufficient to prevent these diseases.

C. Legal Issues

3. A number of comments on the initial proposal pertained to FDA's regulatory authority over food labeling. Some comments contended that permitting health messages on foods without first subjecting the products to the rigors of the new drug approval process for such claims would be a violation of statutory requirements. Similarly, several comments argued that permitting such claims would be a reversal of the agency's long-standing policy prohibiting health messages and would be contrary to established legal precedent. On the other hand, some comments contended for various reasons that FDA has no legal basis to regulate foods as drugs on the basis of labeling claims.

FDA has broad regulatory authority over food labeling. The preamble to the August 4, 1987, proposal discussed the history of FDA's regulation of health-related information on food labeling. As discussed in that proposal, and as reflected in this document, the inclusion of health-related information on food labeling may affect the regulatory status of the food and may cause the food not only to be misbranded within the meaning of the act but also to be deemed a drug within the meaning of the act and therefore subject to the drug misbranding and new drug approval provisions of the act.

4. Several comments asserted that the First Amendment to the U.S. Constitution provides manufacturers and distributors of foods with the right to label their products with truthful and nonmisleading health messages. One comment noted that this right has been upheld in recent Supreme Court decisions defining the permissible scope of commercial speech. Other comments disagreed, stating that the agency has authority to restrict such claims when FDA determines that these restrictions are necessary to protect the public health.

The doctrine of commercial free speech was first recognized in 1975. See *Bigelow* v. *Virginia*, 421 U.S. 809 (1975). The fact that many of the cases that FDA and the courts have relied upon for its authority to control health-related claims for foods precede 1975 has led to questions about whether FDA's enforcement of the act in certain circumstances unduly infringes upon commercial free speech.

In general, the applicability of the First Amendment to commercial free speech is based on the "informational function" of advertising. See *Central Hudson Gas & Electric* v. *Public Service Commission*, 447 U.S. 557 (1980). The First Amendment does not protect commercial speech concerning illegal activity or speech that is false or misleading. In addition, even if the commercial speech is not misleading and is otherwise lawful, it nevertheless may be regulated if: (1) the governmental interest in regulating the speech is substantial; (2) if the regulation directly advances the governmental interest; or (3) if the restrictions are not more excessive than is necessary to serve the governmental interest (id. at 564). See also *Board of Trustees of the State University of New York* v. *Fox*, _____ U.S. _____ 109 S. Ct. 3028 (1989).

Congress has given FDA the authority to prohibit inappropriate health messages on food products. Preventing consumer deception is clearly a substantial governmental interest. Agency action to establish criteria for permitting nonmisleading and truthful label statements helps prevent consumer deception, protects the public health, directly serves the public and

governmental interests, and, accordingly, does not infringe upon a manufacturer's commercial speech.

5. Some comments recommended that FDA work closely with other Federal agencies such as USDA and FTC to ensure that Federal agencies adopt a uniform policy on health messages. A few comments also advocated that FDA adopt FTC's "substantiation policy" that allows health-related claims in advertising as long as the claims are not deceptive.

In this reproposal, FDA reaffirms its intention, as stated in the initial proposal and suggested by the comments, to work closely with other Federal agencies to maximize consistency in approaches to providing dietary guidance. The intragovernmental committee structure proposed for adoption would provide for a degree of coordination among the agencies represented. The ASH may expand the PHS Committee, if it is established, beyond PHS to include other Federal agencies. Two key agencies with related responsibilities, FTC and USDA, would likely be involved in the deliberation of any committee, and other agencies would be consulted as appropriate.

Congress, however, explicitly granted different agencies different regulatory authority regarding food advertising and labeling. For example, FTC regulates food advertising under sections 5 and 12 of the Federal Trade Commission Act. These sections prohibit unfair or deceptive advertising.

Consistent with its efforts to be sensitive to the needs of advertisers and to avoid unduly burdening advertisers with regulations, FTC, in the late 1980's, issued three policy statements concerning how it interprets its law enforcement mandate under the Federal Trade Commission Act. One of the policy statements deals with the "substantiation" of claims made in advertising. The statement provides that firms are responsible for the level of substantiation that their advertisement conveys to the consumer. FTC determines the amount of evidence needed for "reasonable basis" for support of the advertisement. This "reasonable basis" can be one study recognized by some but not the majority of the experts in a given area of expertise. A "reasonable basis" can also be the results of one study even if they conflict with those of another similar study.

FDA is not convinced that this standard is adequate for determining the appropriateness of claims on the food label. As several comments pointed out, it is important that consumers maintain confidence in the food label. Consumers view food labeling as more reliable and trustworthy than food advertising. The existence of this dichotomy in consumer preception of the information from these two sources is supported by the results of several surveys and confirmed by a number of experts in the area of advertising and communication (Ref. 8).

Food labeling has a high degree of acceptance among the general public. For example, when asked in a 1984 Roper Survey what sources of information about the nutritional content of food they thought most useful, labels on food packages were the most widely used source, mentioned by 57 percent of the public. Advertisements were considered the most useful source by only 4 percent. These results are essentially unchanged from a 1976 survey. Similarly, a 1980 FDA survey indicated that the perceived honesty/integrity/truthfulness of the food label is very high. Only 1 percent of respondents reported ever having bought a food product that was falsely labeled. In a 1981 survey about what FDA activities were most worthwhile, the two highest rated activities (tied for first) were "making sure food is safe to eat" and "making sure food labeling is honest" (Ref. 8).

Implementation of a health messages policy must proceed in a way that maintains and enhances consumer confidence in the reliability and integrity of the food label. The agency believes that the implementing mechanisms set forth in this reproposal will safeguard against false and misleading label statements. FDA also plans to continue to consult with other agencies, including USDA and FTC, whenever appropriate to promote consistent policies.

6. One comment contended that any prohibition of "health claims" would contravene expressed Congressional intent for information to be disseminated to the public regarding the relationship between diet and health.

FDA believes that its efforts in this rulemaking are consistent with the congressional intent. Although Congress intended that truthful and nonmisleading information regarding the relationship between diet and health be disseminated to the public, Congress also charged FDA with enforcement of the misbranding and new drug provisions of the act. By this reproposal, FDA intends not to interfere with the dissemination of accurate information but to establish a process by which truthful and nonmisleading information about the relationships between diet and health may be provided to the public in food labeling.

7. One comment recommended deleting the word "solely" from proposed § 101.9(j). The comment argued that if a label statement complies with the requirements of proposed § 101.9(i), the labeling should not be a factor in determining whether the food is a "drug" within the meaning of the act.

FDA has removed proposed § 101.9(j) from the reproposal. Given the changes that FDA has made in the proposal, the agency felt that removal of this provision was appropriate.

D. Dietary Supplements

8. A number of comments stated that section 411 of the act (21 U.S.C. 350) (the Vitamin and Mineral Amendments of 1976) precludes FDA from restricting the use of truthful health- and disease-related information in labeling of dietary supplements.

FDA's legal authority for regulating health claims on dietary supplements and its fundamental approach to such regulation did not drastically change as a result of the 1976 amendments. Although the 1976 amendments unquestionably limited FDA's regulatory authority over vitamins and minerals, the scope of the limitations is not broad. As the conference report (Ref. 7) on the amendments makes clear, the purpose of the amendments was to impose three restrictions on the agency. Each restriction deals with the potency of vitamin products (including foods for special dietary use).

First, FDA was prohibited from using its authority under section 201(n), 401, or 403 of the act (21 U.S.C. 321(n), 341, and 343) to impose maximum limits on the potency of safe vitamins and minerals intended for ingestion in tablet, capsule, or liquid form or intended as foods for special dietary use as defined by the amendments. Second, the amendments prohibited FDA from classifying as a drug any natural or synthetic vitamin or mineral, offered by itself or in combination, solely because it exceeded the level of potency that FDA determined to be nutritionally rational or useful. The third limitation imposed by the amendments was to prohibit FDA from using its authority concerning misbranding and standards of identity to limit the combination or number of any safe vitamin or mineral products identified in the amendments.

Excluded from these limitations is any vitamin, mineral, or other ingredient or special dietary food which is represented for use by individuals in the treatment or management of specific diseases or disorders, by children, or pregnant or lactating women. See

section 411(a)(2) of the act (21 U.S.C. 350(a)(2)).

The conference report on the bill discussed the extent and the purpose of section 411(a)(2) of the act as follows:

> The provision with respect to foods intended for use in the treatment or management of specific diseases or disorders was adopted in conference in order to make clear that the proposed new section 411(a) of the Act does not override the Secretary's authority under section 401, 403, or 201(n) of the Act to limit the potency and combination of vitamins, minerals, other ingredients in foods, or foods, represented *for use in the dietary treatment or management of individuals with specific diseases or disorders*, or of post-operative or convalescing medical patients.
>
> Since each of these foods must be precisely formulated to meet the needs of individuals with specific diseases and disorders, the conference substitute clearly preserves the authority of the Secretary to regulate as foods the nutritional formulation, composition, and potency of each product represented for such uses * * *. (Emphasis added)
>
> Dietary management with these products is not only of major clinical value to the individual, but can be lifesaving in many instances. In the case of phenylketonuria and maple syrup disease, these foods provide the only means for *prevention* of mental retardation particularly in infants and young children, or for the partial restoration of mental capacity in older children. Special formula feedings are essential to long-term maintenance of severely debilitated individuals. Low sodium foods are useful in dietary management of individuals with severe forms of hypertension, acute heart failure, acute nephritis, toxemia of pregnancy and similar disorders when the degree of sodium restriction must be greater than that achievable with conventional foods * * * (Ref. 7, p. 27).

In sum, even the limitations in section 411 of the act on regulations concerning vitamin/mineral potency are limited.

Moreover, although the 1976 amendments expressly refer to special dietary use products as foods, the conference report goes on to make quite clear the agency may regulate any vitamin and mineral product as a drug: "If a product containing vitamins, minerals or other ingredients is a drug within the meaning of section 201(g) of the act, the [FDA] may, with respect to such product, exercise [its] authority" under the drug provision of the act (Ref. 7, p. 28). In so stating, Congress recognized a distinction between a representation that a vitamin or mineral product will prevent disease (which is a drug type claim) and a representation that a vitamin or mineral product supplies "a special dietary need that exists by reason of * * * disease," (which is a food type claim) (section 411(c)(3)(a) of the act). This is consistent with FDA's history of regulation of foods for special dietary use.

It is for all the above-stated reasons that the agency has concluded that section 411 of the act does not mandate that certain health and even disease-related information be permitted on the label of dietary supplements of vitamins and minerals. Section 411 of the act affirmatively limits FDA only to the extent FDA seeks to use the drug and misbranding provisions of the act to regulate the potency of foods for special dietary use which may contain vitamins and minerals.

9. One comment requested clarification of whether the initial proposal would affect the labeling of foods for special dietary use that simply identify the presence or absence of nutritionally recognized constituents.

The agency advises that the labeling of foods for special dietary use in the manner described in the comment would not be affected by any final rule based on this reproposal as long as the labeling did not include a health message.

10. A few of the comments on the initial proposal objected to FDA's statement in the proposal that, for dietary supplements, "the extent to which the criteria for evaluating health-related claims can be met may be limited." The comments contended that the statement reflects an alleged bias against dietary supplements and presumes that lable statements are inappropriate for dietary supplements. Several comments noted that dietary supplements are foods and suggested that they should not be treated any differently than other foods. In addition, the comments maintained that FDA should be evenhanded in its enforcement activities for dietary supplements.

Under the reproposal, FDA would apply the same criteria to all foods, including dietary supplements. Therefore, the agency does not agree that its discussion about the propriety of label statements on dietary supplements represents an agency bias against supplements. FDA's discussion of dietary supplements was, however, a reflection of agency support for the joint DHHS/USDA "Dietary Guidelines for Americans" statement, "There are no known advantages and some potential harm in consuming excessive amounts of any nutrient. Large dose supplements of any nutrient should be avoided." These guideline statements are directed at a normally healthy population and do not address specific subpopulations that may have medical reasons for specific nutrient needs. FDA's reproposed health message concept is based on a presumption that an appropriate, nonmisleading label statement will encourage consumers to develop a well-balanced dietary pattern and will not over-emphasize the role of a single food, including a dietary supplement, in enhancing good health.

11. Some comments contended that available literature already recognizes that individual nutrients are not only helpful, but necessary for the prevention of degenerative illness. Some comments alleged that, in some circumstances, a dietary supplement may be preferable to a food that provides the nutrient. Comments also argued that, for most nutrients, there is such a large margin of safety that it is unlikely that harmful quantities of nutrients will be consumed. Other comments objected to the use of health messages on dietary supplements. These comments noted that there is no evidence to support the view that dietary supplements are beneficial and cautioned that over ingestion of dietary supplements can cause a nutrient imbalance or toxicity. Several comments noted that healthy adults and children can obtain adequate nutrients from dietary sources, and that therefore, supplementation generally is not needed.

FDA recognizes the validity of the concern about over ingestion of dietary supplements and also recognizes the fact that dietary supplements can be beneficial for some consumers with special nutrient requirements. During the process of developing scientific summaries, consumer health message summaries, and model label statements, if it decides to adopt that mechanism, FDA will proceed cautiously on each identified diet/chronic disease issue to determine whether appropriate label statements can be devised for dietary supplements.

12. One comment noted that even truthful statements such as "vitamin C keeps gums healthy," "B-vitamins release energy," and "vitamin A is essential for good vision," on a dietary supplement are inherently deceptive. The comment contended that such statements imply that the referenced metabolic processes would not take place in individuals who fail to consume that particular supplement.

Whether such claims are misleading will have to be evaluated on a case-by-case basis. For example, a claim could be considered misleading if it implies that ingestion of a nutrient will prevent a condition (e.g., lack of energy) that, among most Americans who suffer from it, is caused by other than nutrient deficiency. The agency does not encourage such statements for there is

little to be gained from implications that a sound dietary pattern will not supply the nutrient needs for most individuals.

13. One comment noted that 21 CFR 101.9(i)(6) currently prohibits claims implying that a natural supplement is superior to a synethetic supplement. The comment contended that it is contradictory to propose limiting claims to natural nutrient sources or to imply that they may not be appropriate for synthetic sources, i.e., food supplements.

FDA does not agree that making a distinction between dietary supplements and traditional food when evaluating the appropriateness of label statements contradicts 21 CFR 101.9(i)(6). This cited regulation provides that a food shall be deemed misbranded if its label represents, suggests, or implies that a natural vitamin in the food is superior to an added or synthetic vitamin or differentiates in any way between vitamins naturally present and those that are added. Label statements developed under this reproposal would not distinguish between natural and synthetic vitamins. Foods traditionally fortified with synthetic nutrients may be appropriate candidates for label statements related to the added nutrient. Thus, FDA's concern about the appropriateness of label statements would not be based on consideration of whether a nutrient is naturally occurring or added from a natural or synthetic source.

14. One comment recommended that a health claim promoting a nutrient should be permitted only on a food that provides at least 20 percent of the U.S. Recommended Daily Allowance for the nutrient.

FDA believes that a single percent content level above which health messages are appropriate cannot be predetermined. The distribution of nutrients in the food supply varies significantly, with some concentrated in a few food sources and others ubiquitous throughout the food supply. FDA reiterates a statement made in the initial proposal that: "The dietary characteristics of the food must be consistent with the message being used." Part of this consistency concerns the relative contribution to the total diet of the food component by the food source. Therefore, part of the development of each scientific summary would be consideration of which foods constitute a significant source of the food component of sufficient dietary impact to merit a health-related label statement.

E. Food versus Drug Distinction

15. One comment objected to product names that convey or imply a health claim, such as "Brain Power," "Immune Booster," and "Stress Guard."

FDA does not condone the use of product names that imply that the particular product may be used as a drug-like treatment for specific physiological disorders. These products will be subject to action under the drug provisions of the act. Moreover, they may be subject to regulatory action on the grounds that they are misbranded.

16. Some comments contended that current scientific data on the role of nutrition in disease prevention and treatment are insufficient to support establishment of truthful and nonmisleading health messages on food labeling.

FDA has carefully considered these comments. FDA agrees that it is premature to develop scientific summaries for the majority of potential diet/chronic disease areas that are the subject of ongoing research. However, FDA tentatively finds that for a small number of topics it may be appropriate to allow health messages on food labels. While this is the first time that the agency has considered allowing the food package label to be used as a means of providing the consumer with information on nutrition's influence on chronic diseases, there are other authoritative nongovernmental health organizations, as well as PHS agencies and the qualitative dietary guidelines published by DHHS and USDA, that have provided dietary recommendations to consumers for a number of years. FDA believes that it may be possible, by carefully selecting and reviewing a limited number of diet and chronic disease topic areas, for the agency to provide valuable guidance to consumers while maintaining order in the use of this new labeling concept in the marketplace.

17. One comment recommended that health messages, based on verifiable, traditional uses should be permitted on "traditional medicinal foods," such as herbal remedies.

FDA believes that this comment misses a fundamental point of this labeling initiative. The agency's initial proposal provided that label statements should not imply that a particular food could be used as part of a drug-like treatment or therapy-oriented approach to health care. Herbal remedies are generally drugs within the meaning of section 201(g) of the act and will be regulated in FDA's traditional manner.

F. Implementation

18. Several comments recommended that, to ensure the protection of the public from false and misleading health messages, the agency should require premarket approval of all food labels or labeling that bear such messages. On the other hand, a number of comments asserted that FDA has no statutory authority to require preclearance of truthful, adequately substantiated health messages on food labeling. Several comments suggested that the agency require prior notification of the use of proposed health messages on food labeling. One of the comments recommended that FDA require that it be notified 90 days prior to use of such claims, retain authority to request additional information on or substantiation for such claims, and provide public notice of the proposed use of such claims to assure that it has received all relevant information. Another of the comments opposing preapproval for health messages suggested that FDA offer advisory opinions regarding the propriety of product specific health messages.

FDA has not felt it necessary to explore in-depth its authority to establish a premarket clearance system. The agency has tentatively concluded that truthful, useful, and non-misleading messages will be produced by the proposed system, and that it has the authority to establish such a system. FDA could adequately enforce this system through postmarketing action. The agency, however, has consistently stated that it would welcome discussions with manufacturers and distributors wishing to place health messages on food products before the marketing of foods bearing such statements to help ensure that the information to be communicated is consistent with agency policy. However, the mechanism of offering official advisory opinions regarding specific health messages would be inconsistent with applicable agency regulations which provide that official advisory opinions may not be given regarding a particular product or label but rather must involve an issue of broad applicability (21 CFR 10.85(a)(2)(iv)). The scientific summaries and model label statements detailed in this reproposal would serve the function of providing official advice to those interested in such information of broad applicability. The citizen petition process procedure in § 10.30 (21 CFR 10.30) would be available to persons interested in proposing the wording of scientific summaries and model label statements for classes of products. With respect to the labels of specific products, more informal advice can be provided on a case-by-case basis.

19. One comment questioned whether more than one label statement could be permitted on a food label.

The agency has not proposed to establish a limit on the number of label statements that could be placed on a food label. Thus, it is conceivable that labeling for a specific food could include more than one label statement developed under any final rule based on the reproposal, provided that the combined effect would not be misleading, and that collectively the statements met the requirements of the act and of any final rule based on this reproposal.

20. Several comments on the initial proposal indicated that it would be difficult to distinguish misleading health messages from nonmisleading label statements because it would be possible to develop a claim that is literally accurate but nevertheless misleading because it fails to provide complete or balanced information about the food. For example, as a number of comments pointed out, a health message on a food label may distort the consumer's impression of the relative nutritional value of the food so that he or she may be encouraged to purchase a food bearing the health message in lieu of another food that provides more essential nutrients or that otherwise is more appropriate for a well-balanced diet. In addition, several comments emphasized that both positive and negative aspects of a food's contribution to the total diet should be presented.

FDA is also concerned that consumers may be misled by statements that appear on food labels. In an effort to minimize this occurrence, the agency has proposed to adopt a mechanism that it believes would limit the potentially misleading aspects of health messages. FDA has tentatively determined that by concentrating its initial efforts on those food components for which there appears to be some significant degree of general scientific agreement regarding their importance in reducing the risk of chronic health conditions or in delaying their onset, it can provide a degree of guidance to industry that would effectively minimize the misuse or abuse of the health message concept.

In addition, the development and publication of scientific summaries and consumer health message summaries discussing any beneficial or adverse properties, sensitive subpopulations, significant food sources of each food component, and how this component interacts with other components in the total diet, would provide balanced guidance to consumers and enable them to make more informed choices in food purchasing and diet. FDA's tentative view is that scientific summaries and consumer health message summaries, along with nutrition labeling, would serve to minimize the potential that a health message about a single food component would communicate a misleading message to consumers.

21. Some comments suggested that promulgation of a regulation to permit health messages on food would lead to possible overfortification of the food supply.

It is difficult to predict what immediate influence any final rule based on this reproposal would have on the food industry with respect to additional efforts to fortify foods. FDA shares the concerns of this comment that indiscriminate addition of vitamins and minerals to foods, especially to unexpected or unusual food sources of those nutrients, could have unpredictable adverse consequences on selected individuals within the general population. Therefore, FDA reminds manufacturers of the agency's food fortification policy (21 CFR 104.20) and expects the food industry to follow this policy when fortifying foods. This practice should avoid the potential problem cited by this comment.

22. Several comments underscored the need for ensuring that health messages convey information about the relationship between the total diet and chronic diseases. Comments cautioned against overemphasizing the role of specific foods in controlling disease. Comments also indicated that claims suggesting a competitive advantage of one food over another should not be permitted. Comments indicated that food- or brand-specific health messages should not be permitted.

FDA agrees that misleading claims comparing one food with another should not be allowed. One reason that FDA has proposed to establish the scientific summaries and consumer health message summaries is that it believes that they would help to ensure that consumers will be provided accurate and balanced information regarding the intake of a given food component, its relationship to the total diet, and its influence on health. The agency tentatively believes that the overall health message concept set out in this reproposal will help to reduce the possibility that the role of specific foods in reducing the risk of chronic disease conditions will be overemphasized. While it is difficult to predict all possible types of health messages that may be made in the future, FDA does not currently envision a health message that would be unique to a single type or brand of food.

23. A few comments suggested that health messages may indirectly harm consumers who follow the advice presented in them in lieu of seeking conventional medical care.

FDA tentatively believes that the system by which health messages would be developed under this reproposal will be unlikely to produce messages that would dissuade consumers from seeking conventional medical attention. The proposed scientific summaries would define the state of scientific knowledge regarding the role of a food component and a sound total diet in reducing the risk of certain chronic disease conditions. They, together with the proposed consumer health message summaries, would discuss labeling and the importance of total diet, thus providing balanced information for all health messages. Simply stated, the scientific summaries, consumer health message summaries, and model label statements are in no way intended to provide a substitute to seeking conventional medical care.

24. One comment suggested that the initial proposal would result in untrue or misleading health claims relating to hypoallergenicity of certain foods. The comment feared that such claims might encourage the allergic individual to ingest foods with allergic reaction potential.

FDA tentatively believes that the procedures described in this reproposal would provide an adequate means of assessing the scientific validity of suggested label statements and would minimize the possibility of untrue or misleading health messages appearing on food labeling. Ingredient disclosure requirements, which are useful to allergic individuals, are unaffected by this reproposal.

Hypoallergenic foods must comply with 21 CFR 105.62. FDA assumes that allergic patients will continue to follow the dietary recommendations of their physicians and will not be influenced by label statements concerning unrelated food component/chronic disease interactions to consume foods to which they know they will adversely react.

25. Some comments on the initial proposal suggested that other sources of accurate and truthful health-related information were more appropriate and reliable methods of communication than food labels. A few comments suggested that FDA concentrate its efforts and resources on utilizing and expanding educational programs that currently exist. Pamphlets and videos were suggested as appropriate mechanisms for disseminating nutrition information.

FDA agrees that consumer education programs are vital to the successful communication of dietary advice and to the appropriate use of such advice. Accordingly, the health message concept in this reproposal emphasizes consumer education aspects in at least two important ways. First, the consumer health message summaries would be an integral part of FDA's health message program and contribute directly to consumer education. Second, FDA's Consumer Guide to Food Labeling would be a particularly important consumer education tool which is intended to have wide distribution.

26. Some comments contended that the relationship between nutrition and chronic disease is too complex to adequately explain on labeling. They contended that there is not enough space on the label to adequately and accurately provide a balanced presentation of the scientific evidence.

FDA is also concerned about the adequacy of the limited space available on most food labels for conveying sufficient information about the complex relationship between diet and chronic disease. The health message concept in this reproposal represents an effort to resolve the problem of providing a balanced presentation of scientific evidence. The consumer health message summary, which would be referred to in the model label statements, would be an extended source of information that the limited space on the label could not provide.

27. One comment requested clarification of the following statement which appeared in the preamble to the proposed rule: "The dietary characteristics of the food must be consistent with the message being used."

Under the reproposal, label statements would have to be pertinent to the product to which they apply. Label statements that discuss the positive aspects of certain nutrients could be made only on products containing significant amounts of that nutrient. Further, the valued nutrient or other substance would have to be shown to have equal benefit to that demonstrated in products used in scientific studies to support the claim (e.g., equal bioavailability and metabolic/physiological effect. FDA would be interested in comments on other ways in which this showing could be made). Moreover, the food, when considered as a whole, could not contain ingredients that would have attributes inconsistent with the claims being made in the label statement.

G. Nutrition Labeling

28. A few comments expressed concern that health messages may be misleading by virtue of their potential prominence on the label as compared to the lesser prominence of the nutrition label or of "negative" information about that food.

FDA agrees that it is desirable for food labels bearing a health message to provide a balanced picture of the food to the greatest extent possible. Therefore, a key aspect of this reproposal is that the use of a health message would trigger full nutrition labeling in accordance with 21 CFR 101.9. Balance would be achieved also through the proposed scientific summaries, consumer health message summaries, and consumer guide to food labeling. These educational tools would aid consumers in making appropriate food selections in the context of their own dietary needs. If a balanced message could not be devised for a given food, the presence of any message would be inappropriate and could result in regulatory action.

FDA also is concerned that "overprominence" of a label statement may lead consumers to choose less than optimal foods. For this reason FDA seeks comment on the appropriateness of requiring manufacturers who choose to use a health message on a package panel to include a reference to the nutrition label in the statement (e.g., "see nutrition label for further information"). The reference to the nutrition label would need to be of essentially the same degree of prominence as the label statement.

29. A number of comments pointed out that 21 CFR 101.9(h) (2) and (10) exempt dietary supplements and fresh fruits and vegetables from the requirement to bear complete nutrition labeling. Such comments requested clarification on whether this exemption would apply to such foods if they are labeled with health messages.

In initially proposing the requirement that a food label contain a health message also contain nutrition labeling required by 21 CFR 101.9, the agency did not address those product categories that are exempt from nutrition labeling under 21 CFR 101.9(h). Distributors of fresh fruits and vegetables that bear labels or labeling would be encouraged to provide full nutrition labeling if they ultimately elect to use a health message in conformity with any final rule based on this reproprosal. They would not, however, be required to do so. Currently, there is not a significant portion of the fresh fruit and vegetable market sold in labeled packages. If this marketing system changes, FDA would consider additional rulemaking to alter the exemption for these commodities.

In the case of dietary supplements not in food form, FDA would also encourage manufacturers to include nutrition labeling on the label if they provided a health message in conformity with any final rule based on this reproposal. However, virtually all dietary supplements not in food form do list the percentage of the U.S. Recommended Daily Allowance for the various vitamins and minerals provided in the product or are single vitamin or mineral products that provide the dosage strength of the product (e.g., calcium, 250 milligrams per tablet). FDA tentatively believes that such information, combined with the reference to the appropriate consumer health message summary, would provide the balanced information needed by consumers to make informed decisions about specific dietary supplements bearing health messages in conformity with this reproposal. If FDA should determine for any reason that additional rulemaking is necessary, it would act accordingly. Segments of the dietary supplement industry, in commenting on the proposal, asked that FDA provide an abbreviated format for nutrition labeling to be used for dietary supplements. The agency does not see a need for such action at this time.

30. A few comments expressed concern that some very nutritious foods, such as fresh fruits and vegetables, probably would not bear label statements because they generally are not labeled. Therefore, such products would be at a competitive disadvantage.

FDA regulations do not prohibit the labeling of fresh fruits and vegetable, nor would this reproposal preclude health messages on these products. Although these products frequently lack labels, labeling in the form of posters and other point of purchase information may become increasingly common. To ensure that consumers have sufficient information about the nutritional characteristics of the fresh fruits and vegetables bearing such label statements, the agency recommends that full nutrition information be provided whenever a health message is used.

31. One comment pointed out that the quantity of a component such as fiber is not required to be listed in the nutrition label. The comment suggested that, if a health message is made with respect to such a component, quantification of that component needs to be required in the nutrition label.

FDA recognizes that a situation could arise in which health messages might be appropriate for food components that

are not currently provided for in the nutrition labeling format of 21 CFR 101.9. How FDA deals with a particular situation will depend, in large part, on the mechanism for developing health messages that it ultimately establishes. In addition, as part of the ANPRM published on August 8, 1989 (54 FR 32610), FDA is considering whether any additional food components should be included in the nutrition label. FDA requests comment on this issue as part of the broader proceeding that was initiated by publication of the ANPRM.

H. State Laws

32. A few comments were concerned that the proposed requirements may conflict with current State laws and regulations. The comments contended that adoption of the proposal would lead to different enforcement strategies among the States that could result in confusion and decreased consumer confidence in the quality of foods.

None of the comments cited specific examples where a conflict between State and Federal regulation would result because of the proposed regulations. Many States have food and drug laws that follow the Federal law, and regulations at the Federal level are also adopted at the State level.

In this area of law, FDA does not have express preemption authority over State law. Moreover, no information was presented in the comments that would justify FDA exercising its general Federal preemption prerogative.

I. Miscellaneous

33. Several comments were submitted that, although interesting and informative, were not directly relevant to the proposal. For example, some of those commenting provided ideas on additional information that should be provided on the food label. Such comments are outside the scope of the present proceedings, and responses to them are not provided in this document.

34. FDA received several comments on an earlier version of this reproposal that was inappropriately disclosed to the public. FDA will consider and respond to these comments as part of its review of all comments on this reproposal.

VIII. Economic Impact

35. A few comments suggested that the initial proposal would have an adverse economic impact on small businesses because they do not have the resources to conduct the studies necessary for developing supportable health claims and nutrition labeling.

FDA does not agree that this reproposal would cause a substantial economic burden for small business. The reproposal would not require any business, large or small, to use health messages or to conduct research to develop or support a label statement. Health messages developed under any final rule based on this reproposal are likely to be generic rather than brand specific and would be available for any manufacturer to voluntarily use on appropriate products. FDA recognizes that manufacturers who decided to use a label statement on a product that did not already provide nutrition labeling would have to bear the expense of developing nutrition labeling. These manufacturers would have to evaluate whether the advantages of providing a label statement outweighed the costs of developing nutrition labeling.

In accordance with the Regulatory Flexibility Act and Executive Order 12291, the agency previously considered the potential economic effects of the initial proposal. This reproposal has not effected a change that would alter the initial economic determination. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action.

Furthermore, in accordance with Executive Order 12291, FDA has determined that the reproposal is not a major rule as defined by the Order. The agency has not received any new information or comments concerning the initial proposal that would alter its previous determination.

IX. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of Meeting, FDA Commissioner with Food Industry and Related Trade Associations, November 30, 1987.

2. Memorandum of Meeting, FDA Commissioner with Consumer Advocacy Groups, December 2, 1987.

3. Memorandum of Meeting, FDA Commissioner with Biomedical Professional Organizations, December 3, 1987.

4. Memorandum of Meeting, FDA Commissioner with Dietary Supplement Manufacturers and Related Trade Associations, November 30, 1987.

5. FDA Proposals to Permit the Use of Disease-Specific Health Claims on Food Labels, Hearing Before a Subcommittee of the Committee on Government Operations House of Representatives, One Hunrdreth Congress, First Session, December 10, 1987, U.S. Government Printing Office, Washington, DC 1988.

6. Disease-specific Health Claims on Food Labels: An Unhealthy Idea, Forty-third Report by the Committee on Government Operations together with Dissenting Views, U.S. Government Printing Office, Washington, DC 1988.

7. House of Representatives Report No. 94–1005, Health Research and Health Services Amendments of 1976, Conference Report, April 2, 1976.

8. Memorandum by A.L. Levy, Ph.D., to Office of Nutrition, and Food Services, Center for Food Safety and Applied Nutrition FDA, April 17, 1987.

9. Testimony of FDA at a Hearing on Health Messages before the Human Resources and Intergovernmental Subcommittee of the House Committee on Government Operations, October 31, 1989.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 is revised to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 355, 371).

2. Section 101.9 is amended by revising paragraph (i)(1) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(i) * * *

(1) That the food, because of the presence or absence of certain dietary properties, is adequate or effective in the prevention, cure, mitigation, or treatment of any disease or symptom. However, a food that is labeled in accordance with the requirements of this section may bear a health message about the association between diet and certain serious chronic disease conditions if all of the following conditions are met:

(i) The label statement is truthful and not misleading.

(ii) The label statement is limited to describing the value that ingestion (or reduced ingestion) of a dietary component, as part of a total dietary pattern, may have in either lowering the risk, or forestalling the premature onset, of a particular chronic disease condition. Such a statement must be based on the totality of publicly available scientific evidence, including evidence from well-designed studies conducted in a manner that is consistent with generally recognized scientific procedures and principles. A significant agreement must exist among qualified experts that the statement is supported by such evidence.

(iii) The label statement is consistent with generally recognized medical and nutritional principles for a sound total dietary pattern.

(iv) The label statement is based on and consistent with the conclusions set forth in an applicable scientific summary and consumer health message summary accepted by the Food and Drug Administration.

(v) The label statement includes a reference to the applicable consumer health message summary.

(vi) The food is labeled in accordance with the requirements of this section.

* * * * *

Dated: January 2, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

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Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 500 and 589

Gentian Violet in Animal Feed; Gentian Violet for Use in Food Animals; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 500 and 589

[Docket No. 87N-0378]

Gentian Violet in Animal Feed; Gentian Violet for Use in Food Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to declare that gentian violet is not generally recognized as safe (GRAS) and is a food additive when added to animal feed for any nondrug use. FDA also proposes to declare that gentian violet is neither GRAS nor generally recognized as effective (GRAE), and is therefore a new animal drug when used for any veterinary drug purpose in food animals. These proposals are based on FDA's conclusion that the criteria for GRAS and GRAE status are not met with respect to use of gentian violet in food animals. FDA has concluded based on studies conducted by its National Center for Toxicological Research (NCTR) that gentian violet causes cancer in test animals, and that residues of gentian violet will likely occur in the edible tissues of chickens under the anticipated uses. If FDA adopts a final rule determining gentian violet to be a food additive, the agency will revoke its interim policy that permits the use of gentian violet at levels up to 8 parts per million (ppm) as a mold inhibitor in poultry feed. If it adopts both proposals, marketing of gentian violet for use in any food animal species would have to be done under provision of a food additive regulation or an approved new animal drug application (NADA). There are currently no approved food additive regulations or NADA's for gentian violet in food animals.

DATES: Written comments by April 16, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION: Any substance whose intended use results in its becoming a component of food is a food additive, unless it is generally recognized by experts as safe, or unless it is the subject of a prior sanction, under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)). The term "food" in section 201(f)(1) of the act (21 U.S.C. 321(f)(1)) includes animal feed. Section 402(a)(2)(C) of the act (21 U.S.C. 342(a)(2)(C)) deems a food adulterated if it contains a food additive that is unsafe within the meaning of section 409 of the act (21 U.S.C. 348). Under section 409(a)(2) of the act, a food additive is unsafe unless a food additive regulation is in effect with respect to its use or intended use. A food additive regulation may be established through action on a food additive petition (FAP), or on FDA's initiative. Further, the Commissioner, on his own initiative, or at the request of a party, may propose to determine that a substance intended for use in animal feed is not GRAS and is a food additive subject to section 409 of the act and 21 CFR 570.38. After consideration of comments, the Commissioner may, among other things, issue a final rule declaring the substance to be a food additive and require discontinuation of the use of the additive except in compliance with a food additive regulation.

Section 201(w)(1) of the act (21 U.S.C. 321(w)(1)), states that a new animal drug is a drug intended for use in animals that is not generally recognized by experts as safe and effective. Section 501(a)(5) of the act (21 U.S.C. 351(a)(5)) deems a new animal drug to be adulterated if it is unsafe within the meaning of section 512 of the act (21 U.S.C. 360b). According to section 512(a)(1) of the act (21 U.S.C. 360b(a)(1)), a new animal drug is unsafe with respect to any particular use or intended use unless it is subject of an approved NADA. Section 512 of the act provides for the approval of NADA's that are submitted to FDA. Under the authority for informal rulemaking provided by section 701(a) of the act (21 U.S.C. 371(a)), and the new animal drug provisions of the act, the Commissioner may establish that a drug intended for use in animals is a new animal drug.

Gentian violet has been used in animal feed for both drug and nondrug purposes. For reasons explained below, FDA is proposing to declare gentian violet to be a food additive and a new animal drug when intended for use in food animals.

I. Gentian Violet

A. The Compound and Its Uses

Gentian violet ($C_{25}H_{30}ClN_3$, CAS No. 548-62-9) is also known as crystal violet, basic violet 3, and hexamethylpararosaniline chloride. Because of the method of preparation, the compound usually contains a few percent methyl violet (pentamethylpararosaniline chloride) and tetramethylpararosaniline chloride. For example, gentian violet according to the U.S.P. must be at least 96 percent crystal violet; the remaining 4 percent is comprised of methyl violet and tetramethylpararosaniline chloride. Gentian violet belongs to a class of dyes related by molecular structure that are known as di- and triaminophenylmethanes. Crystal violet is effective as a fungistat in solution and is used in differential bacteriology media to inhibit gram positive bacteria. Gentian violet has in the past been used in human medicine as an antiparasitic agent, but its use in human medicine today in this country is extremely limited. Reportedly, gentian violet is used against *Trypanosoma cruzi* in stored blood in South America.

Gentian violet has been added to animal feed to inhibit mold and fungus growth in the feed. Gentian violet has also been added to animal feed, alone or in combination with other ingredients, for animal drug use in chickens, turkeys, swine, and cattle. A prominent example of the latter is use of gentian violet in feed for control of an internal mycotic condition in poultry (i.e., candidiasis). Gentian violet is a drug whenever its intended use meets the definition of a "drug" in section 201(g) of the act (21 U.S.C. 321(g)).

B. Regulatory History

FDA has, since first becoming aware of the marketing of gentian violet as an animal feed ingredient, stated that gentian violet is not generally recognized as safe or effective for use in animal feed, and that its use must be the subject of a food additive regulation or approved NADA. The government began to seize gentian violet-containing products in 1966, under authority of section 304 of the act (21 U.S.C. 334). For more than a decade, all of the actions were resolved in favor of the government, resulting in findings that the products were food additives, or new animal drugs, or both. See, e.g., *United States* v. *41 Cases, More or Less,* 420 F.2d 1126 (5th Cir. 1970); *United States* v. *14 Cases, More or Less, * * * Naremco Medi-Matic Free Choice Poultry Formula,* 374 F. Supp. 922 (W.D. Mo. 1974); *United States* v. *Articles of Food and Drug Coli-trol 80 Medicated,* 372 F. Supp. 915 (N.D. Ga. 1974), *aff'd,* 518 F.2d 743 (5th Cir. 1975); *United States* v. *An Article of Drug * * * Entrol-C Medicated * * *,* 362 F. Supp. 424 (S.D. Calif. 1973), *aff'd,* 513 F.2d 1127 (9th Cir. 1975); *United States* v. *7*

*Cartons, More or Less * * * "Ferro-Lac Swine Formula Concentrate (Medicated),"* 293 F. Supp. 660 (S.D. Ill. 1968), *aff'd in part and vacated in part,* 424 F.2d 1364 (7th Cir. 1970).

Because the marketing of gentian violet-containing products continued in spite of the court decisions, the agency on April 17, 1974, issued a compliance policy guide stating that gentian violet was not generally recognized as safe and was a food additive when used in animal feed. The government also obtained injunctions against the marketing of gentian violet-containing products—for both drug and nondrug feed use—by Naremco, Inc., see *United States* v. *Naremco, Inc.,* 553 F.2d 1138 (8th Cir. 1977), and by a second firm, see *United States* v. *Dan-Mar Enterprises, Inc.,* No. C79–08G (N.D. Ga. Sept. 21, 1978), *appeal dismissed,* No. 78–3666 (5th Cir. Jan. 22, 1979). In June 1977, following the court of appeals' 1977 decision in the *Naremco* case, FDA notified by letter all known gentian violet manufacturers that gentian violet could not be marketed without NADA or FAP approval.

In March 1978, however, a district court enjoined FDA from taking further regulatory action with respect to the marketing of gentian violet by Marshall Minerals, Inc. Although the Fifth Circuit Court of Appeals ultimately reversed the decision of the district court and directed the court to vacate the injunction, the court of appeals strongly urged FDA to employ informal rulemaking to resolve the regulatory status of gentian violet. *Southeastern Minerals, Inc.* v. *Harris,* 622 F.2d 758 (5th Cir. 1980).

On the same day it issued its opinion in *Southeastern Minerals,* the Fifth Circuit reversed a district court's order that had granted summary judgment to the government in a seizure involving a Marshall Minerals' gentian violet-containing product. *United States* v. *An Article of Food * * * 345/50 lb. bags,* 622 F.2d 768 (5th Cir. 1980). The district court had ruled that, as a matter of law, the product was a food additive. At a subsequent trial, a jury found the product to be generally recognized as safe when used as a mold inhibitor in poultry feed at not more than 8 ppm. *United States* v. *Article of Food * * * Gentian Violet,* No. C78–63G (N.D. Ga. April 15, 1981). The government did not appeal the decision. FDA then decided that it would suspend regulatory action against the use of gentian violet at levels up to 8 ppm as a mold inhibitor in pountry feed, even though the agency still believed that gentian violet was not generally recognized as safe for any use in food animals. FDA announced this decision in the **Federal Register** of July 27, 1982 (47 FR 32480). The announcement made clear that this exercise of regulatory discretion did not authorize any other use of gentian violet in food-producing animals. Also, by stipulation between FDA and Naremco, the injunction against Naremco was stayed pending the outcome of toxicity studies on gentian violet that were to be conducted at NCTR (see below).

Marshall Minerals had submitted an FAP for use of gentian violet in animal feed in August 1977. FDA subsequently refused to approve the petition (44 FR 19035; March 30, 1979), and denied Marshall Minerals' request for a hearing on the ground that there were no factual issues as to whether the petition could be approved (45 FR 20559; March 28, 1980). The court of appeals held that FDA erred in denying a hearing, in *Marshall Minerals* v. *Food and Drug Administration,* 661 F.2d 409 (5th Cir. 1981). However, Marshall did not pursue its request for a hearing at that time, but instead elected to wait for the results of the NCTR studies.

FDA had denied the FAP in part because Marshall Minerals had not submitted chronic toxicity studies designed to determine whether gentian violet is a carcinogen. The agency had concluded that such studies were necessary because of certain published and unpublished studies concerning gentian violet, and its structural similarity to known carcinogens (see 44 FR 19035 and the discussion below). The agency subsequently decided to ask its NCTR to conduct chronic toxicity and related studies on gentian violet.

II. Criteria for Exemption from the Approval Requirements

A. Nondrug Substances Added to Animal Feed

1. GRAS status

General recognition of safety of a substance added directly or indirectly to food may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of such substance. General recognition of safety of a substance added to food requires common knowledge about the substance throughout the scientific community that is knowledgeable about the safety of such substance. The basis of the experts' views may be either (1) scientific procedures or (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food (21 CFR 570.30(a)). A determination that a substance is GRAS is generally based on specific information regarding the composition of the substance, its use, methods for detecting its presence in food, and information on its safety and functionality in food. (See, e.g., 21 CFR 570.35.)

General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive regulation. However, substances that are GRAS based on such use must be currently recognized as safe based on their pre-1958 use. *United States* v. *Narmeco,* 553 F.2d 1138 (8th Cir. 1977); compare *United States* v. *Western Serum,* 666 F.2d 335 (9th Cir. 1982). Recognition through common use is ordinarily to be based upon generally available data and information. (See 21 CFR 570.30(c).) An ingredient that was not in common use in food prior to January 1, 1958, may achieve general recognition of safety only through scientific procedures (21 CFR 570.30(c)).

General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation for the ingredient (21 CFR 570.30(a)). *United States* v. *Naremco, supra,* 553 F.2d at 1143. A substance is not generally recognized if there is a genuine dispute among the experts as to its recognition. *An Article of Drug * * * Furestrol Vaginal Suppositories,* 251 F. Supp. 1307 (N.D. Ga. 1968), *aff'd* 415 F.2d 390 (5th Cir. 1969). Further, general recognition of safety through scientific procedures must be based upon published studies, *United States* v. *Colitrol, supra,* 518 F.2d at 747, so that the results are generally available to experts. The published studies may, however, be corroborated by unpublished studies and other data and information (21 CFR 570.30(b)). It is not enough, in attempting to establish that a substance is generally recognized as safe, to establish that there is an absence of scientific studies that demonstrate the substance to be unsafe; there must be studies that show the substance to be safe. *United States* v. *An Article of Food,* 752 F.2d 11, 15 (1st Cir. 1985).

Conversely, a substance may be ineligible for GRAS status if studies show that the substance is, or may be, unsafe. This is true whether the studies are published or unpublished. (See 50 FR 27294 at 27296; July 2, 1985). If there are studies tending to support a finding that a particular substance is GRAS, but also studies tending to support a contrary position, the conflict in the studies—just

like a conflict in expert opinion—may prevent general recognition of the substance.

If a substance is to be used in food-producing animals, its GRAS status will be affected by information as to the level of residues in edible products resulting from its use. Lack of residue studies may prevent a determination that such a substance is GRAS. See, e.g., *United States* v. *14 Cases * * *, supra,* 374 F. Supp. at 929. Conversely, if residue studies do exist, and these studies show that residues may occur under anticipated conditions of use, the studies may support a conclusion that the substance is not GRAS.

Special considerations apply to a substance that is to be fed to food-producing animals if that substance has been shown to induce cancer in animals, because of the possibility that carcinogenic residues could occur in edible products. It might be contended that if such a substance could be approved as safe because the risk caused by its use is insignificant (see 21 CFR part 500, subpart E), then that substance could theoretically be GRAS because the standards for approval and for general recognition are generally the same. However, even if it is theoretically possible that a carcinogenic substance for use in animal food might be GRAS, such recognition is—as a practical matter—unlikely. With respect to recognition based on scientific procedures, as explained above, the criteria for general recognition are ordinarily the same as those for approval. Data and information equivalent to those required for approval must be published and generally available to experts. For carcinogens, the required data and information include, among other things, chronic studies; metabolism studies to identify residue in edible products of the parent compound as well as metabolites; and risk assessment data. (See 21 CFR part 500, subpart E.) In addition, a practical regulatory assay method must be available. It is very unlikely that all this data and information would exist and would be published in the scientific literature and available generally to experts.

2. Prior Sanction

Finally, a substance that is added to food is not a food additive if it is the subject of a prior sanction (section 201(s)(4) of the act (21 U.S.C. 321(s)(4))). "Prior sanction" means an explicit approval granted with respect to use of a substance in food prior to September 6, 1958, by FDA of USDA pursuant to the Federal Food, Drug, and Cosmetic Act, the Poultry Products Inspection Act, or the Meat Inspection Act (21 CFR 570.3(1)). A prior sanction exists only for a specific use of a substance in food, i.e., the level, condition, product, etc., for which there was explicit approval by FDA or USDA. Moreover, the existence of a prior sanction exempts the sanctioned use from the food additive provisions of the act but not from the other adulteration or the misbranding provisions of the act (21 CFR 181.5(a) and (b)).

If at the time FDA proposes to determine that a substance is not GRAS and is a food additive under 21 CFR 570.38, the agency is aware of any prior sanction for use of the substance, it will concurrently propose a separate regulation covering such use of the ingredient. If the agency is unware of any such applicable prior sanction, the proposed regulation (as to the substance's GRAS or food additive status) will so state and will require any person who intends to assert or rely on such sanction to submit proof of its existence. Any regulation promulgated pursuant to 21 CFR 570.38 constitutes a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342). The failure of any person to come forward with proof of such an applicable prior sanction in response to the proposal will constitute a wavier of the right to assert or rely on such sanction at any later time (21 CFR 570.38(d)).

B. Drugs

A drug intended for use in animals is a new animal drug unless it is generally recognized by experts qualified by training and experience as safe and effective for use under the conditions of use prescribed, recommended, or suggested in its labeling. As in the case of general recognition of safety of a nondrug substance added to food, the expert opinion supporting general recognition of safety and effectiveness of a drug must be based upon scientific studies of the same quantity and quality as those required for approval of a new animal drug application. *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 652 (1973). Also, the studies must have been published, so that they are generally available to the scientific community. *United States* v. *Articles of Food and Drug Consisting of * * * Colitrol 80, supra,* 518 F. 2d at 747. Further, general recognition of the safety and effectiveness of a drug is confined to a specific drug product, and does not apply generally to all drug products containing a given active ingredient. *United States* v. *Generix Drug Corp.*, 460 U.S. 453 (1983). On the other hand, if the active ingredient is not generally recognized as safe, no individual drug product could be so recognized.

A drug may be ineligible for GRAS and GRAE status if there are studies, published or unpublished, that would support the conclusion that the drug is, or may be, unsafe or ineffective. A conflict in the studies may support a conclusion that a drug is a new animal drug.

As in the case of nondrug substance added to animal feed, the existence or lack of information as to the level of residue resulting from use of the drug in food-producing animals may determine an animal drug's GRAS status. The existence of studies that show that residues may occur under anticipated conditions of use may support a conclusion that the substance is not GRAS.

Also, as in the case of a nondrug substance added to animal feed, a drug that is an animal carcinogen will likely not qualify for GRAS status even if it is theoretically eligible. The reasoning set forth above on this point applies fully with respect to animal drugs.

The agency has authority under sections 201(w) and 512 of the act to determine administratively whether a drug is a new animal drug, either by informal rulemaking under section 701(a) of the act (21 U.S.C. 371(a)) or by declaratory order under the Administrative Procedure Act (5 U.S.C. 554(e)). *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 651–54; *Weinberger* v. *Hynson, Wescott & Dunning, Inc.*, 412 U.S. 609, 624–25 (1973).

An animal drug can escape the approval requirement, under the "grandfather" clause contained in the Drug Amendments of 1962 if, among other things, it was generally recognized as safe on October 9, 1962 (section 107 of Pub. L. 87–781). If it meets the prescribed criteria, the drug is exempt from the requirement that it be generally recognized as effective, and therefore may avoid the approval requirement. However, in order to remain qualified for exemption from the approval requirement the drug must, among other things, be currently generally recognized as safe. *United States* v. *Western Serum,* 666 F.2d 335 (9th Cir. 1982).

III. Status of Gentian Violet

A. Criteria Applicable Both to Drug and Nondrug Uses

1. General Recognition of Safety to Humans Based on Scientific Studies

a. *Introduction.* FDA has been concerned for some time that gentian

violet is toxic and may be a carcinogen. These concerns were based on considerations that included the following:

(1) Unpublished long-term feeding studies of gentian violet in rats, conducted by Fitzhugh in 1949, indicated that carcinomas may have been induced by gentian violet (Refs. 1, 2, and 3).

(2) There is a similarity in chemical structure between gentian violet and a class of dyes known as aminophenylmethanes, a few of which are known animal carcinogens. Two of these dyes, auramine and magenta, have been implicated as human carcinogens (Refs. 4, 5, and 6). Benzyl violet 4B and guinea green B, which are closely related to gentian violet in structure, have been found to be carcinogenic in female rats (Refs. 7 and 8).

(3) Information in a lecture by Kinosita, given at Yale University in 1939, suggested the potential carcinogenicity of gentian violet (Ref. 9).

(4) Evaluation of the genetic toxicity of gentian violet in bacterial assays and in cytogenetic assays (in vitro, using Chinese hamster ovary cells, and in vivo in chicken embryo and mouse bone marrow cells) suggested that the compound is a mutagen (Refs. 10 and 11). Gentian violet was shown to cause chromosomal aberrations in a number of mammalian cell types in vitro (Refs. 10 and 12), and deoxyribonucleic acid (DNA) damage in *Escherichia coli* strains (Ref. 10). Gentian violet was found to be toxic but nonmutagenic in bacterial assays (*Salmonella typhimurium* strains); was shown in vivo assays to be highly toxic, but nonclastogenic, to growing chick embryos at high concentrations; and was found to depress mitotic activity in mouse bone marrow cells following prolonged treatment (Ref. 10). A high correlation has been found between carcinogenic activity of a compound and positive responses obtained in mutagenicity and cytogenetic assays (Refs. 13 through 17).

FDA cited most of the foregoing information when it denied the FAP submitted by Marshall Minerals, discussed above (44 FR 19035; March 30, 1979). Because of these concerns, FDA's Center for Veterinary Medicine (CVM) asked NCTR to conduct a series of studies to add new information on the toxicity and carcinogenicity of gentian violet. These studies are described in the following sections. The agency has also conducted a literature search, which is discussed below. The studies and the research described below form the basis for FDA's conclusion that gentian violet is not generally recognized as safe, from a human food safety standpoint, based on scientific studies.

b. *NCTR studies*—i. *Introduction.* NCTR has submitted final reports to CVM for all of the studies that it has done on gentian violet. One lifetime study (chronic study), the results of which have been published by Littlefield et al. (Ref. 18), shows that gentian violet is a carcinogen in mice. Another lifetime study, this one in rats, also resulted in a carcinogenic response. A residue study shows that residues of gentian violet occur in the edible tissues of chickens after they are administered gentian violet. Maximum tolerated dose studies in mice and rats show that an appropriate dose was used in conducting the chronic studies. Reproduction-teratology studies were negative or inconclusive. A multigeneration study in rats show a lower body weight, a dose-related necrosis in the thymus and a dose-related effect on the kidneys in females, however, a pairwise statistical evaluation of these parameters was not performed. And, metabolism studies in rats and mice show that orally-administered gentian violet is absorbed with the highest residue levels of the compound and its metabolites occurring in fat and liver. The results of these studies are described below, and copies of the final reports are on display in the Dockets Management Branch (address above).

ii. *Lifetime feeding study in mice.* This study was conducted to determine the long-term toxicity and carcinogenicity of gentian violet when added to the diet of mice. Technical Report: Experiment No. 304; Chronic Toxicity and Carcinogenicity Studies of Gentian Violet in B6C3F1 Mice, December 1988 (Ref. 19). Results of this study were published by Littlefield et al. in 1985 (Ref. 18). In this study gentian violet was fed at 100, 300, and 600 ppm to groups of B6C3F1 mice of both sexes. A similar group of mice did not receive any gentian violet and served as a control. Animals were sacrificed at 12, 18, and 24 months. Mortality was very low in all treatment groups until approximately 450 days into the study. Thereafter, a dose-response relationship, more pronounced in the females, was noted. Mortality in females was 13, 28, 27, and 64 percent in the 0, 100, 300, and 600 ppm dose groups, respectively. Mortality in males was 13, 14, 20, and 23 percent for the same dose groups. When compared to the controls, the mortality rate in the females was significantly different for all doses (100 ppm, $p=0.00088$; 300 ppm, $p=0.00079$; and 600 ppm, $p=0.00005$). Mortality was of borderline significance ($p=0.02$) for males in the 600 ppm dose group. Paired comparisons did not detect a significant increase in mortality in males when a Bonferroni correction was applied.

The existence of a blue-purple color in the serum due to the presence of gentian violet interfered with any of the clinical chemistry procedures that involved spectrophotometric assays. However, at 24 months significant effects related to liver function were noted, mostly in females. There was also a significant increase in the serum glutamic-oxaloacetic transaminase (SGOT), serum glutamic pyruvic transaminase (SGPT), and cholesterol in the females, and the SGOT and SGPT in the males in the 600 ppm dose group. The females in the 600 ppm dose group also showed a decrease in triglycerides.

With the exception of a slight dose-response relationship in the incidence of liver tumors in the females at the 18 months sacrifice, no other dose-related effects were noted in any of the treated animals at the 12 and 18 months sacrifice. At 24 months, however, a variety of dose-related lesions was noted, with the females significantly more affected than the males. Females showed a dose-related increase in the incidence of liver tumors, both benign (4, 9, 39, and 21 percent) and malignant (4, 5, 32, and 77 percent) in the control, 100, 300, and 600 ppm dose groups, respectively. The p-values showed similar positive trends for both malignant liver tumors and combinations of benign and malignant tumors, for mortality due to the lesion, for prevalence, and for time to onset. Other dose-related lesions noted were erythropoiesis of the spleen (7, 16, 20, and 44 percent); atrophy of the ovary (6, 15, 28, and 42 percent); reticulum cell sarcoma (Type A) of the uterus (0, 2, 7, and 13 percent), vagina (0.5, 1, 5, and 9 percent), ovary (0, 1, 3, and 6 percent), and bladder (0, 2, 3, and 6 percent); and adenoma of the Harderian gland (4, 12, 20, and 16 percent) in the control, 100, 300, and 600 ppm dose groups, respectively. In the males, the incidence of malignant liver tumors was 15, 17, 18, and 35 percent for the control, 100, 300, and 600 ppm dose groups, respectively. Positive trends for prevalence and time of onset were observed only for malignant liver tumors in the 600 ppm dose groups and the combination of benign and malignant tumors in the 300 ppm dose group. Other lesions observed in males were adenoma of the Harderian gland (4, 7, 11, and 10 percent) for the control, 100, 300, and 600 ppm dose groups, respectively.

Tumors that exhibited positive trends among dose groups for prevalence

overall were: Malignant liver tumors: Females (p=0.00005), males (p=0.00045); malignant and benign liver tumors: Females (p=0.00005), males (p=0.00005); Type A reticulum cell sarcoma in females: Bladder (p=0.0036), uterus (p=0.0001), ovaries (p=0.002), and vagina (p=0.0001).

FDA has reviewed this study and concurs in its findings. FDA concludes that the chronic long-term feeding of gentian violet caused a significant dose-related increase in the incidence of liver tumors in both female and male mice. Female mice appear to be more susceptible to gentian violet as seen by the increased incidence over controls of reticulum cell sarcoma (Type A) of the reproductive tract and the bladder. The increased incidence of these tumors was statistically and biologically significant, meaning that gentian violet is carcinogenic in mice. In addition, statistically significant, positive dose-related trends were observed with respect to mortality due to liver neoplasms and the time to onset of liver neoplasms in both male and female mice receiving gentian violet. Other dose-related toxicological responses noted in this study include erythropoiesis in the spleen, adenoma of the Harderian gland, and atrophy of the ovaries, all in female mice.

At CVM's request, Experimental Pathology Laboratories, Inc. (EPL), conducted a quality assessment review of this study. Following the review, EPL reported that "although numerous deficiencies were noted, the Quality Assessment Review of the pathology materials and data from this study confirmed the overall conclusion made in the Final Report submitted by NCTR that, 'Under the conditions of the experiment described above, gentian violet appears to be a carcinogen in mice at several different organ sites.' " (Ref. 20). CVM concurred with this conclusion. Furthermore, agency scientists also reviewed the slides and concluded that under the conditions of this study, a treatment related increase in the number of animals with either hepatocellular adenoma or hepatocellular carcinoma occurred in both high-dose male and female mice at 24 month sacrifice (Ref. 21).

iii. *Lifetime feeding study in rats.* This study was conducted to determine the long-term toxicity and carcinogenicity of gentian violet when added to the diet of rats. Technical Report: Experiment No. 338; Chronic Toxicity and Carcinogenicity Studies of Gentian Violet in Fischer 344 Rats, November 1988 (Ref. 22). The report was subject to a National Toxicology Program (NTP) validation which included pathology quality assurance (100 percent review of microscopic slide quality and slide labeling and diagnostic assessment of all identified lesions plus a randum 10 percent reading of other tissues from the study) performed by NTP's Pathology Quality Assurance (QA) contractor.

In this study gentian violet was fed at 100, 300, and 600 ppm to groups of Fischer 344 rats of both sexes. A similar group of rats did not receive any gentian violet and served as a control. Animals were sacrificed at 12, 18, and 24 months.

The following is taken from the executive summary of the technical report.

Dosing of rats with gentian violet at 600 ppm for 24 months resulted in a decrease in body weights in both males and females. There was a slight decrease in total food consumption in the high dose; however, when consumption was based on grams of gentian violet per kg of body weight, the consumption was essentially equal due to the smaller body weights of the rats in the high dose. A dose response was evident for mortality, mostly in females and only slightly in the males. Mortality at the termination of the study (24 months) was approximately 33% in the controls for both males and females, but was approximately 59 and 66% in females at 300 and 600 ppm dose, and 48% in males at the 300 ppm dose and 39% at the 600 ppm dose.

There was no dose-related neoplastic pathology evident at 12 months and only early signs of mononuclear cell leukemia at 18 months. By the terminal sacrifice at 24 months, there was a significant difference in incidence from controls for follicular cell adenocarcinoma of the thyroid gland for both males (100 and 600 ppm) and females (300 and 600 ppm). Although the incidences were low, statistical analysis showed a significant difference from controls for heptacellular adenomas at 300 ppm in the females and at 300 and 600 ppm in the males. A dose-time-related incidence of mononuclear cell leukemia was also noted in females at 18 months, but a dose-response was not evident at 24 months. Although there was a high background incidence of the leukemia, a dose-related increase in mortality due to the leukemia was noted. There were several non-neoplastic dose-related lesions noted in both males and females and principally in the 18-month and 24-month sacrifice intervals. Most of these lesions were changes in the liver.

Adenomas and adenocarcinomas of the clitoral gland were observed grossly and confirmed at an incidence of 12, 6, 18, and 33 percent in the 0, 100, 300, and 600 ppm dose groups, respectively. Mesotheliomas and epididymis were also observed grossly and confirmed microscopically at an incidence of 13 percent in the 300 and 600 ppm group at 18 months and at 3, 2, 6, and 9 percent in the 0, 100, 300 and 600 ppm dose groups, respectively, at 24 months.

CVM reviewed the technical report and has made the following findings:

1. In the male rat there appeared to be a slight dose-related increased incidence of hepatocellular adenomas. However, no treatment-related hepatocellular neoplasms occurred in the female rat.

2. In the female rat there was an increased incidence of follicular cell adenocarcinomas alone and in combination with follicular cell adenomas, in the thyroid gland in the mid and high dose groups. In the male rat there was an increased incidence of follicular cell tumors in the high dose groups.

3. Although the appearance of mononuclear cell leukemia could be interpreted as an accelerative action of gentian violet, the data leads to the conclusion that gentian violet's role in the appearance of this lesion is biologically questionable.

4. The reported increased incidences of adenomas and adenocarcinomas of the clitoral gland in females and of mesotheliomas in the males suggests that other treatment-related neoplastic processes may be occurring. However, because the study design excluded normal clitoral glands and epididymis, the full implication of this observation cannot be explored.

Based primarily on the increased incidence of thyroid gland follicular cell adenocarcinomas alone and in combination in both sexes of the Fischer 344 rat, and on the increased incidence of heptocellular adenomas in the male Fischer 344 rat, CVM concludes on the basis of this study that gentian violet is a carcinogen in the rat.

iv. *Residues of gentian violet in edible products.* This study, Technical Report: Experiment No. 6040: Metabolism of Gentian Violet in Chickens, May 1985 (Ref. 23) was conducted to determine the concentration of gentian violet and its metabolites in the edible tissues of broiler chickens, following administration of the substance to the chickens. It was also designed to examine the depletion of gentian violet and/or its metabolites from these tissues after withdrawal of the substance.

Male and female Cornish-White Rock broiler chickens, approximately 6 weeks old, were fed (ring-U)-14C-gentian violet by gavage three times daily for 7 days. Each male was fed 1.72 milligrams (mg) of drug daily, and each female 1.45 mg based on their weights and food consumption. The dose was equivalent to 15 ppm gentian violet in feed. Five males and five females were sacrificed at 6, 24, 48, 120, and 240 hours after the last treatment. At slaughter, skin with adhering fat, breast and thigh muscle,

heart, liver, kidney, and gizzard were collected.

At 6 hours after the last treatment, total residue concentrations in male chickens were highest in liver (approximately 170 parts per billion (ppb)), followed by kidney (approximately 80 ppb), skin with adhering fat (approximately 45 ppb), gizzard (approximately 35 ppb), heart (approximately 30 ppb), and muscle (approximately 15 ppb). After 120 hours (5 days), total residues were highest in liver (approximately 35 ppb) and lowest in muscle (approximately 1.5 ppb). After 240 hours (10 days), total residues were still highest in liver (approximately 20 ppb) and kidney (approximately 4 ppb) and lowest in muscle (less than 1 ppb). Biological half-lives for depletion of total residues from each tissue were also calculated and ranged from 215 hours for liver (males) to 59 hours for gizzard (females).

CVM has reviewed the NCTR report, and has concluded that the residue study shows that residues of gentian violet may occur in edible tissues as a result of administration of the substance under conditions of actual use.

NCTR radiotracer studies that were part of Experiment No. 6040 attempted to identify metabolites and distribution of the metabolites in tissue. NCTR concluded from the studies that the parent compound, hexamethylpararosanaline, comprises a very small portion of the total residue in chicken tissues at short withdrawal times. The known metabolites pentamethyl- and tetramethylpararosaniline were also detected only at short withdrawal times. They accounted for less than 10 percent of the total residue at 6-hour withdrawals and were not detectable with the analytical method at 24-hour withdrawals. The nonextractable portion of the total residue increased during the withdrawal period and accounted for up to 72.3 percent of total residue in female liver after 5 days withdrawal. The amount of insoluble residue in other tissues incuding male liver was less. Virtually all residue of gentian violet in tissues tested after 6 hours' withdrawal was unidentified.

v. *Maximum tolerated dose studies.* NCTR conducted two rangefinding studies to determine the highest dose level of gentian violet that would not alter the normal longevity of test animals. These studies were used in determining the appropriate dose level to test in the chronic studies to have the maximum opportunity for detecting neoplasm (cancerous tumor) development. In the first study, NCTR determined that the appropriate dose level of gentian violet for the lifetime feeding study in rates was 100, 300, and 600 ppm of the diet. Technical Report: Experiment No. 279; 90 Day Study on Gentian Violet in Fischer 344 Rats, June 1984 (Ref. 24). In the second study, NCTR determined that the appropriate dose level of gentian violet for the lifetime feeding study in mice was 100, 300, and 600 ppm of the diet. Technical Report: Experiment No. 278; 90 Day Study on Gentian Violet in B6C3F1 Mice, September 1985 (Ref. 25).

Chronic studies require that the high dose to be tested be sufficiently high to moderately stress the test animals, but not so high that an undue number of animals die too young to have developed tumors if the test product is in fact a carcinogen. CVM has reviewed the two rangefinding studies, and has concluded that they meet these criteria and that acceptable high doses for testing in the chronic studies were found.

vi. *Reproduction-teratology studies.* Three studies sponsored by NCTR were designed to assess whether gentian violet is toxic to the embryo or fetus, or is a teratogen. Based on the results of one study, NCTR concluded that CVM agreed that gential violet is neither embryotoxic or fetotoxic, nor is it teratogenic in rates when administered orally up to and including 10 mg per kilogram per day (mg/kg/day) during the gestation days 6 through 15. The no-effect level (NOEL) in this study was 2.5 mg/kg/day, based on the lack of drug-induced embryotoxic, fetotoxic, or teratogenic effects. Final Report: Teratologic Evaluation of Gentian Violet (CAS No. 548–62–9) in CD Rats, May 31, 1982 (Ref. 26). CVM also concluded, after a review of the second study, that gentian violet is not teratogenic in rabbits when given orally up to and including 2.0 mg/kg/day during gestation days 6 through 19. However, severe maternal toxicity occurred, and as a result no conclusions could be drawn from this study with respect to the embryotoxicity or fetotoxicity of gentian violet. Final Report: Teratologic Evaluation of Gentian Violet (CAS No. 548–62–9) in New Zealand White Rabbits, March 15, 1983 (Ref. 27). In the third study, CVM concluded that gentian violet was not teratogenic in rats at the dosages used; however, it appeared that a maximum tolerated dose may not have been reached. Technical Report: Experiment No. 355; Developmental Toxicity Study of Gentian Violet in Fischer 344 Rats; July 1988 (Ref. 28).

vii. *Multigeneration study in rats.* This study was conducted to determine the long-term toxicity and effects on reproduction of gentian violet when added to the diet of rats. Technical Report: Experiment Nos. 305, 354, 355; Three-Generation Reproductive and Toxicity Studies of Gentian Violet in Fischer 344 Rats, September 1988 (Ref. 29). CVM reviewed the technical report and made the following findings: while there appeared to be more deaths in the treatment groups than in the controls, there was no identifiable trend; in the F_3a generation there was a statistically significant lower body weight in the 600 ppm dose group ($p<0.01$), a dose-related (trend test) necrosis in the thymus of both sexes, and a dose-related effect on the kidneys of the females; however, a pairwise statistical evaluation of these parameters was not performed and it appears that a no-effect level of 100 ppm may be supported by these data.

viii. *Metabolism studies in mice and rats.* Four metabolism studies in rats and mice were conducted to provide data on the distribution of metabolites in a variety of rodent tissues to assist in interpreting results from chronic toxicity tests and to provide tissues for identifying metabolities of gentian violet. Technical Report: Experiment Nos. 302 and 303. Metabolism of Gentian Violet in Fischer 344 Rats and B6C3F1 Mice, June 1989 (Ref. 30).

Metabolic studies in rats and mice involved both kinetic and residue studies. The kinetic studies involved tissue residue depletion of total 14C residues as a result of administration of a single dose of [phenyl-U-14C] gentian violet to male and female Fischer 344 Rats. After sacrificing rats at 2, 4, 14, 24, and 36 hours, residues were highest in all tissues 4 hours post dosing except fat which rose to a plateau at 24 hours. Depletion half-lives for residues in livers of male and female rats were 14.5 and 7 hours, respectively.

The residue and metabolite studies were run in Fischer 344 rats and B6C3F1 mice dosed twice daily by capsule for 7 days at 100 ppm equivalents in the feed. Total residues in tissues collected 2 hours after the last dose were highest in the fat of female rats (20.2 ppm) and female mice (24.1 ppm). A highly signfiicant sex difference ($p<0.01$) for residue levels in females versus males was found for fat, kidney, and muscle tissue for both species and in mouse liver.

Residue extraction from tissues yielded 50 percent to 80 percent of the total residue. When profiled against known standards, the residue was found to contain the parent compound along with its pentamethyl and tetramethyl metabolites. The reduced metabolite, leuco gentian violet, and its pentamethyl metabolite were also detected. All or

most of these metabolites were variously detected in all tissues. Leuco gentian violet and its pentamethyl metabolite were the only metabolites identified in fat in both species. Total identified metabolites generally respresented a low percentage of the total residue, ranging from 1.29 percent in male mouse liver to 19 percent in male rat muscle. A higher percentage of residue was identifiable in female mouse ovaries (38 percent) as well as male rat fat (59 percent), female rat fat (51 percent), and male mouse fat (37 percent). The only identified residue in fat was the reduced (leuco) form of gentian violet and its pentamethyl metabolite. Thus, complete profiling of residues in rodents did not occur.

c. *Literature review.* FDA believes that, based on the NCTR studies alone, gentian violet could not be generally recognized as safe. Nevertheless, in order to present a comprehensive review of gentian violet studies, CVM in May 1989 conducted an extensive search of the published literature for articles that are relevant to the GRAS status of gentian violet for drug use and nondrug feed use. Other than the results of the NCTR chronic study in mice published by Littlefield et al., the Center did not find published or unpublished reports of any long-term studies that were designed to determine whether gentian violet is an animal carcinogen. However, CVM found that there is a growing body of literature which is concerned with the carcinogenicity and/or mutagenicity of the compound, in addition to the studies by Fitzhugh and others described above. Other published studies have assessed the toxicity of gentian violet and described how it is metabolized. The results of the search are summarized in the following paragraphs. A complete list of all the titles found, numbering approximately 50, has been filed with the Dockets Management Branch (address above).

A number of the articles, including some previously discussed, report mutagenic responses to gentian violet in several test systems, although results in several other studies were negative. Several authors have identified significant mutagenic effects such as clastogenic toxicity (Au and Hsu, Ref. 31), DNA repair in hepatocytes (Miller and McQueen, Ref. 32) and direct-acting frameshift mutagenicity (Thomas and MacPhee, Ref. 33). Other authors such as Au et al. (Ref. 10), as well as Rosenkranz and Carr (Ref. 11), have studies mutagenic and toxic effects both in vitro and in vivo and have concluded that gentian violet is potentially hazardous to cells. In a summary article, Combes and Haveland-Smith reported that gentian violet was positive in 10 genotoxicity tests and negative in 3 (Ref. 34). In support of the developing concern that reactive metabolites may also be responsible in part for the toxicity observed from the use of gentian violet, it has been established that the metabolism of gentian violet includes a reduction in which free radicals are produced (Refs. 35 and 36). McDonald and Cerniglia found the reduced form of gentian violet, leucogentian violet, to account for 11 percent of the excreted drug in the feces of orally dosed rats when parent gentian violet was administered (Ref. 37). These same authors found leucogentian violet to be a major metabolite produced by human, rat, and chicken microflora in vitro.

Two studies not previously discussed describe the occurrence of residues of ^{14}C-gentian violet in chicken tissues. A patent assigned to Taylor (Ref. 38) contains the description of a study in 12-day-old male chicks that were gavage dosed once a day for 12 days. The dose was 0.5 mg/kg body weight, which approximates 7 ppm in the feed. Total residue, as determined by combustion analysis, was determined in edible tissues over a 72-hour depletion period. Residue levels were highest in liver and kidneys, and were 34 ppb and 24 ppb at 72 hours, respectively. This 3-day depletion period coincides with the early portion of the 10-day period used in the NCTR study. The second study by Olentine, et al. (Ref. 39), involved adult chickens predosed for 30 days on feed containing 1 kg unlabeled gentian violet/1,000 kg feed (1,000 ppm) followed by a single dose of ^{14}C-gentian violet at 1.45 mg/kg body weight. Total residue determined in kidney at 336 hours after the pulse dose was 16 to 77 ppb. Liver from female chickens still contained drug residues of 18 ppb at 120 hours. These studies support the findings of the NCTR metabolism study (Ref. 23) of the presence of residue of gentian violet in chicken tissue over a long depletion period. In its literature search, CVM did not find any other studies concerning residue of gentian violet in human food.

In addition, more than 20 articles which address toxic reactions of gentian violet in various animal species including man, have been published since 1968. Most of these papers can be characterized as involving inflammatory reactions of individuals or animals that were acutely exposed to gentian violet or crystal violet. However, other toxicities have been noted to include epidemic occupational nose bleed (Ref. 40) and cytotoxicity in vitro (Ref. 41).

B. Criteria Unique to Nondrug Uses in Animal Feed

1. Prior Sanction

FDA is not aware of any prior sanctions for the use of gentian violet that meet the criteria described above. No party has, in the course of the litigation described above, claimed that its gentian violet-containing product was the subject of a prior sanction. Accordingly, based on the information that is available to it, the agency has concluded that there are no prior-sanctioned gentian violet products for animal feed use.

2. General Recognition Based on Common Use in Food

The agency also believes that gentian violet for use in animal feeds is not generally recognized as safe through experience based on common use in food prior to January 1, 1958. The agency is not aware of any evidence tending to prove that gentian violet was commonly used in animal feed prior to January 1, 1958. Further, the absence of such evidence was established in the litigation described above. In *United States* v. *An Article of Food,* No. C76–63G (N.D. Ga.), cited above, the court granted the government's motion for a directed verdict with respect to the issue as to whether gentian violet had been used prior to January 1, 1958, in poultry feed at levels recommended on the labeling of claimant Marshall Minerals' product, thus resolving a question left open in *United States* v. *An Article of Food,* 622 F.2d 768, 771 n.8, *supra.* Moreover, Naremco failed to present evidence of pre-1958 food use of gentian violet in the lawsuit that resulted in its being enjoined from the marketing of gentian violet products. See *United States* v. *Naremco, supra,* 553 F.2d at 1143.

3. Animal Safety

A CVM literature search found one published study (Ref. 42) having to do with the safety of gentian violet to food animals, specifically chickens. The data in that study show that gentian violet in broiler breeder chickens does not increase mortality or significantly affect the fertility, semen quality, hatchability, feed consumption, egg production, or feed per dozen eggs at up to 100 ppm. Similar data are not available for other classes of chickens or other food-producing animals. The one study might have provided at least a partial basis for general recognition of safety to one class of chickens under the tested conditions. However, the studies cited above in the section on human food

safety, showing that gentian violet causes carcinogenic and mutagenic responses, raise sufficient question to preclude general recognition of safety to target animals.

C. Criteria Unique to Drug Use

1. General Recognition of Effectiveness

The literature search described above would have identified any published studies concerning the effectiveness of gentian violet as a drug for use in animals. However, none was found. Several studies concerned the utility of gentian violet as a fungus inhibitor (Refs. 43 and 44). However, this application is a food additive use, not a drug use. Accordingly, FDA is not aware of published studies that support general recognition of effectiveness of gentian violet for any drug use in food animals.

2. Grandfathered Uses

FDA is not aware of any grandfathered uses of gentian violet that meet the criteria described above. No party has, in the course of the litigation described above, claimed that its gentian violet-containing drug product was grandfathered. Accordingly, based on the information that is available to it, the agency has concluded that there are grandfathered gentian violet products for any veterinary drug use in food animals.

IV. Conclusions

FDA has concluded that gentian violet when added to animal feed is not generally recognized as safe and is therefore a food additive. Gentian violet is not GRAS, from a human food safety standpoint, based on scientific procedures. The NCTR chronic mouse study establishes that gentian violet is an animal carcinogen and the results of the NCTR chronic rat study corroborate this conclusion. Moreover, the NCTR chicken metabolism study demonstrates that measurable residue of gentian violet occurs in edible poultry products.

Furthermore, if gentian violet is to meet the criteria for GRAS status, there must be data and information to show that the residue that does occur presents no significant risk. A practical regulatory method must be available. This data and information must be published and available generally to experts. These criteria have not been met in the case of gentian violet. For instance, there is no published risk assessment purporting to establish that an insignificant risk to humans would occur from the use of gentian violet in poultry or any other food-producing animal, under practical conditions of use. Except for the chronic mouse study, no other studies of the kind required for approval of a carcinogenic animal food additive have been published and made available to experts. And no practical regulatory method is available. Therefore, even if it is theoretically possible for a carcinogenic food additive to be GRAS, gentian violet would not be GRAS.

Furthermore, even if the chronic studies that have been done by NCTR do not establish that gentian violet is an animal carcinogen, they do not establish that gentian violet is safe. There is a paucity of the kind of studies, published in the scientific literature, that are required to support an expert opinion that gentian violet is generally recognized as safe. In fact, FDA's literature survey generally found that the published literature demonstrates that gentian violet tends to have mutagenic, genotoxic, and other toxic properties. Where such incriminating studies exist, experts generally agree that chronic studies must affirmatively show that the substance does not cause cancer, before it can be recognized as safe.

Similarly, FDA has not found sufficient evidence to support a conclusion that gentian violet is GRAS to target animals, based on scientific procedures. Also, as shown above, gentian violet is not GRAS based on common use in food. Nor is its use in animal feed subject of a prior sanction.

The agency has also concluded that when intended for any drug use in food animals, gentian violet is a new animal drug because it is not GRAS or GRAE for any food animal drug use. It is not GRAS for the reasons given above with respect to gentian violet's food additive status. The lack of published literature supporting general recognition of effectiveness of gentian violet for drug use precludes a finding that it is GRAE for any food animal drug use. Further, gentian violet for drug use is not exempt from the approval requirement by virtue of the 1962 grandfather clause.

Therefore, FDA is proposing to declare that gentian violet for use in animal feed is not generally recognized as safe and is a food additive. The agency is also proposing to declare that gentian violet for any veterinary drug use in food animals is not generally recognized as safe and effective and is a new animal drug.

Interested persons may on or before April 16, 1990, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA will review all comments and if it concludes there is a lack of convincing evidence that the substance is GRAS or otherwise exempt from the definition of a food additive in section 201(s) of the act, it will publish a final order declaring gentian violet to be a food additive. Similarly, if the agency concludes that there is a lack of convincing evidence that the substance is GRAS or GRAE for drug use, it will publish a final order declaring gentian violet to be a new animal drug.

Comments that are submitted must meet the criteria for determination of food additive and new animal drug status, as prescribed by applicable provisions of the act and regulations, as set forth in case law, and as described above. Comments submitted by persons who consider themselves to be experts qualified by training and experience to evaluate the safety and effectiveness of gentian violet should provide pertinent information on their training and experience. Persons interested in submitting comments should also submit copies of all literature they rely on, published or unpublished, that is not on file with the Dockets Management Branch (address above).

Comments that contend that gentian violet is GRAS for nondrug uses in feed should provide a technical description of the product upon which the comment is made, as specified in 21 CFR 570.35. Claims of prior sanction should be supported by the specific information described above. Comments that contend that gentian violet is GRAS and GRAE for drug use, or exempt under the 1962 grandfather clause should identify the specific drug product for which the claim is made, and provide labeling or other sources of the intended conditions for use.

Currently, the only use of gentian violet that the agency has sanctioned is for the prevention of mold growth in poultry feed at up to 8 ppm. Under this proposal, gentian violet would be declared to be a food additive. Food additives are deemed unsafe unless they are subject to regulations prescribing the conditions under which such additives may be safely used. Currently, there are no regulations that prescribe conditions under which gentian violet may safely be used. Therefore, if a final rule is issued based on this proposal, gentian violet intended for use in poultry feed to inhibit mold growth will be deemed unsafe, poultry feed containing any

amount of gentian violet will be deemed adulterated, and both gentian violet and feed containing it would be subject to regulatory action. Therefore, upon the effective date of any final rule based on this proposal, the agency will withdraw its sanction of July 27, 1982 (47 FR 32480). All other uses of gentian violet in animal feed, including drug use, are currently subject to regulatory action, and will continue to be so subject during this rulemaking proceeding.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Fitzhugh, O.G., "Data Regarding Long Term/Chronic Toxicity Testing on Gentian Violet," 1951.

2. Memorandum of February 1, 1978, from Director, Division of Pathology (HFF–130), to Joseph Rodricks (HFF–3), Re: Review of Slides from Fitzhugh Chronic Oral Toxicity Study with Gentian Violet.

3. Memorandum of June 12, 1978, from Director, Division of Pathology (HFF–130), to Joseph Settepani (HFF–104), Re: Review of Pathology Report on Fitzhugh Chronic Toxicity Study of Gentian Violet.

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13. Miller, E.C. and J.A. Miller, "The Mutagenicity of Chemical Carcinogens: Correlations, Problems and Interpretations," *Chemical Mutagens*, Plenum Press, New York, Vol. I, 83–119, 1971.

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16. DeSerres, F.J., "Prospects for a Revolution in the Methods of Toxicological Evaluation," *Mutation Research*, 39:165–176, 1976.

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18. Littlefield, N.A., B.N. Blackwell, C.C. Hewitt, and D.W. Gaylor, "Chronic Toxicity and Carcinogenicity Studies of Gentian Violet in Mice," *Fundamental and Applied Toxicology*, 5:902–912, 1985.

19. NCTR; Technical Report: Experiment No. 304; Chronic Toxicity and Carcinogenicity Studies of Gentian Violet in B6C3F; Mice, December 1988.

20. Experimental Pathology Laboratories, Inc., Audit of NCTR's Chronic Toxicity and Carcinogenicity Study of Gentian Violet in Mice, December 2, 1986.

21. Moch, R.W., Pathology Report: "Gentian Violet; Review of Experimental Pathology Laboratories' Audit of the National Center for Toxicological Research's Chronic Toxicity and Carcinogenicity Study of Gentian Violet in Mice," June 19, 1987.

22. NCTR; Technical Report: Experiment No. 338; Chronic Toxicity and Carcinogenicity Studies of Gentian Violet in Fischer 344 Rats, November 1988.

23. NCTR; Technical Report: Experiment No. 6040; Metabolism of Gentian Violet in Chickens, May 1985.

24. NCTR; Technical Report: Experiment No. 279; 90 Day Study on Gentian Violet in Fischer 344 Rats, June 1985.

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26. Research Triangle Institute, Final Report: Teratologic Evaluation of Gentian Violet (CAS Reg. No. 548–62–9) in CD Rats, May 31, 1982.

27. Research Triangle Institute, Final Report: Teratologic Evaluation of Gentian Violet (CAS Reg. No. 548–62–9) in New Zealand White Rabbits, March 15, 1983.

28. NCTR; Technical Report: Experiment No. 355; Developmental Toxicity Study of Gentian Violet in Fischer 344 Rats, July 1988.

29. NCTR; Technical Report: Experiment Nos. 305, 354 and 355; Three-Generation Reproduction and Toxicity Studies of Gentian Violet in Fischer 344 Rats, September 1988.

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38. Taylor, G.W., U.S. Patent 4,033,721, July 5, 1977.

39. Olentine, C.G., Jr., D.L. Cross, and P. M. Borrows, "^{14}C-Gentian Violet Residues in Tissues of Broiler Breeders," *Poultry Science*, 59–500–505, 1980.

40. Quinby, G.E., "Gentian Violet as a Cause of Epidemic Occupational Nosebleeds," *Archives of Environmental Health*, 16:485–489, 1968.

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44. Hall, C.L., and P.B. Hamilton, "In Vitro Antifungal Activity of Gentian Violet," *Poultry Science*, 61:62–66, 1982.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting the finding contained in an environmental assessment under 21 CFR

25.31 may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Economic Impact

FDA has examined the economic impact of the proposed regulation in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency expects most poultry producers who currenty use gentian violet as a mold inhibitor to switch to an alternative mold inhibitor, mainly propionic acid. The total nationwide impact of those who switch will incur an annual cost increase of $5.1 million or less, which reflects the difference in price between propionic acid and gentian violet. However, this cost increase may be mitigated if propionic acid is a more effective mold inhibitor than gentian violet.

There is some imprecision in the $5.1 million cost estimate, because the agency believes that a portion of gentian violet users employ the feed additive to treat candidiasis rather than to inhibit mold. Treating candidiasis with gentian violet is an unapproved drug use. If poultry producers who use gentian violet for treating candidiasis switch to a therapeutic agent approved for this use (Nystatin), they may realize savings as a result of lower disease-related losses. However, these potential savings could be partially or totally offset by the difference in price between the two feed additives.

Based on its examination, FDA concludes that the economic effects attributable to the proposed regulation do not warrant its treatment as a major rule as defined in Executive Order 12291. With regard to the Regulatory Flexibility Act, the agency finds that this regulation will affect about 10 to 15 firms in the mold inhibitor manufacturing industry. Although many of these firms are small businesses, most of them are believed to sell alternatives to gential violet. Therefore, the proposed regulation will not have a significant effect on a substantial number of firms, and it does not warrant a regulatory flexibility analysis under Public Law 96–354.

A copy of the assessment supporting these determinations is on file with the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Polychlorinated biphenyls (PCB's).

21 CFR Part 589

Animal feeds, Animal foods, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 500 and 589 be amended as follows:

PART 500—GENERAL

1. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: Secs. 201, 301, 402, 403, 409, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371).

2. New §§ 500.29 and 500.30 are added to subpart B to read as follows:

§ 500.29 Gentian violet for use in animal feed.

The Food and Drug Administration has determined that gentian violet is not generally recognized as safe for use in animal feed and is a food additive subject to section 409 of the Federal Food, Drug, and Cosmetic Act (the act), unless it is intended for use as a new animal drug and is subject to section 512 of the act. The Food and Drug Administration has determined that gentian violet is not prior sanctioned for use in animal feed.

§ 500.30 Gentian violet for animal drug use.

The Food and Drug Administration has determined that gentian violet is not generally recognized as safe and effective for any veterinary drug use in food animals and is a new animal drug subject to section 512 of the Federal Food, Drug, and Cosmetic Act (the act). The Food and Drug Administration has determined that gentian violet is not exempted from new animal drug status under the "grandfather" provisions of the 1962 Drug Amendments.

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

3. The authority citation for 21 CFR part 589 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 242, 348, 371).

5. New subpart B consisting of § 589.1000 is added to read as follows:

Subpart B—Listing of Specific Substances Prohibited From Use in Animal Food or Feed

§ 589.1000 Gentian violet.

The Food and Drug Administration has determined that gentian violet has not been shown by adequate scientific data to be safe for use in animal feed. Use of gentian violet in animal feed causes the feed to be adulterated and in violation of the Federal Food, Drug, and Cosmetic Act (the act), in the absence of a regulation providing for its safe use as a food additive under section 409 of the act, unless the substance is intended for use as a new animal drug and is subject to an approved application under section 512 of the act.

Dated: February 2, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–3222 Filed 2–12–90; 8:45 am]

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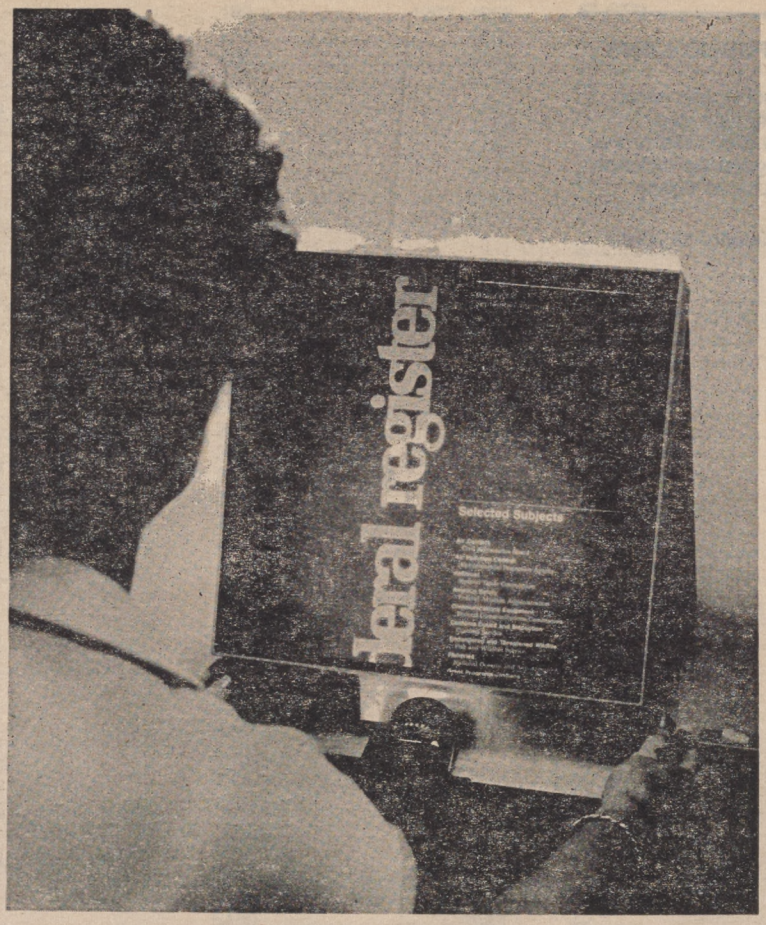
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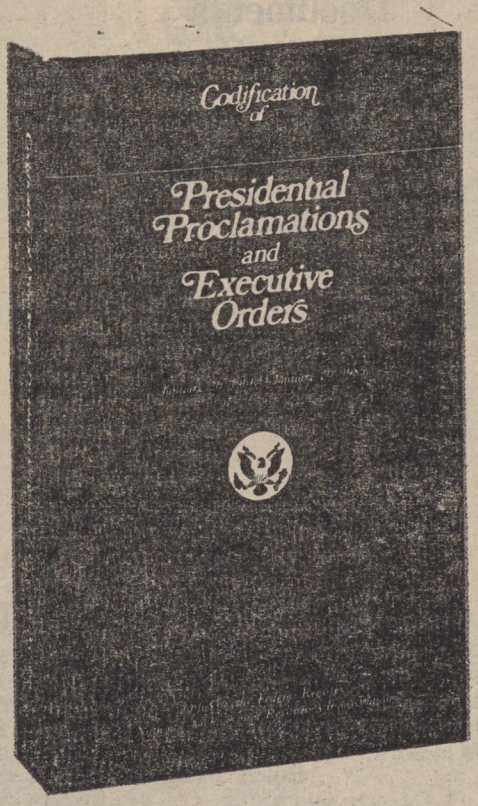
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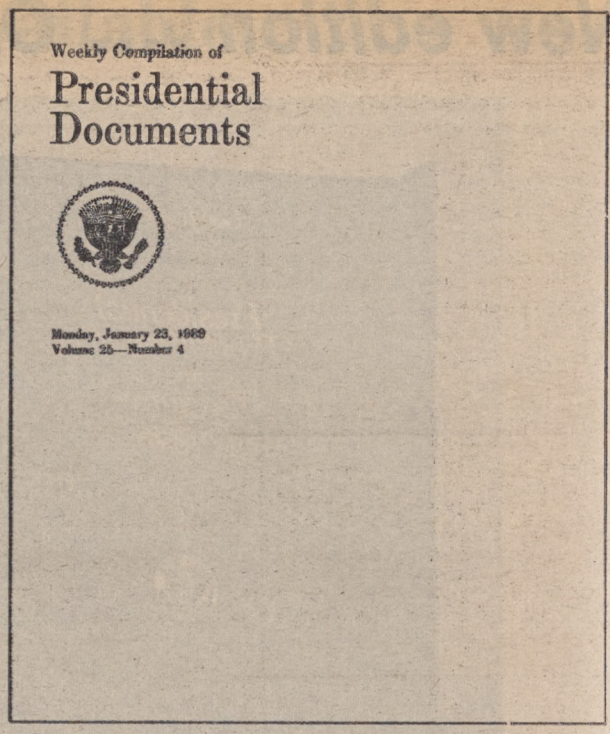
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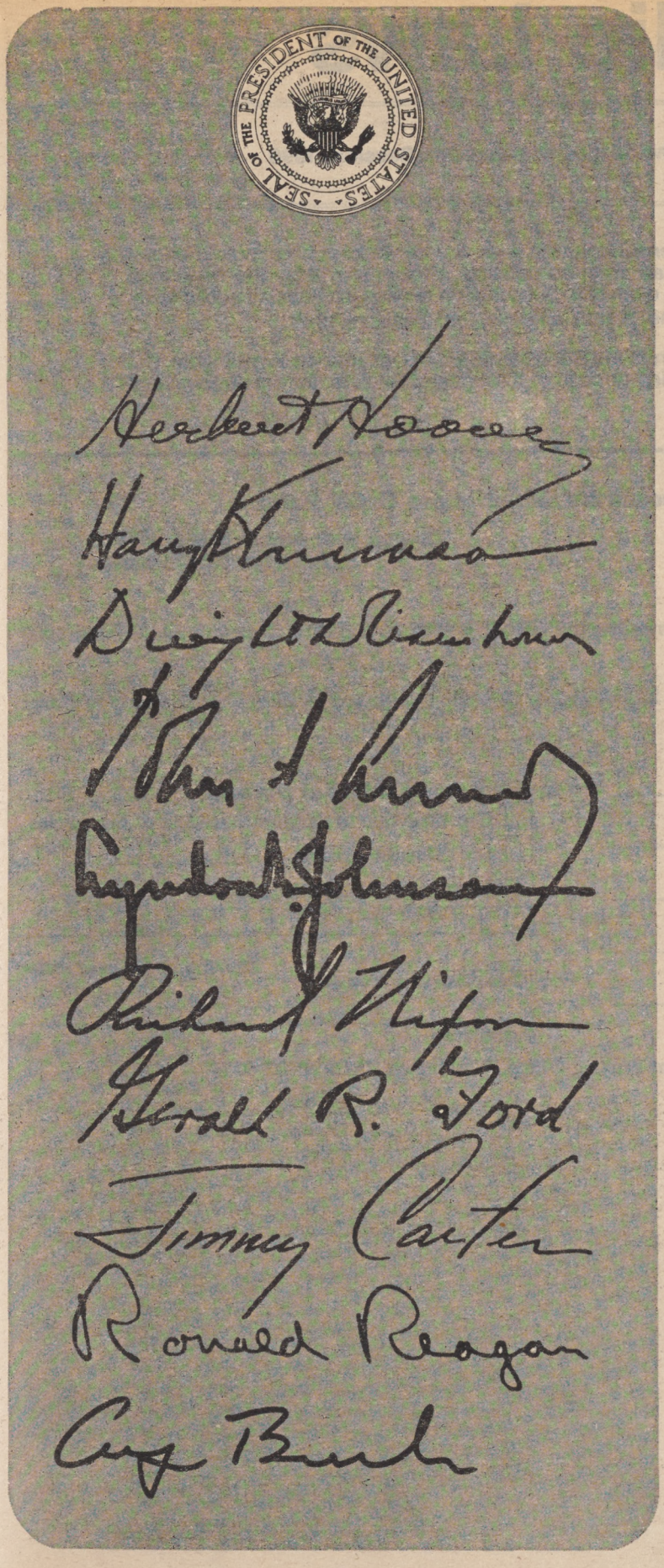
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